

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

ELECTRONIC APPLICATION OF DUKE)
ENERGY KENTUCKY, INC. FOR AN)
ADJUSTMENT TO RIDER NM RATES AND) Case No. 2023-00413
FOR TARIFF APPROVAL)

**RESPONSE BRIEF OF JOINT INTERVENORS KENTUCKY
SOLAR ENERGY SOCIETY AND KENTUCKIANS FOR THE
COMMONWEALTH**

Byron L. Gary
Tom FitzGerald
Ashley Wilmes
Kentucky Resources Council
P.O. Box 1070
Frankfort, Kentucky 40602
(502) 875-2428

*Counsel for Joint Intervenors Kentucky
Solar Energy Society and Kentuckians
for the Commonwealth*

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I. Introduction

The application of Duke Energy Kentucky (“Duke,” or “Company”) in this proceeding to establish a new Rider NM-II suffers from multiple flaws in methodology, and substantial and repeated noncompliance with the requirements for such a tariff under the law and past Commission precedent. As Joint Intervenors showed in their initial Memorandum Brief, the application and process of the Company does not comply with the principles established by the Commission for calculating net metering compensatory credit rates. It also does not consider all of the costs and benefits required by the Commission and undervalues several of those it does consider in direct contravention of Commission precedent. The Company’s arguments in its initial Memorandum Brief do not address or dispute many of these key points. Joint Intervenors therefore respectfully reassert their request that the Commission reject the filing for substantial and repeated noncompliance with previous Commission Orders, or in the alternative include values or substitute more appropriate values for each component of rate determination, as suggested by Joint Intervenors in their initial memorandum brief. Joint Intervenors also respectfully request that the Commission reaffirm and clarify the manner established in the Commission Orders in Cases 2020-00174, 2020-00349, and 2020-00350, by which the netting in “net metering” is required to be undertaken under an NMS 2 Tariff.

II. Joint Intervenors fully adopt the arguments and position of KYSEIA.

The Joint Intervenors agree fully with the points made by Kentucky Solar Industries Association, Inc. (KYSEIA) in their Memorandum Brief.¹ In particular, Joint

¹ Kentucky Solar Industries Association, Inc., Memorandum Brief (Jun. 26, 2024).

Intervenors share KYSEIA's concerns regarding the legacy rights of existing net metering customers, preserved in statute.² KYSEIA also makes important points regarding the faulty cost of service study conducted by the Company,³ and its treatment of customer-generators generally.⁴ The Joint Intervenors therefore wholly endorse and adopt the arguments of KYSEIA as if fully set out below.

III. Duke's arguments continue its disregard for Commission precedent.

Throughout its Brief, the Company continues to disregard Commission precedent on the avoided costs that must be included, the principles to be followed in setting avoided cost credit rates, and the way in which the amount to be charged and credited is to be calculated. The principles set in Commission precedent bear repeating in full:

Principles for Compensation for Eligible Customer-Generators

As previously mentioned, multiple intervenors recommended a separate proceeding and process for defining objectives and determining approaches for estimating net metering costs and benefits. Intervenors provided several examples of other states undergoing similar proceedings and provided a description of best practices for compensating eligible customer-generators. While the Commission declined, in the January 13, 2021 Order, to adopt a recommendation for a separate proceeding to determine a NEM rate methodology, the Commission concludes that many of the best practices supported by intervenors are reasonable and should be incorporated into NMS II for the reasons set forth below. These principles are as follows:

- Evaluate eligible generating facilities as a utility system or supply side resource. Because eligible customer-generators and their eligible generating facilities can meet power system needs, they should be compared with other energy resources using consistent methods, processes, and assumptions.

² *Id.* at 4-7.

³ *Id.* at 7-11.

⁴ *Id.* at 11-12.

