

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION _____
CASE NO. 24-CI-_____

KENTUCKY SOLAR ENERGY SOCIETY
KENTUCKIANS FOR THE COMMONWEALTH

PLAINTIFFS

V. **COMPLAINT**

PUBLIC SERVICE COMMISSION OF KENTUCKY

DEFENDANTS

Serve: Hon. Linda C. Bridwell
Executive Director
Public Service Commission of Kentucky
P.O. Box 615, 211 Sower Boulevard
Frankfort, Kentucky 40602-0615

Serve: Hon. Russell Coleman
Attorney General of Kentucky
ServetheCommonwealth@ky.gov

DUKE ENERGY KENTUCKY, INC.
Serve: Ct Corporation System
306 W Main Street
Suite 512
Frankfort, Kentucky 40601

HON. RUSSELL COLEMAN, ATTORNEY GENERAL OF THE
COMMONWEALTH OF KENTUCKY, by and through HIS
OFFICE OF RATE INTERVENTION

Serve: Hon. Russell Coleman
Attorney General of Kentucky
ServetheCommonwealth@ky.gov

KENTUCKY SOLAR INDUSTRIES ASSOCIATION, INC.
Serve: Matt Partymiller
1038 Brentwood Court, Ste. B
Lexington, Kentucky 40511

Plaintiffs Kentucky Solar Energy Society (“KYES”) and Kentuckians for the
Commonwealth (“KFTC”) (together, as styled below, “Joint Intervenors”), by counsel, and for
their Complaint, state as follows:

Introduction

1. This action is brought pursuant to KRS 278.410 for review of the Public Service Commission of Kentucky’s (“Commission’s”) Final Order of October 11, 2024 (“Order”) and Order on Rehearing of November 20, 2024 (“Rehearing Order”) in Commission Case No. 2023-00413.

Parties

2. Kentucky Solar Energy Society (“KYSES”) is a non-profit corporation in good standing, incorporated in the Commonwealth of Kentucky, with its principal office at 215 Oxford Place Louisville 40207. KYSES was granted status as a Joint Intervenor with KFTC in Commission Case No. 2023-00413 by Order of the Commission on January 29, 2024, pursuant to 807 KAR 5:001.

3. Kentuckians for the Commonwealth (“KFTC”) is a non-profit corporation in good standing incorporated in the Commonwealth of Kentucky with its principal office located at 131 North Mill Street, London, Kentucky 40743. KFTC was granted status as a Joint Intervenor with KYSES in Commission Case No. 2023-00413 by Order of the Commission on January 29, 2024, pursuant to 807 KAR 5:001, Section 4.

4. The Commission is an agency of the Commonwealth of Kentucky and is a body corporate with the power to sue and to be sued in its corporate name. Pursuant to KRS 278.040, the Commission has the statutory duty to regulate utilities and to enforce the provisions of KRS Chapter 278. It has exclusive jurisdiction over the rates and service of utilities. Its offices are located at 211 Sower Boulevard, Frankfort, Kentucky 40601.

5. Duke Energy Kentucky, Inc. (“Duke” or “DEK”) is a corporation organized under the laws of the Commonwealth of Kentucky, with its principal offices at 139 East Fourth Street, Cincinnati, OH 45202. DEK was the applicant in Commission Case No. 2023-00413.

6. The Honorable Russell Coleman, Attorney General of the Commonwealth of Kentucky, is a constitutional officer elected pursuant to Section 91 of the Constitution of Kentucky. His Office of Rate Intervention is responsible for carrying out the statutory duty “[t]o appear before any federal, state or local governmental branch, commission, department, rate-making or regulatory body or agency, to represent and be heard on behalf of consumers’ interests;” KRS 367.150(8)(a), and is granted the statutory right “[t]o be made a real party in interest” in any Commission case, KRS 367.150(8)(b). He was granted status as an intervenor by Order of the Commission on December 21, 2023. He is named in his official capacity.

7. Kentucky Solar Industry Association (“KYSEIA”) is a non-profit corporation in good standing incorporated in the Commonwealth of Kentucky with its principal office located at 1038 Brentwood Court, Ste. B, Lexington, Kentucky 40511. KYSEIA was granted status as an intervenor in Commission Case No. 2023-00413 by Order of the Commission on January 12, 2024, pursuant to 807 KAR 5:001, Section 4. No relief is sought against KYSEIA in this action, and it is named as a party to the proceeding before the Commission in order that it may assert any claims or defenses regarding those Orders.

Jurisdiction & Venue

8. This Court has subject matter jurisdiction over this action pursuant to KRS 278.410 and KRS 23A.010(1).

9. Pursuant to KRS 278.410, venue lies in this Court. Notice is being given to all parties of record before the Commission in Commission Case No. 2023-00413 as required by KRS 278.410(1) by making each party to those Commission proceedings a party to this action and by serving each such party with a summons and this Complaint.

10. This action is timely commenced in accordance with KRS 278.410(1). By separate filing, the Joint Intervenors will timely designate the record on appeal in accordance with KRS 278.420(2).

Factual Background

11. KRS 278.465 through KRS 278.468 establish the right for customers of Commission-regulated electric utilities to engage in “net metering.” Under the net metering statutes, the customer of a “retail electric supplier” owns and operates an electric generating facility (that generates electricity from solar, wind, hydro, or biomass/biogas and has a rated capacity of 45 kw or less) that is located on the customer's premises, for the primary purpose of supplying all or part of the customer's own electricity requirements, and is connected to the retail electric supplier’s distribution system. The customer-generator is credited for excess electricity fed into the system over that utilized, over a billing period.

12. Prior to changes effected by the General Assembly through Senate Bill 100 in 2019, (and to this day for those utilities that have not modified their net metering tariffs to reflect those changes), the netting of generation and usage by a customer-generator under the net metering statutes was measured as a “one-to-one (1:1) kilowatt-hour denominated energy credit provided for energy fed into the grid[.]” KRS 278.466(6). The manner in which net metering was conducted under the pre-2019 statute (“net metering I”) was that the utility would net the total energy consumed and the total energy exported by eligible customer-generators over the course of each billing period. If, after netting at the end of the billing period, a customer-generator had generated and fed into the grid more kilowatt-hours (“kWh”) of electricity than had been consumed from the grid over that period, the surplus generation, measured in kilowatt-hours, would be credited and carried forward to future billing periods.

13. The 2019 statutory revisions changed the manner in which the energy credit for net metering customers would be quantified (“net metering II”) – from a “kilowatt-denominated energy credit,” 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[.]” *Id.*

14. The 2019 statutory revisions did not change the manner in which the netting occurred, i.e. that electricity generated and fed into the grid would be netted against electricity consumed over the billing period, with the dollar-denominated credit applied to the excess generation or the retail rate charged for any excess consumption over generation.

15. The 1:1 kilowatt-hour-based net metering credit remains in place for any existing customers of a retail electric supplier receiving service under that tariff, until a Commission Order in a proceeding brought by a retail electric supplier pursuant to KRS 278.466(3) using the ratemaking processes and proposing to use a dollar-denominated credit rather than a kilowatt-hour-based credit.

16. The Commission has previously adjudicated applications from three utilities seeking to replace the kilowatt-hour-based crediting with the dollar-denominated credit as provided in KRS 278.466. Those cases are . Commission 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* (“KPCo Case”); Commission Case Nos. 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 and 2020-00350, *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*, (“LG&E-KU Cases”) (although filed separately, the Case Nos. 2020-00349 and 2020-00350 were adjudicated together).

17. In those cases, the Commission ordered utilities to “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.” KPCo Case, *Order* at 24-25 (May 05, 2021) (“KPCo Order”); *see also* LG&E-KU Case, *Order* at 48 (Sep. 24, 2021) (“LG&E-KU Order”), and *Order* at 25 (Nov. 04, 2021) (“LG&E-KU Rehearing Order”).

18. The Commission further set forth five “Principles for Compensation for Eligible Customer-Generators.” Those principles directed the utilities to evaluate eligible generating facilities as a utility system or supply side resource; to treat benefits and costs symmetrically; to conduct forward-looking, long-term, and incremental analysis; to avoid double counting; and to ensure transparency. KPCo Order at 21-23; LG&E-KU Order at 41-42.

19. Finally, in the previous cases, the Commission ordered the kWh-based credit for excess generation over a billing period based on nine components of costs and benefits: avoided energy costs, avoided generation capacity costs, avoided transmission capacity costs, avoided ancillary service costs, avoided distribution capacity costs, avoided carbon cost, avoided environmental compliance cost, jobs benefits, and avoided costs of customer-generators

participating in wholesale markets under Federal Energy Regulatory Commission (FERC) Order No. 2222. KPCo Order at 25-40, LG&E-KU Order at 48-58.

20. Duke filed an application with the Commission on December 11, 2023 to rename and close its Rider NM: Net Metering Rider (“NM-I”) and establish a new Rider NM-II: Net Metering II Rider. Duke sought to, among other things, close its Rider NM-I, under which customer-generators currently take service, and which as required by law, offers a one-to-one compensation for each kilowatt-hour (kWh) delivered by the customer to Duke and each kWh delivered by Duke to the customer.

21. It sought to “grandfather” current customers taking service under NM-I to continue service under NM-1 for twenty-five years, given certain conditions are met or remain the same; as required by KRS 278.466(6).

22. Duke further sought to establish a new Rider NM-II, under which new customer-generators would receive a compensatory credit pursuant to a billing system through which they are billed the standard rates for each kWh delivered to them by Duke, and are credited at a new, lower, dollar-denominated “Avoided Cost Excess Generation Credit (ACEGC)” for each kWh delivered by them to Duke. *Application* at 1-2 (Dec. 11, 2023).

23. Direct testimony from Duke proposed a value for that dollar-denominated credit based on the Company’s calculations of avoided energy, capacity, and ancillary services costs. Duke advocated against including avoided transmission and distribution capacity costs, but proposed values it believed the Commission should use if it finds such costs should be included. Duke further stated that avoided environmental compliance and carbon costs are “included in the forecasted marginal energy prices.” Direct testimony further claimed that it “is unaware of a consistent or appropriate method for evaluating” jobs benefits.

24. The Commission entered a scheduling order January 05, 2024, pursuant to which the OAG, KYSEIA, and Joint Intervenors moved to intervene and were allowed. Two rounds of pre-hearing information requests were allowed to the Company from the intervening parties. Joint Intervenors filed direct testimony and responded to one round of requests for information from Duke. The Commission and Staff submitted, and Duke responded to, five rounds of prehearing data requests. A hearing was held on May 21, 2024, with seven witnesses testifying for the Company, and the Joint Intervenors presenting testimony from a single witness. Parties were also allowed one round of post-hearing requests for information, and the Commission and Staff submitted two rounds of post-hearing data requests. All parties submitted post-hearing briefs on June 26, 2024; and Joint Intervenors, Duke, and KYSEIA submitted post-hearing response briefs on July 18, 2024.

25. The Commission entered an Order on October 11, 2024, addressing all portions of the application.¹

26. Joint Intervenors filed a Petition for Rehearing on October 31, 2024. KYSEIA filed a Response in support of Joint Intervenors' Petition on November 4, 2024, and Duke filed a Response in opposition.

27. The Commission entered an Order denying Joint Intervenors' Petition for Rehearing on November 20, 2024.²

Claims for Relief

Count 1:

Error of Law in Violation of KRS 278.465(4) and KRS 278.466(3) & (4) for Failing to Require Net Metering Over a Billing Period

¹ A copy of the Commission's October 11, 2024 Order in Case No. 2023-00413 is attached as Appendix A to this Complaint.

² A copy of the Commission's November 20, 2024 Order in Case No. 2023-00413 is attached as Appendix B to this Complaint.

- 28. Paragraphs 1-27 are incorporated herein by reference as if fully set forth below.
- 29. Duke’s application proposed that

Netting will occur monthly on a dollar value basis, as follows: the Company shall measure the amount of electricity delivered by the Company to the Customer during the billing period, pursuant to the metering methods outlined in the tariff, and calculate the customer’s bill in accordance with the Customer’s standard rate schedule that would apply if the Customer were not a customer-generator. And the Company shall measure the amount of electricity delivered by the Customer to the Company during the billing period, in accordance with the metering methods outlined in the tariff. Then, the Company will provide a bill credit for each kWh the Customer produced to the Company’s grid.

Application at ¶ 19 (Dec. 11, 2023).

- 30. The proposed tariff accompanying the application outlines a billing method, by which:

The Company shall measure the amount of electricity delivered by the Company to the Customer during the billing period, in accordance with one of the methods listed under “METERING”. The Customer bill will be calculated in accordance with the Customer’s standard rate schedule. Bill charges will be in accordance with the same standard tariff that would apply if the Customer were not a customer-generator. Billing for Customer demand is as described in the Customer’s standard tariff for receiving electric service.

The Company shall measure the amount of electricity delivered by the Customer to the Company during the billing period, in accordance with one of the methods listed under “METERING”. The Company will provide a bill credit for each kWh Customer produces to the Company’s grid. The dollar-denominated bill credit will be applied to the customer’s electric bill subject to minimum bill provisions of the standard rate schedule.

Application Exhibit 3 at Page 2 of 6 (Dec. 11, 2023).

- 31. The Commission’s October 11, 2024 Order states

[t]he Commission finds that, because the energy charge is based upon electricity consumed, the dollar amount of energy exported to Duke Kentucky’s distribution system by a Rider NM-2 customer

should be netted against the energy charge and any rider that is based on a per kWh charge.

Order at 42 (Oct. 11, 2024).

32. The Commission explained the reasoning in this manner:

Based upon the evidence of record, the Commission finds that Duke Kentucky’s proposed netting methodology for Rider NM-2, as revised below, is reasonable and should be approved. As Duke Kentucky correctly notes, the plain language of KRS 278.465(4) 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. The Commission is not persuaded by the Joint Intervenors’ argument that Duke Kentucky’s netting methodology is inconsistent with the plain language of KRS 278.465(4) and with the Commission’s September 24, 2021 and November 4, 2021 Orders in Case No. 2020-00349 and Case No. 2020-00350. The Commission specifically stated in its answer to the Franklin Circuit Court Appeal, 021-CI-00872³ that the plain language of the September 24, 2021 and November 4, 2021 Order are consistent with KRS 278.465 and that, consistent with those Orders, KU/LG&E filed, and the Commission accepted KU/LG&E’s NMS-2 tariffs which reflected the methodology approved by the Commission.

33. In its Order on the Joint Intervenor’s Petition for Rehearing, the Commission misapprehended the position of Joint Intervenors and rejected rehearing with this explanation:

The Joint Intervenors argued that Rider NM-2 customer-generators should still get the one-to-one (1:1) kWh credit up to the amount of kWh Duke Kentucky delivers to the customer, with any excess kWh delivered by the customer-generator to Duke Kentucky taking the form of a dollar-denominated credit. However, the net metering statute does not state anywhere that a Rider NM-2 customer-generator is entitled to the same 1:1 kWh denominated energy credit as those customer-generators served under Rider NM-1. Furthermore, it is clear by the changes made to the net metering statute effective January 1, 2020, that the 1:1 kWh credit would not continue for customer-generators taking service under a new, proposed net-metering tariff, in this case, Rider NM-2. Duke

³ *Ky. Utils. Co. & Louisville Gas & Elec. Co.*, Case No. 21-CI-00872 (Franklin Cir. Ct. Dec. 15, 2021 (citation in original)).