- Treat benefits and costs symmetrically. KRS 278.466(5) provides that electric utilities are “entitled to implement rates to recover . . . all costs necessary to serve its eligible customer-generators.” This is because an evaluation consisting of only the costs incurred by Kentucky Power would be deficient if the evaluation failed to consider known or reasonably expected measurable positive effects, or benefits, that accrue to Kentucky Power. Thus, to avoid bias, it is important to weigh the costs and benefits of a resource symmetrically. As we found in Case No. 2019-00256, “[t]he Commission must develop a process that identifies known or reasonably expected measurable costs and benefits that can be factored into the ratemaking process” for net metering rates that compensate eligible customer-generators for energy exported to the grid. While the record in this case does not offer quantitative evaluations of benefits and costs, the parties’ qualitative arguments demonstrated the need to evaluate a broad range of known or reasonably expected measurable benefits of eligible customer-generators, leading the Commission to incorporate additional avoided cost components beyond those proposed by Kentucky Power.

- Conduct forward-looking, long-term, and incremental analysis. A utility makes economic decisions that consider the entire life of a project, and such long-term analysis should also apply to an eligible customer-generator. Given that the typical warranty provided by a solar panel manufacturer is 25 years, this would be an appropriate analysis period for Kentucky Power’s net metered customers. A long-term approach ensures unbiased evaluation of system resources, ensures ratepayers are paying fair value for avoided future costs, and compensates eligible customer-generators fairly.

- Avoid double counting. There is a risk of counting certain benefits or costs more than once if they fall into multiple categories of benefit or cost. All impacts should therefore be clearly defined and carefully quantified.

- Ensure transparency. Transparency creates trust between parties and allows for a robust public process around resource evaluation. All relevant assumptions, methodologies, and results from any party should therefore be clearly documented and available for stakeholder review and input.

While the principles above were offered in the context of compensating eligible customer-generators, similar principles apply to rate design. For a net metering tariff, rate design principles are relevant not only to the export rate structure, but also to the underlying retail rate that customer-generators pay for their energy consumption. When considering rate designs for either export or consumption, it is important to consider the above principles alongside the additional principles of stability and simplicity.⁵

A. Avoided Energy Cost, Avoided Environmental Compliance Cost, And Avoided Carbon Cost

Duke's disregard of the Commission's Orders starts with its first avoided cost presented, those for energy, by stating "[a]lthough more transparent methods could have been used, these would not have been as accurate or as current a reflection of the Company's actual avoided costs."⁶ While Joint Intervenors agree this is generally compliant with past Commission precedent,⁷ Duke ignores entirely the point of Joint Intervenor expert Dr. Richard McCann, who points out that he was "not able to examine the validity of these forecasts in detail because the work was performed by an unnamed third-party vendor who has not been presented for data inquiries and cross examination."⁸ The Company further ignores the argument of Dr. McCann that these

⁵ Case No. 2020-00174, *Electronic Application of Kentucky Power Company for (1) a General Adjustment of Its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; And (5) All Other Required Approvals and Relief*, Order (May 14, 2021) (hereinafter "KPCo Order") at 21-24.

⁶ *Duke Energy Kentucky, Inc.'s Post-Hearing Brief* (hereinafter "Duke Brief") at 14.

⁷ *Memorandum Brief of Joint Intervenors Kentucky Solar Energy Society and Kentuckians for the Commonwealth* (hereinafter "JI Brief") at 28.

⁸ *Prepared Direct Testimony of Richard McCann, Ph.D on Behalf of Joint Intervenors Kentucky Solar Energy Society and Kentuckians for the Commonwealth* (hereinafter "McCann Direct") at 17.

avoided costs ignore the hedging benefit provided to the Company by customer-generators.⁹

More importantly, the Company completely disregards Commission precedent, stating “[t]he LMPs calculated by the Company incorporate anticipated environmental costs, including those associated with carbon,”¹⁰ As pointed out by Joint Intervenors in their initial brief, both avoided carbon costs¹¹ and avoided environmental compliance costs¹² should be specifically analyzed, and arguments similar to those made by Duke have already previously been rejected by the Commission.¹³ As further pointed out by Joint Intervenors, both the avoided carbon and environmental compliance costs have not only grown greater, but more certain as recent regulations have been adopted by the EPA, thus clarifying what the requirements and costs will likely be.¹⁴ Furthermore, the Company also does not acknowledge the capital costs associated with compliance.¹⁵

The costs put forward by the Joint Intervenors with regard to avoided environmental compliance and carbon costs, therefore, remain the only ones proposed

⁹ *Id.* at 17-20.

¹⁰ Duke Brief at 15.

¹¹ JI Brief at 24-26

¹² *Id.* at 26-28.

¹³ See, e.g., KPCo Order at 35-37; *In the Matters of: Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit and Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Case Nos. 2020-349 and 2020-350 (*hereinafter* “LG&E-KU Cases”), Order (Sept. 24, 2021) at 56-57.

¹⁴ JI Brief at 25-26.

¹⁵ *Id.* at 27-28.

by a party in this proceeding, and Joint Intervenors respectfully request they be adopted by the Commission, should it decide to accept the Company's faulty application in the case.

B. Avoided Generation Capacity Cost

Duke similarly rejects Commission precedent which prefers the publicly-available PJM Net CONE value for avoided capacity costs, calling the preference a mischaracterization of Joint Intervenors' witness.¹⁶ However, the Commission itself stated "Net CONE reflects an approximate capacity market equilibrium and therefore better reflects long-term avoided capacity value."¹⁷ The Commission should therefore reject the opaque methodology put forward by the Company, which similar to its avoided energy costs, offers no opportunity for real examination, in favor of the method it has ordered in the past.

Furthermore, aside from continuing to favor transparent data sources, the Commission should reject the use of the "revised ELCC values for Fixed Solar for use in the 2025/2026 Base Residual Auction."¹⁸ The ELCC values are presented out of context, and as pointed out during cross-examination at the hearing are not yet associated with updated Net CONE values, which will likely be much higher.¹⁹

C. Avoided Transmission Capacity Cost and Avoided Distribution Capacity Cost

The Company continues to attempt to argue that because customer-generators utilize power they generate first, that the amount they export is somehow unpredictable,

¹⁶ Duke Brief at 17.

¹⁷ KPCo Order at 29.

¹⁸ Duke Brief at 13.

¹⁹ Hearing Testimony of Matthew Kalemba at 7'32" to 7'39".

and therefore deserving of no compensation for the reduction in load on the Company's transmission and distribution systems.²⁰ This argument is facially absurd, though, as the Company modeled both production and load from customer-generators *as a part of this case*.²¹

The Company additionally makes the novel argument that fully compensating customer-generators as previously ordered by the Commission would incentivize them to increase exports,²² ignoring the fact that including the avoided transmission and distribution costs offered as an alternative the overall compensation rate proposed by the Company²³ is still lower than the energy charge to residential customers.²⁴

The remainder of Duke's argument with regard to the benefits of customer-generators for the transmission and distribution system have already been roundly rejected by the Commission,²⁵ and should continue to be.

D. Job Benefits

Finally, the Company disregards Commission orders with regards to jobs benefits, stating:

The Company recognizes that the Commission has ordered other utilities to "evaluate job benefits and economic development as an export rate component" in their next rate case. However, there is only a small amount of net metering capacity remaining under the net metering cap for which to

²⁰ Duke Brief at 18-19.

²¹ Direct Testimony of Bruce L. Sailors at Attachment BLS-2.

²² *Id.* at 19.

²³ \$0.080187 per kWh, *Id.* at 14.

²⁴ \$0.099654 per kWh, Schedule of Rates, Classifications Rules and regulations for Electric Service of Duke Energy Kentucky, Inc. at Sheet 30.

²⁵ KPCo Order at 33-34; LG&E-KU Cases, Order (Sept. 24, 2021) at 51-54.

evaluate incremental job benefits of NM II. It seems likely this value would be immaterial.²⁶

As pointed out by the Chair at the hearing, this argument is circular. There is no evidence of job benefits because utilities continue to ignore Commission orders requiring it be studied.²⁷ In this case, a viable method for studying the exact benefits that the Company denies was proposed by Joint Intervenors' witness,²⁸ a fact ignored by the Company in its brief.