Kentucky is statutorily required to calculate Rider NM-2 bills by netting the dollar value of all electricity generated by an eligible customer-generator fed back to the grid over a billing period priced at the Commission approved rate and the dollar value of all electricity consumed by the eligible customer-generator over the same period at the tariff rate. Therefore, the Commission’s findings were neither unreasonable or unlawful and no material errors or omissions were made.

Order at 11-12 (Nov. 11, 2020) (citation omitted).

34. The Orders are unreasonable, arbitrary and capricious, and otherwise inconsistent with the law for several reasons. They are in contradiction of the plain language of KRS 278.465(4), defining net metering as requiring netting over a billing period. The plain language of KRS 278.465(4) defines “Net metering” as “the difference between the: (a) Dollar value of all electricity generated by an eligible customer-generator that is fed back to the electric grid **over a billing period** and priced as prescribed in KRS 278.466; and (b) Dollar value of all electricity consumed by the eligible customer-generator **over the same billing period** and priced using the applicable tariff of the retail electric supplier.” (Emphasis added). The 2019 amendments to the net metering laws modified the form of the bill credits that would be applied to excess generation over consumption over a billing period from a kWh-based denomination to one that applied a dollar-denominated value to that excess generation. But the 2019 statutory revisions did **not** alter the manner in which the generation and consumption would be “netted” which is over a billing period. The Order on rehearing misrepresented the position of Joint Intervenors as advocating for a continuation of the 1:1 kw netting for Duke NMS 2 customers, stating that “[t]he Joint Intervenors argued that Rider NM-2 customer-generators should still get the one-to-one (1:1) kWh credit up to the amount of kWh Duke Kentucky delivers to the customer, with any excess kWh delivered by the customer-generator to Duke Kentucky taking the form of a dollar-denominated credit.” Rehearing Order at 11. Joint Intervenors made no such argument.

Instead, Joint Intervenors have been clear that the methodology of “netting” has not changed, and that however one “values” the fed-in electricity (i.e. whether by electron or dollar) “over the billing period” still means that you net generation against usage over the billing period using the meter readings to determine what is the “net” to which the value (i.e. retail rate or determined value of solar) is applied. The misrepresentation of Joint Intervenors’ position cannot mask that the position espoused by the Commission in the *Answer* filed in the LGE/KU case is at fundamental variance with the Commission’s KPC 2020-00174 Order and approved KPC NM tariff, and with the NM Orders in the LGE/KU cases.

35. The Orders are unreasonable, arbitrary and capricious, and otherwise inconsistent with the law in that they are in contravention of the plain language of KRS 278.466(3) & (4), also requiring netting to be undertaken over a billing period. Those provisions require that “[a] retail electric supplier serving an eligible customer-generator shall compensate that customer for all electricity produced by the customer's eligible electric generating facility that flows to the retail electric supplier, as measured by the standard kilowatt-hour metering,” and “[e]ach billing period, compensation provided to an eligible customer-generator shall be in the form of a dollar-denominated bill credit. If an eligible customer-generator's bill credit exceeds the amount to be billed to the customer in a billing period, the amount of the credit in excess of the customer's bill shall carry forward to the customer's next bill.”

36. The Orders are unreasonable, arbitrary and capricious, and otherwise inconsistent with the law in that they fail to provide reasoned explanation for a reversal of Commission Orders in prior cases plainly establishing that the manner of netting was unchanged and that under “net metering II” utilities were to “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.” KPCo Case, *Order* at 24-25 (May 05, 2021) (“KPCo Order”); *see also* LG&E-KU Case, *Order* at 48 (Sep. 24, 2021) (“LG&E-KU Order”), and *Order* at 25 (Nov. 04, 2021) (“LG&E-KU Rehearing Order”). The Commission speaks through its lawfully-issued Orders, and not through litigation positions advanced in “answers” filed by Commission counsel which are at variance with those Orders. The Commission acted unreasonably, arbitrarily and capriciously, and inconsistently with the law in relying on Commission Staff’s Answer to a Complaint by LG&E-KU rather than the law of the Commonwealth of Kentucky and its own past Orders.

Count 2:

Error of Law in Violation of Section 2 of the Constitution of Kentucky and Amendment 14 to the United States Constitution for Failing to Explain the Basis of the Decision

37. Paragraphs 1-36 are incorporated herein by reference as if fully set forth below.

38. Due process requires that parties “be given a meaningful opportunity to be heard,” and to “know what evidence is considered” and “an opportunity to test, explain, or refute” that evidence. *Util. Regulatory Com. v. Ky. Water Serv. Co.*, 642 S.W.2d 591, 593 (Ky. App. 1982).

39. Essential to a determination of whether an agency has acted unreasonably and arbitrarily, are sufficient findings of adjudicative fact based on consideration of evidence in the record, so that the reviewing court can determine whether the Commission properly considered and weighed the evidence in making the ultimate finding of compliance with the statute.

40. In its application Duke proposed to establish a value or the dollar-denominated credit to compensate eligible customer-generators for excess generation based solely on avoided energy and avoided generation capacity costs. *Application* at ¶ 21. Duke claimed to include avoided environmental, carbon, and ancillary services costs in its avoided energy costs. *Id.* Contrary to Commission precedent, Duke’s application suggested not including avoided distribution capacity and avoided transmission capacity costs. *Id.* In the alternative, Duke

suggested avoided distribution capacity and avoided transmission capacity costs if the Commission found they should be included. *Id.* at ¶ 22.

41. Duke proposed rates of \$0.057132 per kWh for residential customers, and \$0.057463 per kWh for non-residential customers. *Id.* at ¶ 18. For avoided distribution capacity and avoided transmission capacity costs, Duke suggested values of \$0.015393 per kWh and \$0.007662 per kWh, if the Commission were to include them in accordance with its prior precedent. *Id.* at ¶ 22. If Duke’s suggested avoided distribution and transmission capacity costs are added to its proposed avoided energy and capacity costs, the total rate offered to eligible customer-generators for excess generation would be \$0.080187 per kWh for residential customers and \$0.080518 per kWh for non-residential customers.

42. In their own expert testimony, Joint Intervenors suggested an alternative avoided generation capacity cost, avoided carbon costs and an added “risk hedge value” to the avoided energy costs proposed by Duke. *Prepared Direct Testimony of Richard McCann, Ph.D. on Behalf of Joint Intervenors Kentucky Solar Energy Society and Kentuckians for the Commonwealth* (Mar. 13, 2024). Joint Intervenors’ expert also refuted Duke’s assertion that avoided distribution and transmission capacity costs should not be included, and also suggested a methodology for calculation of jobs benefits. *Id.*

43. In rebuttal testimony, Duke argued against Joint Intervenors’ avoided generation capacity, avoided carbon, and risk hedge costs, as well as reiterating their opposition to inclusion of avoided distribution and transmission capacity costs, but continuing to suggest the same costs as in their original application if they were to be included. *Rebuttal Testimony of Bruce L. Sailors on Behalf of Duke Energy Kentucky, Inc.* (Apr. 17, 2024). Duke also pointed to recently-published “effective load-carrying capacity” (“ELCC”) values for solar to suggest a

possible new avoided generation capacity cost, while still maintaining its original avoided generation capacity costs should be used. *Id.* at 11-12.

44. In its Order, in a section on “Avoided Cost Excess Generation Credits,” the Commission begins with a subsection on “Avoided Capacity Costs,” which somewhat confusingly ends instead with a discussion of avoided transmission and distribution costs in the same section. *Order* at 29, 32-33 (Oct. 11, 2024). The Order then continues to a section titled “Avoided Cost Calculations,” followed by sections on “Avoided Energy Costs” and “Avoided Ancillary Services Costs” which generally approve of Duke’s methods for calculating avoided capacity costs, energy costs, and ancillary costs without stating what specific avoided costs were approved or incorporated into the ultimate “Excess Generation Avoided Cost Credit Rate.” *Id.* at 33-36. The Order also states that “there is no need for any additional values for avoided environmental or carbon costs and in so far as Duke Kentucky excluded those costs, the credit rate calculation is reasonable,” but offers no further explanation. *Id.* at 36. Finally, there is no discussion of Jobs Benefits or avoided costs of customer-generators participating in wholesale markets under Federal Energy Regulatory Commission (FERC) Order No. 2222 at all in the Order’s Discussion and Findings. The Commission ultimately ordered “Excess Generation Avoided Cost Credit Rate” of \$ 0.062924 per kWh for residential customers, and \$ 0.063255 per kWh for non-residential customers. *Order* Appendix at 1 (Oct. 11, 2024).

45. Joint Intervenors’ Petition for Rehearing asked the Commission to specifically enumerate and explain the cost components of its “Excess Generation Avoided Cost Credit Rate”, *Petition for Rehearing of Joint Intervenors Kentucky Solar Energy Society and Kentuckians for the Commonwealth* at 4-5 (Oct. 31, 2024), in line with the nine specific components of costs and benefits required by Commission precedent: avoided energy costs,

avoided generation capacity costs, avoided transmission capacity costs, avoided ancillary service costs, avoided distribution capacity costs, avoided carbon cost, avoided environmental compliance cost, jobs benefits, and avoided costs of customer-generators participating in wholesale markets under Federal Energy Regulatory Commission (FERC) Order No. 2222. KPCo Order at 25-40, LG&E-KU Order at 48-58.

46. In its Order denying Joint Intervenors' Petition for Rehearing, the Commission states:

that in its October 11, 2024 final Order, several components of the bill credits were modified, but overall, accepted, such as the CAPEX cost of a combustion turbine (CT), the Effective Load Carrying Capability values, adjustments to the fixed Operating and Maintenance (O&M) of a CT, and the avoided transmission and distribution costs.

Order at 9 (Nov. 20, 2024).

47. The Orders fail to fully explain which of the nine specific components of costs and benefits required by Commission precedent are included in its "Excess Generation Avoided Cost Credit Rate" and what the approved values for each are, and are therefore unreasonable, arbitrary and capricious, and otherwise inconsistent with the due process and the law in that they fail to give the parties "a meaningful opportunity to be heard," and to "know what evidence is considered" and "an opportunity to test, explain, or refute" that evidence.

**Count 3:
Error of Law in Violation of KRS 278.030(1) and 278.466(3) for Failing to Require Fair,
Just, and Reasonable Rates**

48. Paragraphs 1-39 are incorporated herein by reference as if fully set forth below.

49. KRS 278.466(3) requires that

[a] retail electric supplier serving an eligible customer-generator shall compensate that customer for all electricity produced by the customer's eligible electric generating facility that flows to the retail electric supplier, as measured by the standard kilowatt-hour

metering prescribed in subsection (2) of this section. The rate to be used for such compensation shall be set by the commission using the ratemaking processes under this chapter during a proceeding initiated by a retail electric supplier or generation and transmission cooperative on behalf of one (1) or more retail electric suppliers.

50. KRS 278.030(1) states that “[e]very utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person.” *Energy Regulatory Com. v. Ky. Power Co.*, 605 S.W.2d 46, 49 (Ky. App. 1980). In addition, “[i]t is axiomatic that an administrative agency either must conform with its own precedents or explain its departure from them. An agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion, it may cross the line from the tolerably terse to the intolerably mute.” *In re Hughes & Coleman*, 60 S.W.3d 540, 543 (Ky. 2001) (citing *Ohio Fast Freight, Inc. v. U.S.*, 574 F.2d 316 (6th Cir.1978)) (internal citations omitted).

51. The Commission previously ordered calculation of a number of the components of costs and benefits for compensation of eligible customer-generators, and specific methods for several:

- a. The Commission rejected use of proprietary methods for calculation of avoided generation capacity and required the use of the publicly-available PJM Net Cost of New Entry (“Net CONE”) for calculation of avoided generation capacity costs, finding that it “reflects an approximate capacity market equilibrium and therefore better reflects long-term avoided capacity value.” KPCo Order at 29.
- b. The Commission required the separate inclusion of avoided carbon costs based on other utilities’ prior resource planning, and previously directed utilities to develop a robust approach for estimating avoided carbon costs, KPCo Order at 35-36, and

rejected arguments that avoided carbon costs are fully accounted for in avoided energy and capacity cost components, LG&E-KU Order at 14, 55-56.

- c. Similar to avoided carbon costs, the Commission previously required the separate inclusion of avoided environmental compliance costs and rejected arguments that they are fully accounted for in avoided energy and capacity cost components. KPCo Order at 36-37, LG&E-KU Order at 14, 56-57.
- d. Finally, finding insufficient evidence regarding jobs benefits in previous records, the Commission has ordered utilities to “evaluate job benefits and economic development as an export rate component for [a utility]’s next rate case filing.”

52. The Commission notes significant shortcomings in Duke’s calculation of avoided capacity costs in its Order. The Commission states the cost provided by Duke “appears to be severely understated.” *Order* at 30 (Oct. 11, 2024). Further,

[t]he Commission notes that the National Renewable Energy Laboratory’s Annual Technology Baseline (NREL ATB) has a CAPEX cost of a natural gas CT (F-Frame) of \$1,349 per kW, which is *significantly higher* than what Duke Kentucky had proposed in its avoided cost calculations for the cost of a CT[.]

Id. (emphasis added) (citation omitted). However, later in the same paragraph the Order states “the costs of the CT between NREL’s ATB and Duke Kentucky’s confidential information is *slightly different*, the Commission will accept Duke Kentucky’s cost estimates of a CT.” *Id.* The Order further notes that Duke asserted substantial differences between Net CONE and its own calculations, but offers no further analysis other than stating that “[t]he Commission notes that Duke Kentucky did not provide sufficient evidence nor justification in support of its CT cost estimates,” but nonetheless accepts Duke’s cost calculations. *Order* at 30 (Oct. 11, 2024).

53. Regarding avoided carbon costs Joint Intervenors’ witness undertook precisely the investigation precisely ordered of utilities in previous cases, and arrived at an avoided carbon

cost of \$0.0466 per kWh, tempering even his own independent findings of potentially much higher costs. *Corrected Prepared Direct Testimony Of Richard Mccann, Ph.D On Behalf Of Joint Intervenors Kentucky Solar Energy Society And Kentuckians For The Commonwealth* at 26-28 (Jun. 8, 2024). The Company acknowledged Dr. McCann’s assessment, as well as past precedent setting avoided carbon costs, in its rebuttal testimony, but in response to question regarding his recommendation states only “[a]s discussed above, there is insufficient evidence to support additional avoided costs at this time, beyond what is already inherently embedded in the Company’s proposal related to the IRA.” *Rebuttal Testimony of Bruce L. Sailors on Behalf of Duke Energy Kentucky, Inc.* at 7 (Apr. 17, 2024).

54. During the hearing in this matter, Duke witness Kalemba stated that capital costs of additional required environmental compliance are not necessarily included in avoided capacity or energy costs. Hearing Video Transcript (“HVT”) at 16:39 to 16:45.