IV. Senate Bill 100 did not change the “plain language of KRS 278.465(4)” that usage by and generation of a customer-generator be netted over the billing period before application of the tariffed rate for surplus energy consumed or compensatory rate for surplus energy generated over that period.

In their opening brief, Joint Intervenors demonstrated that the manner by which Duke proposes to implement the NMS-2 tariff is inconsistent both with the plain language of the governing statute and with the methodology adopted and the tariff resulting from Case No. 2020-00174, and the *Orders* entered by the Commission in Cases No. 2020-00349 and 2020-00350 on that issue.

Both Duke and the Attorney General have filed post-hearing briefs addressing the issue in this case, and Joint Intervenors address their arguments *seriatim*.

For its part, the Attorney General (AG) seeks to reargue the merits (or lack thereof) of the approach mandated by Kentucky law for addressing the costs of service and value of fed-in solar from customer-generators taking service under a net-metering tariff. The AG's characterization of the history of net metering is entirely untethered both from any citation to record evidence or the facts. The mischaracterization by the AG of

²⁶ Duke Brief at 20 (citations omitted).

²⁷ Sailors Hearing Testimony at 5'43".

²⁸ McCann Direct at Exhibit 1.

the history of net metering, and the assertion that a 1:1 kilowatt-based crediting of excess generation “overcompensated” participants in Kentucky or passed “excess costs” to non-participants, is without evidentiary basis and should be rejected as opinion rather than fact or evidence. The assertion that customer-generators are “free riders” - using the grid as a battery for free - wholly ignores both the value provided by customer-generators, and that of the credit provided. Whether kilowatt- or dollar-denominated, it is the *energy* component of the utility service and that such customers still fully pay both for energy consumed over that generated, and for the fixed costs associated with the meter charge. The implication that customer-generated energy is without value to the utility was soundly rejected by the Commission in Case No. 2020-00174, where the principles for compensatory credit were established for determining how that benefit is to be valued.

The manner in which customer-generators participating under a net metering tariff in Kentucky are to be credited (and not “compensated” as the AG misstates repeatedly) has been set by statute. The AG may dislike the law, but should not be permitted to relitigate settled issues. Absent further legislative change, or some evidentiary support not provided by the AG in this case, the framework for both determining cost of service and the value and amount of compensatory credit for excess generation has been directed by statute and developed and applied in three *Orders* that were not appealed by the AG and which constitute the governing law for assessing the Duke proposal. The framework and those principles are laid out in full above.

For its part, Duke addresses but briefly the question of how the netting of generation and usage by a customer-generator under an NMS II tariff is to be calculated. Duke argues:

However, excess generation fed back to the electric grid is immediately converted to a dollar value and is included as a credit on the customer's bill subject to minimum bill provisions. In its order on rehearing in Case Nos. 2020-349 and 2020-350, the Commission recently clarified this:

The Commission finds that the first sentence in the second paragraph on page 48 of the September 24, 2021 Order should be stricken and replaced with the following: "Consistent with our finding in Case No. 2020-00174 and KRS 278.465(4), the Commission finds that LG&E/KU should continue to **net the dollar value** of the total energy consumed **and the dollar value** of the total energy exported by eligible customer generators over the billing period in NMS 2 consistent with the billing period netting period established in NMS 1."²⁹

The stricken sentence had previously read, "Consistent with our finding in Case No. 2020-00174 and KRS 278.465(4), the Commission finds that LG&E/KU should continue to net the total energy consumed and the total energy exported by eligible customer-generators over the billing period in NMS 2 consistent with the billing period netting period establishes in NMS 1." Thus, the Commission deliberately corrected and specified that dollar values should be netted, not energies.

Thus, the Commission deliberately corrected and specified that **dollar values** should be netted, not **energies**.

Duke Energy Kentucky's proposed netting methodology in Rider NM II is consistent with the Commission's most recent guidance as stated above. Accordingly, although some stakeholders might prefer a different approach, this aspect of Rider NM II is both consistent with the statute and the most recent Commission precedent and therefore reasonable.³⁰

²⁹ *LG&E-KU Cases*, Rehearing Order, pp. 11-12. (November 4, 2021) (emphasis added).

³⁰ Duke Brief at 11-12 (internal citation, including added emphasis, in original).

Unfortunately for Duke, the proposed netting methodology is **neither** consistent with the statute, **nor** with the Commission's *Orders* in 2020-00174, 2020-00349, or 2020-00350.

As noted in the Joint Intervenors' opening brief, the 2019 statutory revisions changed the numerator by which the energy credit for net metering customers would be measured – from a “kilowatt-denominated energy credit,” *Id.*, to a “dollar-denominated bill credit” the rate of which would be determined by the Commission “using the ratemaking processes under this chapter during a proceeding initiated by a retail electric supplier[.]” KRS 278.466(3).

How the netting occurred under the pre-2019 statute is not debated or disputed – the aggregate usage over the billing period was netted against the aggregate generation over the billing period and after netting the total energy consumed and the total energy exported by eligible customer-generators over the course of each billing period, a credit was applied to future energy costs or a bill was sent for consumption over generation during the billing period.

The 2019 amendments to the net metering laws modified the basis for the denomination of bill credits, from kilowatt-denominated to one that applied a dollar-denominated value to that generation but did **not** alter the manner in which the generation and consumption (however denominated) is to be netted – which is over a billing period. The proposed Duke NMS-2 Tariff is contrary to KRS 278.466, since the language that prescribed the monthly netting approach, i.e., “over the billing period” was not changed. The General Assembly is presumed to have been aware of how the netting was being implemented by the Commission when it adopted the 2019 revisions

yet did not change that billing-period netting approach. The revised definition of “net metering” in KRS 278.465(4) changed the manner in which the credit of generation over use would be expressed (from a kWh to a dollar-denominated credit) but did **not** change the essence of net metering, which is the netting of the *volume* of electricity generation and consumption over the course of the billing period.

Had the General Assembly intended to eliminate the concept of “netting” generation and consumption over the billing period, it would have so provided, eliminating “over a billing period” and instead amending the law to read that the “dollar value of all electricity generated by an eligible customer-generator that is fed back to the electric grid and priced as prescribed in Section 2 of this Act.” It did not do so, and Duke cannot selectively ignore the phrase to convert billing-period netting into an instantaneous valuation of all fed-in electricity.

The Duke approach is not consistent with the Commission’s *Orders* in Case Nos. 2020-00174, 2020-00349, or 2020-00350.³¹ As noted below, the Commission acknowledged that the instantaneous netting approach proposed by Duke here and by LG&E/KU there was “inconsistent with the plain language of KRS 278.465(4).” Case No. 2020-00349, *Order* (Sept. 24, 2021), at page 48. **That position of the Commission has not changed in any subsequent Commission Order or judicial decision.**

³¹ As noted in the Joint Intervenors’ opening brief, the Commission subsequently adopted a litigation position at odds with those orders, but those Orders have not been withdrawn, modified, or otherwise altered as a result of the change in litigation position, nor has that position been codified by the Commission or any reviewing Court.

The Duke approach is the same as that proposed by LG&E and KU in their 2020 rate cases, No. 2020-00249 and 2020-00350. In its September 24, 2021, in the *Orders* in Case No. 2020-00349 and 2020-00350, the Commission rejected that approach:

Based upon the evidence of record, the Commission finds that LG&E/KU's proposed methodology for NMS 2 netting period is not fair, just and reasonable, and should be rejected. **This is because LG&E/KU's proposed instantaneous credit for all energy exported on to the grid is inconsistent with the plain language of KRS 278.465(4), which provides that "net metering means the difference between" the dollar value of all electricity generated by an eligible customer-generator that is exported to the grid over a billing period and the dollar value of all electricity consumed by the eligible customer-generator over the same billing period.**

Consistent with our finding in Case No. 2020-00174³² and KRS 278.465(4), the Commission finds that LG&E/KU should continue to net the total energy consumed and the total energy exported by eligible customer-generators over the billing period in NMS 2 consistent with the billing period netting period establishes in NMS 1. The Commission further finds that, because the energy charge is based upon electricity consumed, the energy charge and any riders that are based on a per kWh charge should be netted against energy exported pursuant to KRS 278.465(4).³³