55. The Commission, however, failed to address the Testimony of Dr. McCann or the testimony of Mr. Kalemba at hearing, stating only “there is no need for any additional values for avoided environmental or carbon costs and in so far as Duke Kentucky excluded those costs, the credit rate calculation is reasonable.” *Order* at 36 (Oct. 11, 2024).

56. Regarding jobs benefits, the Commission only noted “Duke Kentucky stated that it did not see grounds to support the inclusion of a jobs benefit in the credit rate as there is only a small amount of net metering capacity remaining under the net metering cap for which to evaluate incremental job benefits.” *Order* at 13 (Oct. 11, 2024). The Order does not address the suggested method for calculating jobs benefits suggested by Joint Intervenors’ witness Dr. McCann.

57. In its Order the Commission also applied the updated ELCC value provided by Duke in rebuttal testimony to avoided distribution and transmission capacity costs despite Duke not having suggested such an adjustment, and without any explanation of why the updated ELCC applied to distribution and transmission capacity costs, *Order* at 32-33 (Oct. 11, 2024) as opposed to the avoided generation capacity costs as suggested by Duke’s rebuttal testimony. *Rebuttal Testimony of Bruce L. Sailors on Behalf of Duke Energy Kentucky, Inc.* at 11-12 (Apr. 17, 2024).

58. In addition to requesting further clarity on the amounts and rationales of certain avoided costs, Joint Intervenors Petition for Rehearing requested that the Commission also reconsider certain evidence of record regarding those costs. *Petition for Rehearing of Joint Intervenors Kentucky Solar Energy Society and Kentuckians for the Commonwealth* at 5-11 (Oct. 31, 2024).

59. In response, the Commission improperly shifted the burden of proof to Joint Intervenors, stating “the Commission reminds the Joint Intervenors that they actually have the burden to provide sufficient evidence that their proposal is reasonable and should be approved by the Commission.” Rehearing Order at 9-10.

60. The Commission further contradicted its own prior precedent stating that “the avoided capacity cost calculation should not include the carbon costs or job benefits.” *Id.*

61. It also supported its prior finding “that parties should calculate avoided capacity costs using public information so that the costs are quantifiable by the public,” *Id.*, but did not enforce this requirement, instead denying Joint Intervenors’ request to do just that with regards to avoided generation capacity costs.

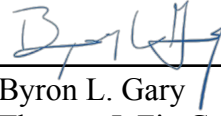
62. Therefore, the Orders are unreasonable, arbitrary and capricious, and otherwise inconsistent with the law in that they give insufficient justification for departure from past Commission precedent regarding the components and methods for calculation of fair, just, and reasonable compensation to eligible customer-generators for excess generation.

Conclusion and Prayer for Relief

WHEREFORE, for the reasons stated above, plaintiffs Kentucky Solar Energy Society and Kentuckians for the Commonwealth respectfully request that this honorable court:

1. Accept subject matter jurisdiction over this Complaint pursuant to KRS 278.410;
2. Determine and Order that the Commission's Orders dated October 11, 2024 and November 20, 2024 are unreasonable and unlawful for failing to require net metering be calculated and credited in a manner consistent with statute and prior Commission Orders;
3. Determine and Order that the Commission's Orders dated October 11, 2024 and November 20, 2024 are unreasonable and unlawful for failing to explain the basis of the decision;
4. Determine and Order that the Commission's Orders dated October 11, 2024 and November 20, 2024 are unreasonable and unlawful for failing to require fair, just, and reasonable rates;
5. Enjoins and prohibits the Commission from any action to enforce the Commission's unlawful determination made in the Orders dated October 11, 2024 and November 20, 2024;
6. Directs the Commission to require Duke provide net metering over a billing period at fully-explained rates based on the nine specific components of costs and benefits required by Commission precedent and supported by substantial evidence; and
7. Any other relief to which Joint Intervenors may be entitled.

Respectfully Submitted,



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

*Council for Plaintiffs Kentucky Solar Energy
Society and Kentuckians for the
Commonwealth*

Appendix A
October 11, 2024 Order of Public Service Commission of Kentucky in Case No. 2023-00413

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY)	CASE NO.
KENTUCKY, INC. FOR AN ADJUSTMENT TO)	2023-000413
RIDER NM RATES AND FOR TARIFF APPROVAL)	

ORDER

On December 19, 2023,¹ Duke Energy Kentucky, Inc. (Duke Kentucky) filed an application to revise its current Net Metering Rider tariff to remove the interconnection guidelines from the rider and rename it Net Metering I Rider (Rider NM-1). Additionally, Duke Kentucky sought Commission approval for two new tariffs, Rider Net Metering II (Rider NM-2) and Interconnection. Duke Kentucky is a jurisdictional electric utility that generates, transmits, distributes, and sells electricity to approximately 152,455 consumers in Boone, Campbell, Grant, Kenton, and Pendleton counties.²

On January 5, 2024, the Commission determined that an investigation was necessary to determine the reasonableness of the proposed tariff, found that the investigation could not be completed by January 19, 2024,³ and suspended the effective date of the proposed tariff for five months, up to and including June 18, 2024.⁴ On the

¹ Duke Kentucky tendered its application on December 11, 2023. A deficiency letter was issued on December 14, 2023, and again on December 19, 2023. Duke Kentucky resolved the deficiency on the December 19, 2023, and the application was deemed filed.

² *Annual Report of Duke Kentucky to the Public Service Commission for the Year Ending December 31, 2022* (2022 Annual Report) at 4, 5.

³ Duke Kentucky proposed an effective date of January 11, 2024. However, the effective date must be at least 30 days from the filing date, making January 19, 2024, the earliest possible effective date.

⁴ Order (Ky. PSC Jan. 5, 2024).

same date, the Commission also established a procedural schedule in this case.⁵ The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General); Kentucky Solar Industries Association, Inc. (KYSEIA); and Kentucky Solar Energy Society (KYES) and Kentuckians for the Commonwealth (KFTC) (jointly, Joint Intervenors) requested and were granted intervention in this matter.⁶ Additionally, numerous public comments have been filed in this case.⁷

Duke Kentucky responded to ten rounds of requests for information, including three post-hearing requests for information.⁸ Duke Kentucky filed direct and rebuttal testimony.⁹ Joint Intervenors filed Direct Testimony of Dr. Richard McCann.¹⁰

⁵ Order (Ky. PSC Jan. 5, 2024).

⁶ Order (Ky. PSC Dec. 21, 2024) (Order granting the Attorney General intervention); Order (Ky. PSC Jan. 12, 2024) (Order granting KYSEIA's request for intervention); Order (Ky. PSC Jan. 29, 2024) (Order granting Joint Intervenors' request for intervention).

⁷ [View Public Comments for: 2023-00413 \(ky.gov\)](#). Last checked on Sept. 10, 2024.

⁸ Duke Kentucky's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Feb. 2, 2024); Duke Kentucky's Responses to Attorney Generals' First Request for Information (Attorney General's First Request) (filed Feb. 2, 2024); Duke Kentucky's Response to KYSEIA's First Request for Information (KYSEIA's First Request) (filed Feb. 2, 2024); Duke Kentucky's Response to Joint Intervenors' First Request for Information (Joint Intervenors' First Request) (filed Feb. 2, 2024); Duke Kentucky's Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed Mar. 5, 2024); Duke Kentucky's Responses to KYSEIA's Second Request for Information (KYSEIA's Second Request) (filed Mar. 6, 2024); Duke Kentucky's Response to Joint Intervenors' Second Request for Information (Joint Intervenors' Second Request) (filed Mar. 6, 2024); Duke Kentucky's Response to Commission Staff's Third Request for Information (Staff's Third Request) (filed Mar. 22, 2024); Duke Kentucky's Response to Commission Staff's Fourth Request for Information (Staff Fourth Request) (filed Apr. 10, 2024); Duke Kentucky's Response to Commission Staff's Fifth Request for Information (Staff's Fifth Request) (filed May 14, 2024); Duke Kentucky's Response to Commission Staff's First Post-Hearing Request for Information (Staff's First Post-Hearing Request) (filed June 7, 2024); Duke Kentucky's Response to KYSEIA's First Set of Post-Hearing Request for Information (KYSEIA's First Post-Hearing Request) (filed June 7, 2024); Duke Kentucky's Response to Commission Staff's Second Post-Hearing Request for Information (Staff's Second Post-Hearing Request) (filed June 26, 2024).

⁹ Direct Testimony of Bruce L. Sailors (Sailors Direct Testimony) (filed Dec. 11, 2023) Rebuttal Testimony of Bruce L. Sailors (Sailors Rebuttal Testimony) (filed Apr. 17, 2024).

¹⁰ Direct Testimony of Dr. Richard McCann (McCann Direct Testimony) (filed Mar. 13, 2024).

A hearing was held on May 21, 2024. On May 24, 2024, a post-hearing procedural schedule was established. On June 26, 2024, all parties filed memorandum briefs. On July 18, 2024, all parties, with the exception of the Attorney General, filed response briefs.

This matters now stands before the Commission for decision.

LEGAL STANDARD

Duke Kentucky filed its revised Rider NM-1 and proposed Rider NM-2 pursuant to KRS 278.180, KRS 278.190, and 807 KAR 5:011. The Commission’s standard of review of a utility’s request for a tariff is well established. In accordance with statutory and case law, Duke Kentucky is allowed to charge its customers “only ‘fair, just and reasonable rates.’”¹¹ Further, Duke Kentucky bears the burden of proof to show that the proposed tariff is just and reasonable, under KRS 278.190(3).

The review of Rider NM-1 and Rider NM-2, particularly the export rate for energy exported onto the electric grid, is governed by KRS 278.465 and 278.466. In accordance with KRS 278.465(1)–(2), Rider NM-1 and Rider NM-2 apply to eligible customer-generators who own and operate an electric generating facility with a rated capacity of 45 kW or less that is located on the customer’s premises for the primary purpose of supplying all or part of the customer’s own electricity requirements. Pursuant to KRS 278.466(3), customers taking service under Rider NM-2 will be compensated for electricity fed into the grid over a billing period at a rate set by the Commission using ratemaking processes authorized by KRS Chapter 278 in a proceeding initiated by a retail electric supplier. KRS 278.466(4) provides that compensation:

[S]hall be in the form of a dollar-denominated bill credit. If an eligible customer-generator’s bill credit exceeds the amount

¹¹ KRS 278.030; and *Pub. Serv. Comm’n v. Com. ex rel. Conway*, 324 S.W.3d 373, 377 (Ky. 2010).

to be billed to the customer in a billing period, the amount of the credit in excess of the customer's bill shall carry forward to the customer's next bill. Excess bill credits shall not be transferable between customers or premises. If an eligible customer-generator closes his or her account, no cash refund for accumulated credits shall be paid.

KRS 278.466(5) provides that net metering rates should be developed as follows:

Using ratemaking process provided by this chapter, each retail electric supplier shall be entitled to implement rates to recover from its eligible customer-generators all costs necessary to serve its eligible customer-generators, including but not limited to fixed and demand-based costs, without regard for the rate structure for customers who are not eligible customer-generators.

According to KRS 278.466(2), the utility is financially responsible for providing net metering customers with a standard kWh meter capable of registering a bidirectional flow of electricity. Additional meters, distribution upgrades to monitor the bidirectional electricity flow, and any upgrade of the interconnection between the utility and net metering customer-generator are made at the expense of the customer-generator, pursuant to KRS 278.466(2) and (9).

KRS 278.466(6) provides that customers taking service under Rider NM-1 will continue to be compensated on a one-to-one kWh denominated energy credit for electricity fed into the grid for at least 25 years:

For an eligible electric generating facility in service prior to the effective date of the initial net metering order by the commission in accordance with subsection (3) of this section, the net metering tariff provisions in place when the eligible customer-generator began taking net metering service, including the one-to-one (1:1) kilowatt-hour denominated energy credit provided for electricity fed into the grid, shall remain in effect at those premises for a twenty-five (25) year period, regardless of whether the premises are sold or conveyed during that twenty-five (25) year period. For any eligible customer-generator whom this subsection applies,

each net metering contract or tariff under which the customer takes service shall be identical, with respect the energy rates, rate structure, and monthly charges, to the contract or tariff to which the same customer would be assigned if the customer were not an eligible customer-generator.

BACKGROUND

In Case No. 2019-00256,¹² the Commission opened a case to discuss the implementation of Net Metering with the electric utilities. The Order stated that the proceedings for the implementation of net metering rates should be thorough and transparent.¹³ Additionally, in that Order, the Commission noted that the net metering ratemaking processes should consider utility-specific costs, and not a uniform rate for all electric utilities.¹⁴

Subsequently, the Commission has incorporated those principles in Louisville Gas and Electric Company's (LG&E) and Kentucky Utilities Company's (KU) (jointly, LG&E/KU) initial net metering cases¹⁵ as well as Kentucky Power Company's (Kentucky Power) initial net metering case.¹⁶ In the Kentucky Power final Order, the Commission

¹² Case No. 2019-00256, *Electronic Consideration of the Implementation of the Net Metering Act* (Ky PSC Dec. 18, 2019).

¹³ Case No. 2019-00256, Dec. 18, 2019 Order at 31.

¹⁴ Case No. 2019-00256, Dec. 18, 2019 Order at 32.

¹⁵ Case No. 2020-00349, *Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric and Gas Rates, A Certificate of Public Convenience and Necessity to Deploy Advances Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, (Ky PSC Sept. 24, 2021); Case No. 2020-00350, *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 Advances Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit* (Ky PSC Sept. 24, 2021).

¹⁶ 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 Rates; (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* (Ky. PSC May 14, 2021).

outlined several principles that utilities should consider when determining their net metering rates and proposals.¹⁷ Specifically, those principles were to: evaluate eligible generating facilities as a utility system or supply side resource; treat benefits and costs symmetrically; conduct forward-looking, long-term, and incremental analysis; avoid double counting; and ensure transparency.¹⁸ The Commission also noted that, 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.”¹⁹ Therefore, while the principles above were offered in the context of compensating eligible customer-generators, similar principles also apply to rate design.

PROPOSED TARIFF

Rider NM-1. Duke Kentucky proposed to revise its Rider NM-1 to serve existing net metering customers in accordance with KRS 278.465 through KRS 278.468, renaming it “Net Metering I Rider”, and removing the current interconnection guidelines and application and approval process from Rider NM-1 to be placed on newly created tariff sheets entitled “Interconnection.”²⁰ Duke Kentucky also proposed non-substantive revisions to its Interconnection Approval Form and its Level 1 and Level 2 Applications for Interconnection and Net Metering.²¹ Under the proposal, the revised Rider NM-1 will be closed to new participants and will terminate 25 years after Rider NM-2’s effective date. Duke Kentucky also proposed a revision that clarifies that customers who elect to

¹⁷ Case No. 2020-00174, May 14, 2021 Order at 21–24.

¹⁸ Case No. 2020-00174, May 14, 2021 Order at 21–24.

¹⁹ Case No. 2020-00174, May 14, 2021 Order at 24.

²⁰ Application at 1.