In two September 24, 2021 *Orders*, one entered in each of the LGE and KU cases, the Commission denied the rates and charges proposed by LGE and KU for its

³² Case No. 2020-00174 was the *Electronic Application of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) Approval Of Tariffs And Riders; (3) Approval Of Accounting Practices To Establish Regulatory Assets And Liabilities; (4) Approval Of A Certificate Of Public Convenience And Necessity; And (5) All Other Required Approvals And Relief*, which was the **first** case filed seeking to change the 1:1 netting that existed prior to the 2019 changes to the law.

³³ Case No. 2020-00349, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Order (Sept. 24, 2021); and Case No. 2020-00350, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Order (Sept. 24, 2021) at 48 (footnote added).

Tariff NMS-2 and further ordered that LGE and KU Tariffs NMS-2 be modified as described in the September 24, 2021 *Order*.³⁴

LGE and KU contested the Commission's September 24, 2021 *Orders* in Case Nos. 2020-00349 and 2020-00350 before Franklin Circuit Court, arguing, among other things, that the Commission's netting approach for NMS-2 was contrary to law.³⁵ By *Order* of November 4, 2021, the Commission, granted rehearing as to the description of the netting methodology as expressed on page 48 of the Commission's September 24, 2021 *Order*.³⁶

With regard to the netting methodology for NMS-2, the Commission ordered:

The first sentence in the second paragraph on page 48 of the September 24, 2021 *Order* is stricken and replaced with the following: Consistent with our finding in Case No. 2020-00174 and KRS 278.465(4), the Commission finds that LG&E/KU should continue to net the dollar value of the total energy consumed and the dollar value of the total energy exported by eligible customer generators over the billing period in NMS 2 **consistent with the billing period netting period established in NMS 1**.³⁷

The Commission did **not** in its November 4, 2021 *Order* modify, withdraw, or otherwise change its September 24, 2021 *Order* finding that KU's proposed methodology for the NMS-2 netting period "is not fair, just and reasonable and should be rejected" and was inconsistent with the *Order* in 2020-00174 with respect to how netting is to be done. Nor did the Commission modify, withdraw, or otherwise change its September 24, 2021 *Order* that held and explained that:

³⁴ *Id.* at 62

³⁵ Franklin Circuit Court Case 21-CI-00872, *Kentucky Utilities Company, et al. v. Public Service Commission of Kentucky, et al.* Complaint (filed Nov. 24, 2021) at 14.

³⁶ Case No. 2020-00349, *Order* (Nov. 4, 2021) at 25. The same clarification was made to the *Order* in Case No. 2020-00350.

³⁷ *Id.* (Emphasis added).

This [rejection] is because LG&E/KU's proposed instantaneous credit for all energy exported on to the grid is inconsistent with the plain language of KRS 278.465(4), which provides that "net metering means the difference between" the dollar value of all electricity generated by an eligible customer-generator that is exported to the grid over a billing period and the dollar value of all electricity consumed by the eligible customer-generator over the same billing period.³⁸

There has been no subsequent *Order* of the Commission, nor any judicial *Order* or *Opinion*, revoking, modifying, or withdrawing the Commission's rejection of the LGE/KU proposed instantaneous credit or instantaneous netting approach for the LGE/KU Tariff NMS-2.³⁹

Finally, the above-quoted text from the *Orders* in Cases 2020-00349 and 2020-00350 rejected the "instantaneous credit" approach proposed then by LG&E and KU and now by Duke, on the basis both of inconsistency with the underlying statute, and with the Commission's *Order* in Case No. 2020-00174. Both the September 24, 2021 *Order* and the November 4, 2021 *Order* contained the same language regarding the rejection of instantaneous crediting as being required in order to be "[c]onsistent with our finding in Case No. 2020-00174" as well as the underlying statute.

³⁸ *Order*, Case No. 2020-00349 (September 24, 2021) at 48.