²¹ Duke Kentucky’s Response to Staff’s Third Request, Item 5, Attachments.

terminate their participation in Rider NM-1 will not be able to obtain service under Rider NM-1.²²

Duke Kentucky proposed that Rider NM-1 legacy customers altering their generating facility beyond replacement of like equipment resulting in a material increase in the generating capacity be removed from participation under Rider NM-1 and be required to reapply for interconnection under the applicable tariff options for customer-generators.²³

Duke Kentucky has not proposed any change to the compensation received by Rider NM-1 customers.²⁴ Such customers will continue to be compensated on a one-to-one kWh denominated energy credit for electricity fed into the grid in accordance with KRS 278.466(6).

Finally, Duke Kentucky proposed adding the following language to Rider NM-1:

[C]ustomer-generators are prohibited from simultaneous participation in both this Rider NM I and any Distributed Energy Resource Aggregation or with any Distributed Energy Resource Aggregator, as those terms are defined by PJM or subsequent Regional Transmission Organization, other than an aggregation formed by Duke Energy Kentucky acting as the aggregator. Customer-generators who desire to participate in PJM markets through a third party aggregator must contact the Company and terminate participation in this Rider NM I prior to such PJM market participation.²⁵

²² Application at 4.

²³ Application at 4.

²⁴ Duke Kentucky's Initial Brief (filed June 26, 2024) at 7–8.

²⁵ Application, Exhibit 2, pages 20–21 of 22.

Rider NM-2. Duke Kentucky proposed to create a new tariff, Rider NM-2, to serve prospective net metering customers not included in Rider NM-1, in accordance with KRS 278.465 through KRS 278.468.²⁶ Rider NM-2 will be available on a first come, first served basis up to a cumulative capacity, including capacity participating under Rider NM-1, of 1 percent of Duke Kentucky's single hour peak load in Kentucky during the previous year. Once the 1 percent threshold is met, Duke Kentucky's obligation to offer net metering to a new customer-generator may be limited.²⁷

Duke Kentucky proposed that eligible customer-generators taking service under Rider NM-2 and a standard rate schedule, which includes a two-part rate structure, may continue to take service under that structure for at least 25 years after the start of service under Rider NM-2.²⁸ Rider NM-2 customers will not be eligible for the Advanced Meter Opt-Out Rider (Rider AMO) and customers receiving service under the Temporary Service Tariff (Rider TS) will not be eligible for Rider NM-2.²⁹ Duke Kentucky is also proposing to include in Rider NM-2 the same language it proposed to include in Rider NM-1 regarding Distributed Energy Resource (DER) Aggregation.³⁰

Duke Kentucky will provide services under Rider NM-2, without any cost to the customer for metering equipment, through a standard kWh metering system capable of measuring the flow of electricity in two directions.³¹ Any additional meter or distribution

²⁶ Application at 1.

²⁷ Application, Exhibit 3, page 1 of 6.

²⁸ Application, Exhibit 3, page 1 of 6.

²⁹ Application, Exhibit 3, page 1 of 6.

³⁰ Application, Exhibit 3, page 2 of 6.

³¹ Application, Exhibit 3, page 2 of 6.

upgrades needed to monitor the flow in each direction will be installed at the customer's expense.³²

Duke Kentucky proposed to measure the amount of electricity it delivers to the customer during the billing period and to calculate the customer's bill in accordance with the customer's standard rate schedule.³³ Duke Kentucky also proposed to measure the amount of electricity delivered by the customer to the utility during the billing period and provide a bill credit for each kWh the customer delivered to the utility's grid.³⁴ According to the testimony, the two amounts will be netted subject to the minimum bill provisions of the customer's rate schedule, with any unused credits carried forward on the customer's account.³⁵ Duke Kentucky proposed that any unused excess billing credits existing at the time the customer's service is terminated at a service location are not transferrable between customers or locations.³⁶ In the case of joint accounts, unused excess billing credits will be carried forward as long as at least one joint account holder remains in the same location.³⁷

Duke Kentucky originally proposed the following excess generation avoided cost credit rate (credit rate): (1) Residential - \$0.057132 per kWh; and (2) Non-Residential - \$0.057463 per kWh. To arrive at the credit rate, Duke Kentucky took into account avoided

³² Application, Exhibit 3, page 2 of 6.

³³ Application, Exhibit 3, page 2 of 6.

³⁴ Application, Exhibit 3, page 2 of 6.

³⁵ Application at 6.

³⁶ Application, Exhibit 3, page 2 of 6.

³⁷ Application, Exhibit 3, page 2 of 6.

energy costs and avoided generation capacity costs.³⁸ Duke Kentucky did not take into account avoided distribution and avoided transmission capacity costs, stating that there was a lack of evidence to support adding those components.³⁹ However, Duke Kentucky did provide values for the avoided distribution and avoided transmission capacity costs that would allow them to be included in the credit rate if the Commission determined they should be included.⁴⁰ Based on that information, the amounts would be the following if the avoided transmission and distribution capacity costs were included: (1) Residential - \$0.080187 per kWh; and (2) Non-Residential - \$0.080518 per kWh.⁴¹

Finally, Duke Kentucky proposed to recover the avoided cost excess generation credits applied to Rider NM-2 customer bills through its Fuel Adjustment Clause (FAC).⁴²

ARGUMENTS

Duke Kentucky:

Duke Kentucky argued that its proposed credit rate fairly and reasonably represents all costs necessary to serve its eligible customer-generators.⁴³ Duke Kentucky indicated that, during the pendency of this case, it updated its avoided capacity costs for qualifying facilities and PJM released revised effective load carrying capability (ELCC) values for Fixed Solar for use in the 2025/2026 Base Residual Auction.⁴⁴ Based on these

³⁸ Application at 6.

³⁹ Application at 6–7.

⁴⁰ Sailers Direct Testimony at 24.

⁴¹ Sailers Direct Testimony at 24.

⁴² Application, Exhibit 3, at 2.

⁴³ Duke Kentucky's Initial Brief at 12.

⁴⁴ Sailers Rebuttal Testimony at 11–12.

updates, Duke Kentucky indicated that the credit rate could be revised to the following: (1) Residential without Transmission and Distribution Capacity Costs - \$0.051067 per kWh and Non-Residential without Transmission and Distribution Capacity Costs - \$0.051398 per kWh; or (2) Residential with Transmission and Distribution Capacity Costs - \$0.074122 per kWh and Non-Residential with Transmission and Distribution Capacity Costs - \$0.074453 per kWh.⁴⁵

For the avoided energy cost, avoided environmental compliance cost and avoided carbon cost, Duke Kentucky stated that those costs reflect the most accurate and up-to-date information available and mirror its integrated resource plan (IRP) methodology.⁴⁶ Duke Kentucky used forecasted locational marginal prices (LMP) to develop average annual prices for the next 25 years and discounted those prices through a net present value calculation to arrive at the avoided energy cost.⁴⁷ For the residential value, Duke Kentucky calculated the average annual price based on the actual residential excess generation profile from 2022.⁴⁸ For the non-residential value, Duke Kentucky stated that it was not appropriate to use the actual excess generation profile from non-residential customers due to the small population of non-residential customer-generators.⁴⁹ Instead, Duke Kentucky used a PVWatts solar output profile to weight the LMP forecasted prices for the non-residential value.⁵⁰ While Duke Kentucky acknowledged that more

⁴⁵ Duke Kentucky's Initial Brief at 14.

⁴⁶ Duke Kentucky's Initial Brief at 14.

⁴⁷ Sailers Direct Testimony at 16.

⁴⁸ Sailers Direct Testimony at 17.

⁴⁹ Sailers Direct Testimony at 17.

⁵⁰ Sailers Direct Testimony at 17.

transparent methods could have been used to determine these costs, it stated that the methods would not have been as accurate or current a reflection of Duke Kentucky's actual avoided costs.⁵¹

To arrive at the avoided generation capacity cost, Duke Kentucky indicated that it calculated the fixed cost of constructing, financing, and staffing a Combustion Turbine (CT) to meet customer demand.⁵² Duke Kentucky argued that while PJM Net Cost of New Entry (CONE) values would offer more transparency, these values would not accurately reflect the avoided generation capacity costs of Duke Kentucky.⁵³ While the Joint Intervenors argued that Commission precedent would call for the use of PJM Net CONE to determine the avoided generation capacity cost, Duke Kentucky stated that the Commission did not deem PJM Net CONE as the best approach and that its method is more tailored to its service territory.⁵⁴

To determine avoided ancillary services cost, Duke Kentucky stated that it obtained price forecasts for ancillary services and then used a net present value calculation to arrive at the appropriate avoided ancillary services cost.⁵⁵

Duke Kentucky stated that it did not include components for avoided transmission and distribution capacity costs in the proposed credit rate due to the random, intermittent, and non-dispatchable nature of exports from a net metering customer.⁵⁶ As such, Duke

⁵¹ Duke Kentucky's Initial Brief at 14.

⁵² Duke Kentucky's Initial Brief at 16.

⁵³ Duke Kentucky's Initial Brief at 17.

⁵⁴ Duke Kentucky's Initial Brief at 17.

⁵⁵ Duke Kentucky's Initial Brief at 17–18.

⁵⁶ Duke Kentucky's Initial Brief at 18

Kentucky argued that it is precluded from relying on such exports to reduce its planned transmission and distribution investments.⁵⁷

Regarding job benefits, Duke Kentucky stated that it did not see grounds to support the inclusion of a jobs benefit in the credit rate as there is only a small amount of net metering capacity remaining under the net metering cap for which to evaluate incremental job benefits.⁵⁸

Regarding the circumstances under which Rider NM-1 customers would lose their Rider NM-1 legacy rights, Duke Kentucky stated that the material increase language will only be triggered if the customer increases the capacity of the generating facility's inverter from the inverter capacity that was approved in the facility's initial interconnection study.⁵⁹ Duke Kentucky stated that replacing like-for-like equipment will not be considered a material modification.⁶⁰ Additionally, Duke Kentucky specified that increases in solar panel capacity will not be considered material as long as the panels are consistent with the capability of the generating facility's pre-existing inverter, i.e., the inverter that was approved in the generating facility's initial interconnection study.⁶¹ Duke Kentucky stated that if a customer increases the inverter capacity from the previously approved inverter capacity, Duke Kentucky will require a new interconnection application and study and the customer will no longer be eligible for Rider NM-1.⁶²

⁵⁷ Duke Kentucky's Initial Brief at 18.

⁵⁸ Duke Kentucky's Initial Brief at 20.

⁵⁹ Duke Kentucky's Initial Brief at 8.

⁶⁰ Duke Kentucky's Initial Brief at 8.

⁶¹ Duke Kentucky's Initial Brief at 8.

⁶² Duke Kentucky's Initial Brief at 8–9.

When a premises containing an eligible generating facility served under Rider NM-1 is sold or conveyed, Duke Kentucky stated that the premises would remain on Rider NM-1 during the 25-year legacy period assuming there is no other reason for removal or transition.⁶³ However, the new owner of the premises would be required to complete an interconnection agreement.⁶⁴ Duke Kentucky argued that requiring a new interconnection agreement when a premises is sold or conveyed is necessary as, by signing the agreement, the new customer is agreeing to commitments that are important to the safety and reliability of Duke Kentucky's system.⁶⁵

Duke Kentucky proposed the language regarding DER Aggregation to address future scenarios where a customer-generator would have the opportunity to participate in a DER Aggregation or with any DER Aggregator, as those terms are defined by PJM Interconnection, LLC (PJM).⁶⁶ Duke Kentucky argued that allowing a customer-generator to participate in Rider NM-1 or Rider NM-2 and a DER Aggregation would essentially result in the customer-generator being double compensated for the same service.⁶⁷ Duke Kentucky stated that it based the proposed language on the policy against double counting set forth in recent Federal Energy Regulatory Commission (FERC) orders and the most recent compliance filing made by PJM.⁶⁸

⁶³ Duke Kentucky's Response to KYSEIA's First Request, Item 1(b).

⁶⁴ Duke Kentucky's Response to KYSEIA's First Request, Item 1(b).

⁶⁵ Duke Kentucky's Reply Brief (filed July 18, 2024) at 15.

⁶⁶ Duke Kentucky's Initial Brief at 9.

⁶⁷ Duke Kentucky's Initial Brief at 9.

⁶⁸ Duke Kentucky's Initial Brief at 9.

Duke Kentucky argued that it is uncertain whether an aggregation could be created and accepted by PJM that includes Rider NM-1 resources, which are compensated through Rider NM-1, while somehow determining that the program is providing additional net system benefit.⁶⁹ Duke Kentucky stated that, even if such an aggregation could be created, Duke Kentucky would be the only aggregator eligible to do so, given the Rider NM-1 credit provided to the customer-generator.

Regarding the prohibition of customers participating in Rider NM-2 and the Advanced Meter Opt-Out (Rider AMO) or the Temporary Service tariff, Duke Kentucky stated that temporary service accounts are typically for builders during site construction⁷⁰ and that billing and field collection system modifications would be needed to accommodate Rider AMO customers.⁷¹ Duke Kentucky estimated that such changes would take approximately 12 months to implement at a cost of approximately \$1.6 million.⁷²

Duke Kentucky argued that its netting methodology complies with the Net Metering statutes and recent Commission precedent.⁷³ Duke Kentucky cited to LG&E/KU's Commission approved net metering tariffs, which set forth the same netting methodology proposed by Duke Kentucky in this proceeding.⁷⁴ Duke Kentucky also cited the definition of "net metering" in KRS 278.465(4), which states:

⁶⁹ Duke Kentucky's Response to Staff's First Post-Hearing Request, Item 5.

⁷⁰ Duke Kentucky's Response to Staff's First Request, Item 3.

⁷¹ Duke Kentucky's Response to Staff's First Post-Hearing Request, Item 8.

⁷² Duke Kentucky's Response to Staff's Second Post-Hearing Request, Item 2.

⁷³ Duke Kentucky's Initial Brief at 10–12.

⁷⁴ Duke Kentucky's Reply Brief at 3–4.

“Net metering” means the difference between the:

- (a) Dollar value of all electricity generated by an eligible customer-generator that is fed back to the electric grid over a billing period and priced as prescribed in KRS 278.466; and
- (b) Dollar value of all electricity consumed by the eligible customer-generator over the same billing period and priced using the applicable tariff of the retail electric supplier.⁷⁵

Attorney General:

First, the Attorney General argued that Duke Kentucky’s proposal appropriately considered the impacts of net-metering on all of its customers, including non-participants.⁷⁶ The Attorney General argued that the Commission should take a holistic perspective since the compensation afforded to net metering customers for excess energy impact every other Duke Kentucky retail customer.⁷⁷ The Attorney General stated that, as the solar industry has grown, the question of whether rooftop solar customers are receiving excessive benefits for the power they generate at the expense of other customers is becoming increasingly important and pointed out other states that are overhauling and decreasing net-metering rates.⁷⁸

Next, the Attorney General argued that renewable generation, including small-scale solar arrays, such as those at issue in this case, do not provide substantial amounts of reliable energy that customers need and demand.⁷⁹ The Attorney General stated that intermittent resources, such as rooftop solar, are physically incapable of generating

⁷⁵ Duke Kentucky’s Reply Brief at 2.

⁷⁶ Attorney General’s Memorandum Brief (filed June 26, 2024) at 1.

⁷⁷ Attorney General’s Memorandum Brief at 1.

⁷⁸ Attorney General’s Memorandum Brief at 4.

⁷⁹ Attorney General’s Memorandum Brief at 5.

during critical times and that these resources produce a relatively small amount of energy during only a portion of the day.⁸⁰ The Attorney General argued that attempts to inaccurately portray intermittent resources and traditional resources as functionally equivalent invite the types of energy supply shortages and associated reliability impacts being seen locally and nationally.⁸¹

Finally, the Attorney General argued that Duke Kentucky's Rider NM-2 proposal represents fair, just and reasonable rates.⁸² The Attorney General argued that, in order to achieve fair, just and reasonable rates for all customers, it stands to reason that excess rooftop solar generation should only be purchased at the lowest reasonable price and that in all other instances, utilities in the Commonwealth are required to pursue least cost resources.⁸³ The Attorney General cited previous precedent where the Commission has defined "[a]voided costs" as "the incremental costs that a utility would have incurred but for services purchased from net metered customers instead of purchasing or generating the same amount of services from another source."⁸⁴ The Attorney General stated that the Commission articulated eight factors to consider when determining avoided costs associated with net metering: (1) energy cost; (2) ancillary services; (3) generation capacity; (4) transmission capacity; (5) distribution capacity; (6) carbon cost; (7) environmental compliance cost; and (8) job benefits.⁸⁵ The Attorney General argued that

⁸⁰ Attorney General's Memorandum Brief at 5.

⁸¹ Attorney General's Memorandum Brief at 6.

⁸² Attorney General's Memorandum Brief at 6.

⁸³ Attorney General's Memorandum Brief at 6.

⁸⁴ Attorney General's Memorandum Brief citing Case No. 2020-00174, May 14, 2021 Order at 6-7.

⁸⁵ Attorney General's Memorandum Brief citing Case No. 2020-00174, May 14, 2021 Order at 6-7.

Duke Kentucky's calculation of Rider NM-2 bill credits of \$0.057132 \$/kWh (residential customers) and \$0.057463 kWh (non-residential customers) based on those same factors appears justified and well-supported by the evidence in the record, and the Attorney General recommended approval of the proposal as filed.⁸⁶

KYSEIA:

First, KYSEIA argued that Duke Kentucky's proposed tariff change to Rider NM-1 is unlawful because it negates the statutorily created legacy rights granted for existing electric generating facilities.⁸⁷ Specifically, KYSEIA pointed to the language of KRS 278.466(6) that regards legacy rights whether the premises are sold or conveyed for 25 years.⁸⁸ KYSEIA stated that, while it is reasonable for Duke Kentucky to have a process in place for the orderly transition of a Rider NM-1 customer-generator at a premises from one customer to a successor at the same premises, it is unlawful to suspend or inactivate legacy rights through that process.⁸⁹ KYSEIA argued that, Duke Kentucky's approach of denying legacy rights unless, and until, the successor net metering customer can demonstrate entitlement to such rights to Duke Kentucky's satisfaction equates to an attempt to exercise a power plainly denied by statute.⁹⁰

Next, KYSEIA argued that Duke Kentucky's proposal concerning increases in generating capacity for Rider NM-1 and Rider NM-2 customers was unreasonable

⁸⁶ Attorney General's Memorandum Brief at 7.

⁸⁷ KYSEA's Memorandum Brief (filed June 28, 2024) at 4.

⁸⁸ KYSEA's Memorandum Brief at 4.

⁸⁹ KYSEIA's Memorandum Brief at 5.

⁹⁰ KYSEIA's Memorandum Brief at 5.

because it was contrary to legislative intent.⁹¹ KYSEIA stated that Duke Kentucky's proposal to terminate legacy benefits under Rider NM-1 for an increase in generating capacity does not have a textual basis in KRS 278.466 or Senate Bill 100, and that a construction of KRS 278.466 suggesting that the legislature intends such a result cuts against an express legislative intent to preserve rights for Rider NM-1 customer-generators.⁹² KYSEIA stated that the proposed language is unreasonable because it is misleading, and if Duke Kentucky wanted to propose a *per se* policy or bright line test for any increase in inverter rating resulting in a net metering tariff change, then it should unmistakably identify the policy through its application.⁹³ KYSEIA argued that Duke Kentucky's proposed language does not give fair and reasonable notice to its customers, and the language does not reasonably identify and explain its actual policy.⁹⁴ Therefore, KYSEIA argued that it should be denied as unreasonable.⁹⁵

KYSEIA's third argument was that the analysis offered by Duke Kentucky in support of its proposal for successor net metering rates under Rider NM-2 is unreasonable because it does not provide a matching of actual weather conditions to customer usage history and fails to demonstrate the reliability of applying modeled weather conditions to its customer usage history.⁹⁶ KYSEIA argued that the rationale of simplification of Duke Kentucky's cost-of-service study (COSS) cannot justify an

⁹¹ KYSEIA's Memorandum Brief at 6.

⁹² KYSEIA's Memorandum Brief at 6.

⁹³ KYSEIA's Memorandum Brief at 6.

⁹⁴ KYSEIA's Memorandum Brief at 6.

⁹⁵ KYSEIA's Memorandum Brief at 6.

⁹⁶ KYSEIA's Memorandum Brief at 7.

inherently unreliable analysis of the impact of solar generation.⁹⁷ KYSEIA pointed out that Duke Kentucky's projections of solar generation are not based upon the actual generation of its net metering customers, and that Duke Kentucky's customers actual usage and generation results for the study period are not weather normalized results.⁹⁸

KYSEIA then argued that the analysis offered by Duke Kentucky in support of its proposal for successor net metering rates under Rider NM-2 is unreasonable because it does not demonstrate that the 12 coincident peak (12 CP) hours identified in the study period and used for the analysis reliably demonstrate the likely impact of solar generation on Duke Kentucky's cost of service for its residential customers who have net metering service.⁹⁹ KYSEIA pointed out that the evidence supplied by Duke Kentucky in support of its application did not contain a clear reconciliation of the hours and days for the COSS and the hours and days for the modeled solar generation, which Duke Kentucky conceded in a post hearing request for information.¹⁰⁰ KYSEIA stated that it is a critical error because only 12 of the 8,760 hours establish the 12 CP used in the analysis and relied upon by Duke Kentucky.¹⁰¹ KYSEIA stated that the evidence presented struggled to demonstrate in a cogent manner that the 12 CP from the COSS in its most recent rate case properly matches (and reconciles by reference to Eastern Standard Time) the actual customer usage results to the typical weather year modeled solar generation.¹⁰² KYSEIA

⁹⁷ KYSEIA's Memorandum Brief at 7.

⁹⁸ KYSEIA's Memorandum Brief at 8–9.

⁹⁹ KYSEIA's Memorandum Brief at 9.

¹⁰⁰ KYSEIA's Memorandum Brief at 9.

¹⁰¹ KYSEIA's Memorandum Brief at 9.

¹⁰² KYSEIA's Memorandum Brief at 9.

also noted that Duke Kentucky is the party with the burden of proof.¹⁰³ KYSEIA argued that the lack of a clear reconciliation of schedules, identification, and quantification for the 12 CP aggravates or worsens the problem of mixing and matching actual usage results from the COSS period with modeled typical year weather results that are separate from the same study period.¹⁰⁴

KYSEIA argued that Duke Kentucky has yet to present an analysis that, aside from its other problems, is clear and understandable.¹⁰⁵ KYSEIA argued that all other things equal, higher solar generation corresponds to lower demand values during the 12 CP hours and that there is a significant risk that Duke Kentucky's analysis severely understates the reductions it would experience by reference to its COSS analysis.¹⁰⁶ KYSEIA argued that Duke Kentucky's analysis, which also suppresses the value of solar generation through preventing a negative net load hour in the 12 CP values, fails to reliably explain or predict customer usage and behavior, and it fails to demonstrate the value of solar exports upon its system from its net metering customers and is therefore unsound for proper ratemaking.¹⁰⁷

Lastly, KYSEIA argued that Duke Kentucky's approach to serving its net metering customers lacks sufficient accountability.¹⁰⁸ KYSEIA argued that a common thread throughout Duke Kentucky's application and evidence is that Duke Kentucky does not

¹⁰³ KYSEIA's Memorandum Brief at 10.

¹⁰⁴ KYSEIA's Memorandum Brief at 10.

¹⁰⁵ KYSEIA's Memorandum Brief at 10.

¹⁰⁶ KYSEIA's Memorandum Brief at 10–11.

¹⁰⁷ KYSEIA's Memorandum Brief at 11.

¹⁰⁸ KYSEIA's Memorandum Brief at 11.

offer much coordination of service to its net metering customers.¹⁰⁹ KYSEIA pointed out that Duke Kentucky cannot identify who is ultimately responsible or otherwise accountable for decisions concerning net metering switch determinations.¹¹⁰ Therefore, KYSEIA argued that Duke Kentucky needs to change its approach to comply with statute and to provide reasonable service and processing of matters concerning net metering service.¹¹¹

Joint Intervenors:

Joint Intervenors argued that Duke Kentucky was not required to file this rate application but was entitled to seek to implement updated rates pursuant to the Commonwealth's Net Metering Statutes and prior Commission precedent.¹¹² Joint Intervenors stated that Duke Kentucky was not required to apply to discontinue net metering, and Duke Kentucky should ensure transparent and reciprocal stakeholder outreach prior to applying to make any further changes.¹¹³

Additionally, Joint Intervenors argued that Duke Kentucky did not comply with the principles of setting net metering compensation rates.¹¹⁴ First, Joint Intervenors argued that Duke Kentucky did not consider eligible customer-generators as supply-side resources using consistent methods, processes, and assumptions.¹¹⁵ Next, Joint

¹⁰⁹ KYSEIA's Memorandum Brief at 11.

¹¹⁰ KYSEIA's Memorandum Brief at 11.

¹¹¹ KYSEIA's Memorandum Brief at 11–12.

¹¹² Joint Intervenors' Memorandum Brief (filed June 28, 2024) at 11.

¹¹³ Joint Intervenors' Memorandum Brief at 12.

¹¹⁴ Joint Intervenors' Memorandum Brief at 12.

¹¹⁵ Joint Intervenors' Memorandum Brief at 13.

Intervenors argued that Duke Kentucky did not treat benefits and costs symmetrically.¹¹⁶ Joint Intervenors also argued that Duke Kentucky did not conduct a forward-looking, long-term, and incremental analysis.¹¹⁷ Joint Intervenors stated that, while ratepayers make a long-term investment, and rates are set based on long-term modeling from Duke Kentucky; those rates are subject to periodic change at the initiation of Duke Kentucky.¹¹⁸ Joint Intervenors stated that Dr. McCann, their witness, demonstrated that the immediate change in compensation of customer-generators applied for by Duke Kentucky would contravene the forward-looking, incremental principle of gradualism.¹¹⁹ Joint Intervenors also took issue with Duke Kentucky using proprietary data, calculations, and modeling, arguing that Duke Kentucky did not comply with the requirement to ensure transparency.¹²⁰ Joint Intervenors also stated that Duke Kentucky failed to give serious consideration to input from stakeholders which questioned the very need for filing the Rider NM-2 tariff change.¹²¹

Joint Intervenors also argued that the avoided costs proposed by Duke Kentucky do not comply with the standards or policy for setting compensation for customer-generators, and are not fair, just and reasonable.¹²² Joint Intervenors argued that Duke Kentucky improperly excluded avoided distribution and transmission costs, and

¹¹⁶ Joint Intervenors' Memorandum Brief at 14.

¹¹⁷ Joint Intervenors' Memorandum Brief at 14.

¹¹⁸ Joint Intervenors' Memorandum Brief at 15

¹¹⁹ Joint Intervenors' Memorandum Brief at 15 citing to McCann Direct Testimony at 3, 37.

¹²⁰ Joint Intervenors' Memorandum Brief at 16.

¹²¹ Joint Intervenors' Memorandum Brief at 18.

¹²² Joint Intervenors' Memorandum Brief at 18–19.

disregarded the Commission's prior precedent.¹²³ Joint Intervenors argued that customer-generators are not a random and intermittent resource, and are more constant and predictable than Demand-Side Management (DSM) measures, if less closely matched to customer demand.¹²⁴ Joint Intervenors recommended that the Commission include avoided distribution costs in setting any eventual compensation rate.¹²⁵ Joint Intervenors claimed that utilities often over-build distribution infrastructure, even despite no projections of large load growth, as with Duke Kentucky, and therefore, undervalue the potential benefits of DERs.¹²⁶ Joint Intervenors requested that the Commission order a full COSS to determine the portion of the incremental cost of transmission displaced by customer-generators, and that, if the Commission does not reject the application, that it order a study within a reasonable amount of time, and that the full value calculated by witness Dr. McCann be used in the meantime.¹²⁷

Joint Intervenors argued that Duke Kentucky disregarded the Commission's precedent to use publicly available information, such as PJM's Net CONE values, with respect to setting avoided capacity costs.¹²⁸ Joint Intervenors also argued that Duke Kentucky also ignored the added avoided carbon costs created by customer generators.¹²⁹ Joint Intervenors argued that Duke Kentucky's suggestion that the

¹²³ Joint Intervenors' Memorandum Brief at 19.

¹²⁴ Joint Intervenors' Memorandum Brief at 20–21.

¹²⁵ Joint Intervenors' Memorandum Brief at 21.

¹²⁶ Joint Intervenors' Memorandum Brief at 21–22.

¹²⁷ Joint Intervenors' Memorandum Brief at 22–23.

¹²⁸ Joint Intervenors' Memorandum Brief at 24.

¹²⁹ Joint Intervenors' Memorandum Brief at 24.

inclusion of the benefits of the Inflation Reduction Act fully encompassed the avoided costs of carbon was incorrect, in addition to being in contradiction of the Commission's prior orders.¹³⁰ Joint Intervenors stated that they continue to advocate for a somewhat more moderate avoided carbon price between \$58 and \$188 per ton, or \$0.0466 per kWh.¹³¹

Joint Intervenors argued that Duke Kentucky ignored a variety of known or anticipated costs of compliance with environmental regulations.¹³² Joint Intervenors cited to the fact that the Commission has previously considered and rejected the position that environmental costs were included in the avoided energy costs, and explicitly required consideration of at least two additional environmental rules.¹³³ Joint Intervenors argued that because Duke Kentucky has capital environmental costs that can be avoided by generation from customer-generators, and new and updated environmental rules will absolutely have an effect on the value of energy produced by customer-generations, they deserve credit for them, and Duke Kentucky's application that fails to include them should be rejected for failing to comply with prior Commission orders.¹³⁴

Additionally, Joint Intervenors argued that Duke Kentucky failed to account for the inherent variability and risk in fuel prices in calculating its avoided energy costs.¹³⁵ Joint

¹³⁰ Joint Intervenors' Memorandum Brief at 25.

¹³¹ Joint Intervenors' Memorandum Brief at 26.