³⁹ That the Commission's September 24, 2021 and November 4, 2021 *Orders* in Cases No. 2020-00349 and 2020-00350 intended that the electricity generation and usage over a billing period be netted and that the tariff rates be charged for any excess use over generation or, conversely, any generation over use over that billing period be credited at the new dollar-denominated value, is also clear from the "Appendix B" to the September 24, 2021 *Orders* in both cases, which were unchanged by the November 4, 2021 *Orders* and which required that the company tariffs be revised to reflect that "All excess customer generation, accumulated for the billing period, shall be credited for each month" at the new rate (which was \$0.06924 per kWh for LGE residential customers, and \$0.07366 per kWh). If the LGE/KU approach, now apparently embraced by the agency, of assigning an instantaneous credit to all generation even where such generation is netted by usage over the billing period, there would be no "accumulation" of generation over a billing period nor any "excess" generation. "Excess customer generation" of necessity begs the question, "excess over what?" The answer is plainly, over usage – a netting of kilowatts "for the billing period" resulting in "excess" generation over usage, or "excess" usage over generation to be billed at tariffed rates. The term "net metering" was not changed by the 2019 amendments, and the meters are capable of measuring kilowatt hours, not assigned dollar values.

A reading of the *Order* in Case No, 2020-00174 makes clear that the pre-2019 netting approach was to continue:

The Commission further finds that Kentucky Power shall continue to net the total energy consumed and the total energy exported by eligible customer-generators over the billing period in NMS II consistent with the billing period netting period established in NMS I.⁴⁰

The approach mandated in Case No.2020-00174 and ratified by the Commission's *Orders* in Case Nos. 2020-00349 and 2020-00350, has not been reversed by subsequent Commission or judicial Order and is, as noted by the Commission, the approach that is consistent with the "plain language of KRS 278.465(4)" and should be affirmed here.

V. Conclusion

As stated in Joint Intervenors' initial brief, the Company repeatedly and substantially fails to comply with the Commission's previous orders. In particular, they failed to ensure transparency either in their stakeholder process or their methodology and calculations, to treat eligible customer-generators as supply-side resources symmetrically with other sources of generation, to treat benefits and costs symmetrically, or to conduct forward-looking, long-term, and incremental analysis. The Company fails to even acknowledge most of these principles in its own brief.

Further, the Company disregards the Commission's previously-approved methods for determining the credit amount for net metering customer-generators by

⁴⁰ *Order*, Case No. 2020-00174, (May 14, 2021), at 24-25.

failing to use transparent data and sources previously approved by the Commission, failing to include avoided transmission, distribution, carbon, or environmental costs, and refusing to even examine jobs benefits.

Joint Intervenors therefore respectfully continue to request that the Commission reject the Company's filing without prejudice, with an order to follow prior Commission precedent in the regards listed above before reapplying. Alternatively, Joint Intervenors encourage the Commission to modify the proposed Rider NM II by modifying it to require monthly netting of the electricity fed back to the electric grid over the billing period and the electricity consumed over that same period; including avoided transmission and distribution costs and a reasonable avoided carbon cost in line with that proposed by expert witness for the Joint Intervenors in the Excess Generation Avoided Cost Credit Rate; and ordering the Company to study and file with the Commission within a reasonable period of time not to exceed six months updated rates including jobs benefits, updated avoided transmission and distribution costs, and avoided environmental compliance and carbon costs.

Respectfully Submitted,



Byron L. Gary
Tom FitzGerald
Ashley Wilmes
Kentucky Resources Council
P.O. Box 1070
Frankfort, Kentucky 40602
(502) 875-2428
Byron@kyrc.org
FitzKRC@aol.com
Ashley@kyrc.org

*Counsel for Joint Intervenors Kentucky
Solar Energy Society and Kentuckians
for the Commonwealth*

CERTIFICATE OF SERVICE

In accordance with the Commission's July 22, 2021 Order in Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, this is to certify that the electronic filing was submitted to the Commission on July 18, 2024; that the documents in this electronic filing are a true representations of the materials prepared for the filing; and that the Commission has not excused any party from electronic filing procedures for this case at this time.



Byron L. Gary