¹³² Joint Intervenors' Memorandum Brief at 26.

¹³³ Joint Intervenors' Memorandum Brief at 26 citing Case Nos. 2020-00349 and 2020-00350, Sept. 24, 2021 Order at 56-57.

¹³⁴ Joint Intervenors' Memorandum Brief at 28.

¹³⁵ Joint Intervenors' Memorandum Brief at 28.

Intervenors stated that market forecast prices alone fail to account for the benefit of energy produced by customer-generators, because customer-generators have consistent production and cost, and utilities can know, and to a great deal control, the price paid to customer-generators and when it will change.¹³⁶ Joint Intervenors averred that Duke Kentucky disregarded the Commission's previous orders with regard to job benefits of distributed generation.¹³⁷

Joint Intervenors stated that Duke Kentucky proposes approach to implement Rider NM-2 is inconsistent both with the plain language of the governing statute and with the methodology adopted.¹³⁸ Joint Intervenors argued that the 2019 statutory revisions did not alter the manner in which the generation and consumption (however denominated) is to be netted- which is over the billing period.¹³⁹ Joint Intervenors argued that Duke Kentucky's proposed Rider NM-2 is contrary to KRS 278.466 and to the Commission's Order in Case No. 2020-00174, which required that the generation and consumption over the billing period be netted, with the retail rate applied to any excess consumption over generation over that period, or the new compensatory rate applied to determine the value of the excess generation over consumption over that period.¹⁴⁰ The Joint Intervenors requested that the Commission clarify how net metering under Rider NM-2 should be

¹³⁶ Joint Intervenors' Memorandum Brief at 28.

¹³⁷ Joint Intervenors' Memorandum Brief at 29.

¹³⁸ Joint Intervenors' Memorandum Brief at 31.

¹³⁹ Joint Intervenors' Memorandum Brief at 33.

¹⁴⁰ Joint Intervenors' Memorandum Brief at 32–33.

calculated and specifically to reconcile and clarify the language and methodology at issue in the previous LG&E/KU cases.¹⁴¹

Response Briefs

In their reply brief, Joint Intervenors fully adopted the arguments and position of KYSEIA and reiterated its arguments and requested that the Commission reject Duke Kentucky's filing without prejudice, with an order to follow prior Commission precedent before reapplying.¹⁴² Similarly, KYSEIA agreed with Joint Intervenors' arguments that Duke Kentucky was not required to make this filing on the deadline that Duke Kentucky self-imposed, that Joint Intervenors' approach to calculating net metering over the billing period is consistent with legislative intent, and Joint Intervenors' discussion of changes in the net metering law and the Commission's implementation of Senate Bill 100.¹⁴³ KYSEIA reiterated its disagreement with Duke Kentucky's arguments and methods.¹⁴⁴ KYSEIA also disagreed with the Attorney General's discussion of net metering in Kentucky, stating the Attorney General offers little for the findings of fact and conclusions of law the Commission must make in the instant proceeding.¹⁴⁵

On July 18, 2024, Duke Kentucky filed a reply brief that reiterated its position that the tariffs as filed comply with the net metering statute, the methodologies are reasonable, and the application, as filed, should be approved.

¹⁴¹ Joint Intervenors' Memorandum Brief at 45-46.

¹⁴² Joint Intervenor's Response Brief (filed July 18, 2024).

¹⁴³ Joint Intervenors' Response Brief at 8-16; KYSEIA's Response Brief (filed July 18, 2024) at 2-4.

¹⁴⁴ KYSEIA's Response Brief 4-11.

¹⁴⁵ KYSEIA's Response Brief 12-14.

DISCUSSION AND FINDINGS

Having considered the application and reviewed the record, the Commission makes several findings as discussed more fully below.

Rider NM-1

The Commission finds that Rider NM-1 is approved with the modifications discussed further below.

The Commission notes that Duke Kentucky's Rider NM-1 fails to clearly designate legacy rights as attached to the property in a clear and concise manner. The Commission finds that Duke Kentucky should include explicit language setting out the legacy rights for Rider NM-1 customers regardless of whether the premises are sold or conveyed during the 25-year period pursuant to KRS 278.766.

Additionally, the Commission finds that the removal of a customer from Rider NM-1 following a replacement of equipment resulting in a material increase in the generating capacity as proposed in the tariff is both vague and overbroad.¹⁴⁶ The proposed language does not properly put customers on notice in regard to when they would be removed from Rider NM-1. The tariff only states that the customers will be removed from Rider NM-1 and would, therefore, be required to reapply for interconnection. The Commission notes that Duke Kentucky should clearly and concisely communicate to customers the process and consequences of upgrading their generating capacity, including a specific given time that the customers would be removed from Rider NM-1. Duke Kentucky should add additional language into its tariff that clarifies the process with customers, including the responsibilities of each party at each step. The Commission finds that Duke Kentucky

¹⁴⁶ Application, Exhibit 1, KY.P.S.C. Electric No. 2 Seventh Revised Sheet No. 89.

should define both material change and equipment in its tariff to provide better transparency to its customers.¹⁴⁷ In addition, the Commission finds that replacement of eligible generating facilities in the ordinary course of business that result in only an incidental increase in capacity should not trigger a change in Rider NM-1 legacy status. Similarly, with the additional language related to a material increase, Duke Kentucky should also include language explicitly noting this finding in its tariff as well as when drafting the now required definition of material increase.

Rider NM-2

The Commission finds that Rider NM-2 is approved with the modifications discussed further below.

Avoided Cost Excess Generation Credits

Avoided Capacity Costs

Having reviewed the record, the Commission finds that Duke Kentucky's methodology and calculation of its avoided capacity costs is reasonable as modified below. However, the Commission notes that neither Duke Kentucky nor any intervenor presented sufficient evidence to support different cost calculations in a manner contemplated by the Commission's precedent.

The Commission accepts Duke Kentucky using the cost of a combustion turbine (CT) as a starting point for its avoided generation capacity costs calculation considering a CT is the best generic substitute as it is generally regarded as a least-cost capacity

¹⁴⁷ In its brief, Duke Kentucky explained that the material increase language will only be triggered if the customer increases the capacity of the generating facility's inverter from the inverter capacity that was approved in the facility's initial interconnection study but that replacing like-for-like equipment will not be considered a material modification.

resource and has variable sizing. However, the Commission takes issue with some of the inputs in Duke Kentucky's CT cost calculation.

First, the Commission is skeptical of the current cost that Duke Kentucky utilized in its original filing and in rebuttal testimony as it appears to be severely understated.¹⁴⁸ The Commission notes that the National Renewable Energy Laboratory's Annual Technology Baseline (NREL ATB) has a CAPEX cost of a natural gas CT (F-Frame) of \$1,349 per kW, which is significantly higher than what Duke Kentucky had proposed in its avoided cost calculations for the cost of a CT.¹⁴⁹ Duke Kentucky explained that there appeared to be significant differences between the PJM Net CONE values, and its own position regarding marginal capacity resources and therefore it utilized its own third-party confidential estimates. The Commission notes that Duke Kentucky did not provide sufficient evidence nor justification in support of its CT cost estimates. Moreover, it did not refute the cost estimates that were publicly available from PJM or from NREL and simply asserted that there were significant differences.¹⁵⁰ The Commission finds that considering the costs of the CT between NREL's ATB and Duke Kentucky's confidential information is slightly different, the Commission will accept Duke Kentucky's cost estimates of a CT. However, the Commission notes that the burden is on the utility to submit the necessary information into the record so that the Commission can make a

¹⁴⁸ Duke Kentucky filed for and was granted confidential protection for the CT cost calculation by Order issued May 17, 2024.

¹⁴⁹ <https://data.openei.org/files/6006/2024%20v2%20Annual%20Technology%20Baseline%20Workbook%20Errata%207-19-2024.xlsx>

¹⁵⁰ Sailers Direct Testimony at 19.

reasonable determination of costs and therefore expects Duke Kentucky to file this information in its next net metering case.

Additionally, the Commission is skeptical of the 2023 fixed Operating and Maintenance (O&M) cost that Duke Kentucky utilized as it appeared to be significantly understated as well. The Commission acknowledges that a CT has relatively low capital costs as compared to other capacity generating resources, but not significantly lower than that of a proxy CT from PJM Net CONE or NREL ATB. The Commission notes that Duke Kentucky appeared to model the 2023 fixed O&M costs based upon a specific type of CT with environmental compliance¹⁵¹ rather than a general proxy CT¹⁵², which is contradictory to the modeling of generalized costs. By consistently understating costs in its modeling, Duke Kentucky is offering a lesser credit to its NM customers which could, in turn, result in negative financial incentives to those customers. Therefore, the Commission accepts the 2023 fixed O&M costs from Duke Kentucky's response to Staff's Post-Hearing Request, Item 1(a) based on the premise that Duke Kentucky provided multiple scenarios with low and high fixed costs for multiple different types of CTs. The Commission agrees with the higher values for fixed O&M costs for the specific CTs that were provided and based on other publicly available data.¹⁵³

Next, Duke Kentucky did not propose to include its distribution capacity or transmission capacity avoided costs in its credit rate. Duke Kentucky proposed that, if

¹⁵¹ Duke Kentucky's Response to Staff's First Post-Hearing Request, Item 1(a), CONF Attachment 2.

¹⁵² <https://data.openei.org/files/6006/2024%20v2%20Annual%20Technology%20Baseline%20Workbook%20Errata%207-19-2024.xlsx>.

¹⁵³ Duke Kentucky's Response to Staff's First Post-Hearing Request, Item 1(a), CONF Attachment 2, Scenario 1.

the Commission found that these avoided costs should be included in the credit rate, then its DSM avoided cost value should be the basis for its calculation. The DSM avoided cost value is derived from information provided by Duke Kentucky's Analytics department for the cost of transmission and distribution upgrades related to load growth in 2020 dollars and escalated based on Moody's Analytics Electric Power Distribution – East South-Central Forecast. However, the Commission finds that the calculation proposed by Duke Kentucky is outdated and unreliable, considering the costs are approximately four years old. Therefore, the Commission will utilize the T&D values listed in Duke Kentucky's rebuttal testimony¹⁵⁴ until its next filing in which the Commission expects Duke Kentucky to file updated and additional evidence in regard to avoided transmission and distribution values.

Lastly, the Commission notes that Duke Kentucky did provide updated ELCC values in rebuttal testimony.¹⁵⁵ However, while the ELCC value for fixed-tilt solar decreased from 31 percent to 9 percent for the 2025/2026 BRA, and Duke Kentucky did provide those updated values in its rebuttal testimony Exhibit BLS-1, the Commission notes that Duke Kentucky did not utilize those updated transmission and distribution values in calculating the updated avoided cost rates and instead utilized the cost rates from its original filing. Duke Kentucky stated that the avoided transmission rate was \$0.007662 per kWh and the avoided distribution rate was \$0.015393 per kWh¹⁵⁶, but with updated ELCC values, the new avoided transmission rate is \$0.003330 per kWh and the

¹⁵⁴ Sailers Rebuttal Testimony, Exhibit BLS-1.

¹⁵⁵ Sailers Rebuttal Testimony, Exhibit BLS-1.

¹⁵⁶ Sailers Rebuttal Testimony at 13-14.

new avoided distribution rate is \$0.006719 per kWh.¹⁵⁷ Therefore, the Commission finds that the proposed net metering rates in rebuttal testimony are overstated and should be adjusted based on the updated avoided transmission and distribution values as noted above. Therefore, the Commission finds that the Excess Generation Avoided Cost Credit for residential should be \$0.062924 per kWh, including avoided transmission and distribution and the Excess Generation Avoided Cost Credit for non-residential should be \$0.063255 per kWh, including avoided transmission and distribution.

The Commission accepts Duke Kentucky's avoided capacity costs as modified in this Order; however, the Commission will require Duke Kentucky file another Net Metering application after the conclusion of its 2024 IRP filing with updated rates that utilize public and transparent available data considering the Commission has utilized this for all other vertically integrated utilities in Kentucky.¹⁵⁸ The Commission also finds that Duke Kentucky should utilize updated avoided transmission capacity and distribution capacity cost information from its 2024 IRP filing to reflect more accurate avoided costs in its next filing.

Avoided Cost Calculations

In Case No. 2020-00174, the Commission established principles for utilities to follow in creating their net metering tariffs: evaluate eligible generating facilities as a utility system or supply side resource; treat benefits and costs symmetrically; conduct forward-looking, long-term, and incremental analysis; avoid double counting; and ensure

¹⁵⁷ Sailers Rebuttal Testimony, Exhibit BLS-1.

¹⁵⁸ Case No. 2020-00174, May 14, 2021 Order, Case No. 2020-00349, Sept. 24, 2021 Order, Case No. 2020-00350, Sept. 24, 2021 Order, Case No. 2023-00153, *Electronic Tariff Filing of East Kentucky Power Cooperative, Inc. and Its Member Distribution Cooperatives for Approval of Proposed Changes to Their Qualified Cogeneration and Small Power Production Facilities Tariffs* (Ky. PSC Oct. 31, 2023).

transparency.¹⁵⁹ The Commission also noted that, 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.”¹⁶⁰

While the Commission finds the use of the CT appropriate, the Commission agrees with the arguments made by Joint Intervenors and KYSEIA about Duke Kentucky’s use of confidential third-party information to determine the avoided cost capacity value. The Commission has repeatedly stressed the importance of relying upon open, transparent, and publicly accessible information to determine the avoided capacity costs. Duke Kentucky even acknowledged such,¹⁶¹ but chose to use elements of third-party confidential information instead. The Commission notes that the applicant bears the burden to demonstrate the reasonableness of its proposed avoided capacity costs, and it appears Duke Kentucky disagrees with the public and transparent costs in regard to marginal capacity resources and decided to utilize its own cost estimates and information.

Therefore, the Commission again emphasizes the importance of relying upon publicly available information to calculate net metering avoided capacity costs. Duke Kentucky should use publicly accessible information for avoided capacity costs, such as the NREL ATB, PJM Net CONE or explain why the Commission should rely upon other “confidential” information in future filings in any application, including DSM applications and IRP’s. Calculating net metering avoided capacity costs with public information allows customers to be able to access the information used to create their net meter bill credits

¹⁵⁹ Case No. 2020-00174, May 14, 2021 Order at 21–24.

¹⁶⁰ Case No. 2020-00174, May 14, 2021 Order at 24.

¹⁶¹ Sailers Direct Testimony at 19.

and overall rates. In addition, the Commission also finds that Duke Kentucky should include avoided distribution and avoided transmission in its calculation of its credit rate going forward. Duke Kentucky indicated that it would include those costs should the Commission require it. Lastly, the Commission finds that Duke Kentucky should have a consistent avoided cost methodology with updated values across all future cases going forward rather than relying on outdated information and escalating the values over time.

Avoided Energy Costs

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that Duke Kentucky's method for calculating avoided energy costs is reasonable and should be approved. Duke Kentucky proposed to use forecasted LMP energy prices, as the basis for its avoided energy cost calculation. Duke Kentucky then used its weighted average cost of capital and then discounted the annual average prices through a net present value calculation.¹⁶² The Commission has previously approved the use of actual LMPs to calculate the real-time cost that the utility would otherwise purchase energy.¹⁶³ Similarly, LMP forecasts are used to demonstrate the hourly energy prices in which Duke Kentucky can purchase or sell power into the PJM marketplace, and reflect the marginal cost of electricity. Use of LMPs captures the value of energy to the utility at the time that it is delivered.

Duke Kentucky also stated that the avoided environmental cost and avoided carbon costs are imbedded into the avoided energy costs, as environmental costs are included in the forecasted marginal energy prices, and stated there is no additional value

¹⁶² Sailers Direct Testimony at 16.

¹⁶³ Case No. 2020-00174, May 14, 2021 Order at 26–27.

for carbon beyond the incorporation of the Inflation Reduction Act of 2022, which was included in the avoided energy cost calculation. The Commission finds that there is no need for any additional values for avoided environmental or carbon costs and in so far as Duke Kentucky excluded those costs, the credit rate calculation is reasonable.

Avoided Ancillary Services Costs

The Commission finds that using forecasted prices for ancillary services are reasonable and should be accepted. However, the Commission expects Duke Kentucky to file additional evidence and testimony in the next NM case regarding the ancillary services based on the IRP findings as well as any other environmental compliance impacts that may impact those costs.

Rider NM-2 Legacy Customers

As noted above, Duke Kentucky proposed to create legacy rights for Rider NM-2 customers whereas such customers that take service under a two-part rate structure may continue to take service under a two-part rate structure for 25 years after the start of service under Rider NM-2.¹⁶⁴ For the reasons set forth below, the Commission finds that eligible customer-generators who take service under Rider NM-2 and a standard rate schedule with a two-part rate structure should be allowed to take service under the current two-part structure¹⁶⁵ for 25 years. The Commission approved a similar provision in Case

¹⁶⁴ Sailers Direct Testimony at 14.

¹⁶⁵ This legacy status is for the *rate structure* only. The Commission is not making any determination as to the appropriate rate amount, such as continuing to charge Rider NM-2 customers the same customer charge and kWh charge as non-participating customers.

Nos. 2020-00174,¹⁶⁶ 2020-00349,¹⁶⁷ and 2020-00350¹⁶⁸ noting that, through establishing legacy rights for Rider NM-1 customers, the legislature determined that there should be some allowance for customer expectation of and reliance on existing rate structures when the eligible generating facility was placed in service, especially given the 25-year expected useful life of current eligible generating facilities. The Commission noted that legacy provisions mitigate the negative financial impact that changes in rate design may have on an eligible customer-generator who invested in an eligible generating facility. Finally, the Commission noted that the 25-year legacy period for Rider NM-2 customers balances a utility's need to adapt to changing circumstances, such as increased penetration levels, with the needs of existing eligible customer-generators who made a long-term investment in eligible generating facilities.

Rider AMO/Temporary Service

Duke Kentucky proposed a provision that would prohibit a customer from taking service under both Rider NM-2 and Rider AMO and one that would prohibit a customer from taking service under the temporary service tariff and Rider NM-2. No intervenor objected to this proposal. The Commission finds that the proposed provisions are reasonable, and that they should be approved for the following reasons. As Duke Kentucky noted, temporary service is typically used for buildings under construction. Construction is generally considered temporary and many times the developer or contractor is not the property owner. In regard to Rider AMO, Duke Kentucky argues the

¹⁶⁶ Case No. 2020-00174, May 14, 2021 Order at 43.

¹⁶⁷ Case No. 2020-00349, Sept. 24, 2021 Order.

¹⁶⁸ Case No. 2020-00350, Sept. 24, 2021 Order.

costs to enable Rider AMO customers¹⁶⁹ to also participate in Rider NM-2 outweigh the benefits considering the Commission would not expect Duke Kentucky to imprudently incur costs to upgrade its billing system and field collection system to only accommodate Rider AMO customers. In response to several post-hearing requests, Duke Kentucky provided additional information to support that the expense of the change to the billing software was substantial and would benefit very few customers, if any, in which the Commission agrees with Duke Kentucky's argument.¹⁷⁰

Distributed Energy Resource Aggregation

On September 17, 2020, the Federal Energy Regulatory Commission (FERC) issued Order No. 2222 (Order 2222) with the goal of increasing participation of DER Aggregation, such as eligible customer-generators, in the organized wholesale power markets run by regional transmission operators, such as PJM.¹⁷¹ The FERC issued updates to Order 2222 on March 18, 2021,¹⁷² and June 17, 2021.¹⁷³ Order 2222 allows DERs to participate in regional wholesale power markets through aggregation of resources. The FERC has jurisdiction over regional wholesale power markets and the criteria for market participation. Under Order 2222, state authorities retain jurisdiction

¹⁶⁹ Duke Kentucky estimated that such changes would take approximately 12 months to implement at a cost of approximately \$1.6 million.

¹⁷⁰ Duke Kentucky's Response to Staff's First Post-Hearing Request, Item 8 and Duke Kentucky's Response to Staff's Second Post-Hearing Request, Item 2.

¹⁷¹ FERC Order No. 2222: A New Day for Distributed Energy Resources, [FERC Order No. 2222: Fact Sheet | Federal Energy Regulatory Commission](#).

¹⁷² <https://www.ferc.gov/media/e-1-rm18-9-002>.

¹⁷³ <https://www.ferc.gov/media/e-4-061721>.

over the interconnection of individual DERs that participate in wholesale power markets through a DER aggregator.

On September 1, 2023, PJM filed proposed revisions to its Open Access Transmission Tariff (OATT) and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C.¹⁷⁴ As part of that filing, PJM set out its policy against double counting or paying the same resource twice for the same service, which Duke Kentucky used to develop its own provision regarding double counting.¹⁷⁵ Duke Kentucky noted the PJM compliance filing is still pending the FERC approval, and there is currently not complete certainty as to the language that will ultimately be approved.¹⁷⁶ On July 25, 2024, the FERC ordered for PJM to update its compliance filing following the directives of the FERC.¹⁷⁷ Currently, PJM's proposed tariff has a procedure in place for an electric distribution's review and verification of a component DER's registration with a DER aggregator.¹⁷⁸

Given the fact that the PJM compliance filing has not yet been approved by the FERC and the uncertainty flowing therefrom, the Commission finds that Duke Kentucky's proposed provision regarding DER Aggregation participation and Rider NM-1 and Rider NM-2 participation should not be approved at this time. Instead, the Commission approves the following language for both tariffs:

Customer-generators may be prohibited from simultaneous participation in both this Rider NM-1 and any Energy

¹⁷⁴ Duke Kentucky's Response to Staff's First Post-Hearing Request, Item 5.

¹⁷⁵ Duke Kentucky's Response to Staff's First Post-Hearing Request, Item 5.

¹⁷⁶ Duke Kentucky's Initial Brief at 9.

¹⁷⁷ <https://www.pjm.com/-/media/documents/ferc/orders/2024/20240808-er22-962-005.ashx>.

¹⁷⁸ Proposed PJM Operating Agreement Schedule 1, section 1.4B.

Resource Aggregation or any Distributed Energy Resource Aggregator, as those terms are defined by PJM or subsequent Regional Transmission Organization, other than an aggregation formed by Duke Energy Kentucky acting as the aggregator. Customer-generators who desire to participate in PJM markets through a third-party aggregator must contact the Company and such participation may result in termination in this Rider NM-I prior to such PJM market participation.

The Commission notes that this language allows for Duke Kentucky and the customer to engage in a manner that will ensure the procedure set forth in Order 2222 is followed. Upon final Order by the FERC on PJM's compliance filing, Duke Kentucky may include a request in compliance with the Order in its next net metering filing.

Metering Equipment

No Intervenor objected to Duke Kentucky's proposed metering provisions for Rider NM-2. Duke Kentucky's tariff complies with KRS 278.466(2), which states:

Each retail electric supplier serving a customer with eligible electric generating facilities shall use a standard kilowatt-hour meter capable of registering the flow of electricity in two (2) directions. Any additional meter, meters, or distribution upgrades needed to monitor the flow in each direction shall be installed at the customer-generator's expense.

As noted above, Duke Kentucky's tariff states that it will provide net metering service, at no cost to the customer for metering equipment, through a standard kWh metering system capable of measuring the flow of electricity in two directions. Therefore, the Commission finds that the proposed metering provisions are reasonable and that they should be approved.

Netting Methodology

Based upon the evidence of record, the Commission finds that Duke Kentucky's proposed netting methodology for Rider NM-2, as revised below, is reasonable and should be approved. As Duke Kentucky correctly notes, the plain language of KRS 278.465(4) 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. The Commission is not persuaded by the Joint Intervenors' argument that Duke Kentucky's netting methodology is inconsistent with the plain language of KRS 278.465(4) and with the Commission's September 24, 2021 and November 4, 2021 Orders in Case No. 2020-00349 and Case No. 2020-00350. The Commission specifically stated in its answer to the Franklin Circuit Court Appeal, 021-CI-00872¹⁷⁹ that the plain language of the September 24, 2021 and November 4, 2021 Order are consistent with KRS 278.465 and that, consistent with those Orders, KU/LG&E filed, and the Commission accepted KU/LG&E's NMS-2 tariffs which reflected the methodology approved by the Commission.

As noted above, Duke Kentucky has proposed to net the dollar values of the electricity delivered to the grid from the eligible customer generator with the dollar value of the electricity delivered by Duke Kentucky to the eligible customer-generator subject to the minimum bill provisions of the customer's rate schedule. In doing so, Duke Kentucky would be netting the dollar value of the energy exported to the grid with portions of the customer's bill that are not per kWh charges, such as the Home Energy Assistance

¹⁷⁹ *Ky. Utils. Co. & Louisville Gas & Elec. Co.*, Case No. 21-CI-00872 (Franklin Cir. Ct. Dec. 15, 2021).

charge, which is a flat fee, and the Environmental Surcharge, which is a percentage of bill fee. The Commission finds that, because the energy charge is based upon electricity consumed, the dollar amount of energy exported to Duke Kentucky's distribution system by a Rider NM-2 customer should be netted against the energy charge and any rider that is based on a per kWh charge.

Unused Excess Bill Credits/Joint Accounts

No Intervenor objected to Duke Kentucky's proposed provisions regarding unused excess billing credits for Rider NM-2 customers. In regard to the provision for joint accounts, a similar provision was approved by the Commission in Case Nos. 2020-00349 and 2020-00350. The approved provision protected the banked unused excess bill credits of joint account holders in situations where one of the joint account holders was removed from the account. The remaining provisions relating to unused excess bill credits comply with KRS 278.466(4), in that unused excess bill credits carryforward to the customer's next bill and that they are not transferable between customers or premises. Therefore, the Commission finds that the proposed provisions relating to unused excess billing credits and joint accounts for Rider NM-2 customers are reasonable and should be approved. The Commission also finds that the joint account provision should be included in Rider NM-1 to protect the rights of joint account holders served under that tariff.

Collecting Avoided Cost Excess Generation Credits through Rider FAC

No Intervenor objected to Duke Kentucky's proposal to collect Rider NM-2 avoided cost excess generation credits through Rider FAC. The Commission finds that it is reasonable for Duke Kentucky to collect through its Rider FAC the avoided cost excess

generation credits made to customers under Rider NM-2 because the credits are a purchased power expense for net energy exported to the grid under Rider NM-2.

Interconnection Guidelines and Application Forms

No Intervenor objected to Duke Kentucky's proposal to move its interconnection guidelines to a new tariff or to the proposed revisions to the Interconnection Approval Form and the Level 1 and Level 2 Applications for Interconnection and Net Metering. The Commission finds that the proposed revisions are reasonable, and they should be approved as the revisions are non-substantive in nature.

IT IS THEREFORE ORDERED that:

1. The rates and charges proposed by Duke Kentucky in Rider NM-2 are denied.
2. The rates and charges for Duke Kentucky's Rider NM-2, as set forth in the Appendix to this Order, are fair, just and reasonable rates.
3. Duke Kentucky's Rider NM-1 shall be modified as described in this Order.
4. Duke Kentucky's Rider NM-2 shall be modified as described in this Order.
5. Duke Kentucky's proposal to remove the Interconnection Guidelines from Rider NM-1 and place them in a separate tariff is approved.
6. Duke Kentucky's proposed revisions to the Interconnection Approval Form and the Level 1 and Level 2 Applications for Interconnection and Net Metering are approved.
7. Duke Kentucky shall file an application to update its NM tariff and rates either 60 days after the conclusion of its 2024 IRP case or 90 days prior to Duke Kentucky

reaching its 1 percent net metering cap pursuant to KRS 278.466(1), whichever occurs first.

8. Within 20 days of the date of service of this Order, Duke Kentucky shall file with the Commission, using the Commission's electronic Tariff Filing System, new tariff sheets setting forth the rates, charges, and modifications approved or as required herein and reflecting their effective date and that they were authorized by this Order.

9. The case shall be closed and removed from the Commission's docket.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PUBLIC SERVICE COMMISSION



Chairman

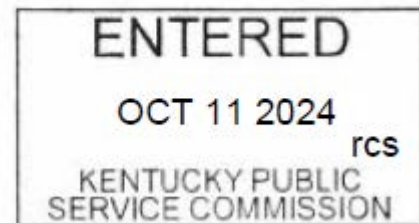


Commissioner



Commissioner

B8957738-D2F1-4D5E-83C2-0EB9088DBA3A : 000068 of 000085



ATTEST:



Executive Director

Case No. 2023-00413

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2023-00413 DATED OCT 11 2024

The following rates and charges are prescribed for the customers in the area served by Duke Energy Kentucky, Inc. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under the authority of this Commission prior to the effective date of this Order.

Rider NM-2
Excess Generation Avoided Cost Credit Rate

The Company will provide a bill credit for each kWh Customer produces to the Company's grid using the rate below.

Residential:	\$ 0.062924 per kWh
Non-Residential:	\$ 0.063255 per kWh

*L. Allyson Honaker
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 1203
Lexington, KENTUCKY 40509

*Thomas J FitzGerald
Counsel & Director
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KENTUCKY 40602

*Minna Sunderman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*John G Horne, II
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Rocco O D'Ascenzo
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Ashley Wilmes
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KENTUCKY 40602

*Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202

*Randal A. Strobo
Strobo Barkley PLLC
239 South 5th Street
Ste 917
Louisville, KENTUCKY 40202

*Audrey Ernstberger
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KENTUCKY 40602

*Larisa Vaysman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Byron Gary
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KENTUCKY 40602

*Lawrence W Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Debbie Gates
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Matt Partymiller
President
Kentucky Solar Industries Association
1038 Brentwood Court
Suite B
Lexington, KENTUCKY 40511

*Honorable David Edward Spenard
Strobo Barkley PLLC
239 South 5th Street
Ste 917
Louisville, KENTUCKY 40202

*J. Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

Appendix B
November 20, 2024 Order of Public Service Commission of Kentucky in Case No.
2023-00413

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On October 31, 2024, Kentucky Solar Energy Society and Kentuckians for the Commonwealth (collectively, Joint Intervenors) filed a petition for rehearing, pursuant to KRS 278.400, regarding Duke Energy Kentucky, Inc’s (Duke Kentucky) Net Metering Tariffs. Specifically, Joint Intervenors asked the Commission to more clearly define the avoided costs that compose the bill credits; requested consideration of changes to certain specific components of those avoided costs; and to reconsider the approved methodology of calculating the amount of energy Rider Net Metering II (Rider NM-2) customers will receive.¹ On November 4, 2024, Kentucky Solar Industries Association, Inc (KYSEIA) filed a response to Joint Intervenors’ petition supporting Joint Intervenors’ petition. On November 7, 2024, Duke Kentucky also filed a response to Joint Intervenors’ petition for rehearing.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are

¹ Joint Intervenors’ Petition for Rehearing (filed Oct. 31, 2024) at 1.

unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”² An order can only be unlawful if it violates a state or federal statute or constitutional provision.³

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

PETITION

Explanation of Components of Bill Credit

Joint Intervenors requested that the Commission more clearly define the avoided costs that compose the “bill credit” in the October 11, 2024 Order and asked for explanation of each of the avoided costs that they argue is required to be considered.⁴ Joint Intervenors argued that the Commission’s October 11, 2024 Order varies from past precedent⁵ in how it presents the costs that it approved as part of the ultimate “Excess Generation Avoided Cost Credit Rate” approved as reasonable in its Order.⁶ Joint Intervenors stated confusion that avoided transmission and distribution costs were in the

² *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

³ *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

⁴ Joint Intervenors’ Petition for Rehearing at 4.

⁵ Joint Intervenors’ Petition for Rehearing at 4.

⁶ Joint Intervenors’ Petition for Rehearing at 4.

avoided capacity cost section.⁷ Joint Intervenors alleged that the Commission did not state what specific avoided costs were approved or incorporated into the avoided cost excess generation credit (ACEGC) rate.⁸ Joint Intervenors stated that there was no discussion of job benefits, and there was no further explanation related to avoided carbon costs.⁹

Value of Avoided Costs

Joint Intervenors asked the Commission to reconsider evidence in the record related to the avoided costs.¹⁰ For avoided capacity costs, Joint Intervenors stated that there does not appear to be an explanation for the Commission's departure from previous precedent¹¹ about utilizing public information and stated that the Order overlooked Joint Intervenors' expert witness who refuted Duke Kentucky's assertion that PJM's Net CONE was not representative.¹²

Next, in terms of avoided transmission costs, Joint Intervenors stated that the value of that cost is unclear in the Order.¹³ Joint Intervenors alleged that the Order does not address the contrary evidence provided by Joint Intervenors showing that the avoided transmission costs should be much higher, arguing for an avoided cost of 0.0174 per

⁷ Joint Intervenors' Petition for Rehearing at 4–5.

⁸ Joint Intervenors' Petition for Rehearing at 5.

⁹ Joint Intervenors' Petition for Rehearing at 5.

¹⁰ Joint Intervenors' Petition for Rehearing at 5.

¹¹ Joint Intervenors mention precedent in the petition at this point; however, the petition does not contain a cite for the two references.

¹² Joint Intervenors' Petition for Rehearing at 7.

¹³ Joint Intervenors' Petition for Rehearing at 8.

kilowatt-hour.¹⁴ For distribution costs, Joint Intervenors stated that the Order references the level of costs, but the value doesn't appear directly in Duke Kentucky witness, Bruce Sailer's rebuttal testimony.¹⁵ Joint Intervenors argued that avoided distribution costs should be set at a level proposed in Duke Kentucky's initial testimony and as supported by Joint Intervenor's expert.¹⁶

For avoided environmental costs, Joint Intervenors stated that the Commission's October 11, 2024, Order states "there is no need for any additional values for avoided environmental or carbon costs and in so far as Duke Kentucky excluded those costs, the credit rate calculation is reasonable," but offers no further explanation.¹⁷ Joint Intervenors pointed out that Duke Kentucky's witness, Matthew Kalemba, stated that avoided costs of additional required environmental compliance are not necessarily included in avoided capacity or energy costs.¹⁸ Joint Intervenors argued that, similarly, the Order also overlooks the possible avoided carbon costs, and that it is directly contrary to Commission

¹⁴ Joint Intervenors' Petition for Rehearing at 8.

¹⁵ Joint Intervenors' Petition for Rehearing at 9.

¹⁶ Joint Intervenors' Petition for Rehearing at 9.

¹⁷ Joint Intervenors' Petition for Rehearing at 9.

¹⁸ Joint Intervenors' Petition for Rehearing at 9.

precedent.¹⁹ Joint Intervenors argued that given the only avoided carbon cost offered into the record compliant with Commission precedent is that in Dr. McCann’s testimony, Joint Intervenors encourage the Commission to reconsider the omission of avoided carbon cost in the Order.²⁰ Joint Intervenors also again pointed out the lack of discussion for job benefits.²¹

Netting Methodology

Joint Intervenors asked the Commission to reconsider its position regarding netting, arguing that it departed from precedent²² requiring utilities “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,” as required by the plain language of KRS 278.465(4).²³ Joint Intervenors argued that Duke’s proposal is fundamentally not netting in any real sense of the word, but instead two-channel billing, allowing Duke Kentucky to charge one rate to its ratepayers and reimburse them a separate lower rate for the energy received by Duke Kentucky from those same

¹⁹ Joint Intervenors’ Petition for Rehearing at 10; 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* (Ky. PSC May 14, 2021), Order at 36; 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* (Ky. PSC Sept. 24, 2021), Order; 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* (Ky. PSC Sept. 24, 2021), Order at 56.

²⁰ Joint Intervenors’ Petition for Rehearing at 11.

²¹ Joint Intervenors’ Petition for Rehearing at 11.

²² Joint Intervenors’ Petition for Rehearing citing Case No. 2020-00349, Sept. 24, 2021 Order at 48 and Case No. 2020-00350, Sept. 24, 2021 Order at 48.

²³ Joint Intervenors’ Petition for Rehearing at 12.

ratepayers.²⁴ Joint Intervenors discussed the Commission’s Order for rehearing in Case No 2020-00349²⁵ stating that “the Order on rehearing still required netting over the billing period as required by the statute, but acknowledged the change in the statute allowing excess generation of rooftop solar over a billing period may be compensated differently.”²⁶ Joint Intervenors argued that the inconsistency of Duke Kentucky’s proposed approach is highlighted in the Commission’s precedent 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).”²⁷ Joint Intervenors provided an example from Duke Kentucky’s response to the Attorney General’s First Request for Information, Item 1, that if a net metering ratepayer were to produce more power than they consumed in a given month (i.e., if “Solar Energy Consumed On-site” were set lower than “Solar Facility Production”), that same ratepayer would still be charged a \$/kWh charge for every single kWh consumed from the grid for Riders PSM, DSM, and FAC, despite having sent more power to the grid in a given month than they consumed.²⁸

KYSEIA RESPONSE

KYSEIA argued that it supports Joint Intervenors petition for rehearing because there are several instances in which the Commission failed to make findings of fact,

²⁴ Joint Intervenors’ Petition for Rehearing at 12.

²⁵ Case No. 2020-00349, Sept. 24, 2021 Order at 11–12.

²⁶ Joint Intervenors’ Petition for Rehearing at 13.

²⁷ Joint Intervenors’ Petition for Rehearing at 13 *citing* Case No. 2020-00349, Nov. 4, 2021 Order at 11–12 and Case No. 2020-00350, Nov. 4, 2021 Order at 11-12..

²⁸ Joint Intervenors’ Petition for Rehearing at 14.

conclusions of law, or explain changes in Commission precedent for determining and documenting the components for net metering export rates, particularly with regard to transparency.²⁹ KYSEIA further agreed that the October 11, 2024 Order is inconsistent with statute and departs from Commission precedent concerning the netting of energy exports and imports over the billing period.³⁰ Lastly, KYSEIA adopted and incorporated by reference Joint Intervenors' petition and requested the Commission to grant rehearing for the matters identified in the petition.³¹

DUKE KENTUCKY'S RESPONSE

Duke Kentucky stated that Joint Intervenors have the burden of establishing one of the elements set out in KRS 278.400, and if it fails to do so, rehearing must be denied.³²

Duke Kentucky first argued that the Commission should deny rehearing on all issues related to components of the ACEGC.³³ Duke Kentucky pointed out that the Commission did not accept its calculation but replaced a portion of Duke Kentucky's calculation with a higher set of values from a post-hearing data request.³⁴ Duke Kentucky also pointed out its obligation to file another net metering application at the conclusion of its 2024 IRP filing.³⁵ Duke Kentucky noted that the referenced value for avoided

²⁹ KYSEIA's Response to the Petition for Rehearing of Joint Intervenors (KYSEIA's Response) (filed Nov. 4, 2024) at 1.

³⁰ KYSEIA's Response at 1.

³¹ KYSEIA's Response at 2.

³² Duke Kentucky's Response to Joint Intervenors Petition for Rehearing (Duke Kentucky's Response) (filed Nov. 7, 2024) at 2–3.

³³ Duke Kentucky's Response at 3.

³⁴ Duke Kentucky's Response at 3.

³⁵ Duke Kentucky's Response at 4.

transmission and distribution costs are included in Bruce Sailer's rebuttal testimony.³⁶ Duke Kentucky additionally stated that the Commission did provide explanation as it relates to avoided environmental and carbon costs.³⁷ For carbon costs, Duke Kentucky stated that there is no direct precedent requiring carbon costs to be calculated separately.³⁸ For job benefits, Duke Kentucky stated that Joint Intervenors' witness did not assign a specific amount of avoided costs per kWh for job benefits, and given the record, the Commission declining to order such an analysis was reasonable.³⁹

Duke Kentucky next argued that the Commission should deny rehearing on netting methodology stating that the Commission has already considered and rejected Joint Intervenors' reading of both the statute and its prior orders, and that Joint Intervenors are seeking to relitigate their original arguments.⁴⁰

DISCUSSION AND FINDINGS

As an initial matter, the Commission's October 11, 2024, Order did not contain an explicit effective date. On October 31, 2024, Duke Kentucky filed its proposed net metering tariffs with an effective date of January 1, 2025. The Commission finds that this effective date is reasonable.

Having considered Joint Intervenors' petition and being otherwise sufficiently advised, the Commission finds that the petition should be denied for the reasons set forth below.

³⁶ Duke Kentucky's Response at 4–5.

³⁷ Duke Kentucky's Response at 6.

³⁸ Duke Kentucky's Response at 7.

³⁹ Duke Kentucky's Response at 7–8.

⁴⁰ Duke Kentucky's Response at 9.

Explanation of Components of Bill Credit

The Commission notes that in its October 11, 2024 final Order, several components of the bill credits were modified, but overall, accepted, such as the CAPEX cost of a combustion turbine (CT), the Effective Load Carrying Capability values, adjustments to the fixed Operating and Maintenance (O&M) of a CT, and the avoided transmission and distribution costs.⁴¹ The Commission accepted the CAPEX cost of a CT, the avoided transmission and distribution costs, and the ancillary services as proposed by Duke Kentucky in Bruce Sailers Rebuttal Testimony, Confidential Rebuttal Attachment BLS-1.⁴² However, as noted in the October 11, 2024 final Order,⁴³ the Commission adjusted the 2023 fixed O&M, considering the costs were significantly lower than what was publicly available. Overall, the Commission accepted the residential and non-residential rate calculations that included all avoided capacity, avoided transmission and distribution, and avoided environmental costs as proposed by Duke Kentucky in Confidential Rebuttal Attachment BLS-1.

Value of Avoided Costs

The Joint Intervenors raised several issues related to the avoided costs. However, in doing so, the Commission notes that the Joint Intervenors failed to provide an example of new evidence, nor were the issues raised the result of an error or omission. The Commission addressed the requests within Duke Kentucky's application. As to the issue of jobs or carbon costs being factored into the avoided capacity costs, the Commission

⁴¹ Order (Ky. PSC Oct. 11, 2024) at 29–33.

⁴² Order (Ky. PSC Oct. 11, 2024) at 29–33. See Bruce Sailers Rebuttal Testimony, Confidential Rebuttal Attachment BLS-1 (filed Apr. 17, 2024).

⁴³ Order (Ky. PSC Oct. 11, 2024) at 31.

reminds the Joint Intervenors that they actually have the burden to provide sufficient evidence that their proposal is reasonable and should be approved by the Commission. The Commission notes that, although the Joint Intervenors provided testimony, the information in the record was rebutted by Duke Kentucky, and the Commission found that the avoided capacity cost calculation should not include the carbon costs or job benefits. The Commission reiterates that parties should calculate avoided capacity costs using public information so that the costs are quantifiable by the public. As noted in its response, Duke Kentucky has an obligation to file a new application using updated and publicly available information after its Integrated Resource Plan has been reviewed by the Commission.

Netting Methodology

The Commission finds that the Joint Intervenors' petition for rehearing regarding the netting methodology failed to meet the standards laid out in KRS 278.400. The Joint Intervenors did not introduce any new evidence not readily discoverable at the time of the original hearing. Accordingly, the Commission reviewed the claims in the Joint Intervenors' petition in terms of the remaining factors set forth in KRS 278.400—whether material errors or omissions were made and whether the findings were unreasonable or unlawful.

Prior to the change to the net metering statutes that took effect on January 1, 2020, KRS 278.465(4) defined net metering as “measuring the difference between the electricity supplied by the electric grid and the electricity generated by an eligible customer-generator that is fed back to the electric grid over a billing period.” Effective January 1, 2020, KRS 278.465(4) was revised to define net metering “as the difference between the

(a) dollar value of all electricity generated by an eligible customer-generator that is fed back to the electric grid over a billing period and priced as prescribed in KRS 278.466; and (b) dollar value of all electricity consumed by the eligible customer-generator over the same billing period and priced using the applicable tariff of the retail electric supplier.” In addition, KRS 278.466(6) was revised effective January 1, 2020, to reflect that customer-generators that were in service prior to the effective date of the initial net metering order by the Commission after January 1, 2020, would be allowed to continue taking service under the net metering tariff provisions in place when the customer-generator began taking net metering service, including the 1:1 kWh denominated energy credit for electricity fed back to the grid, for a period of 25 years.

The Joint Intervenors argued that Rider NM-2 customer-generators should still get the one-to-one (1:1) kWh credit up to the amount of kWh Duke Kentucky delivers to the customer, with any excess kWh delivered by the customer-generator to Duke Kentucky taking the form of a dollar-denominated credit.⁴⁴ However, the net metering statute does not state anywhere that a Rider NM-2 customer-generator is entitled to the same 1:1 kWh denominated energy credit as those customer-generators served under Rider NM-1. Furthermore, it is clear by the changes made to the net metering statute effective January 1, 2020, that the 1:1 kWh credit would not continue for customer-generators taking service under a new, proposed net-metering tariff, in this case, Rider NM-2. Duke Kentucky is statutorily required to calculate Rider NM-2 bills by netting the dollar value of all electricity generated by an eligible customer-generator fed back to the grid over a billing period priced at the Commission approved rate and the dollar value of all electricity consumed

⁴⁴ Joint Intervenors’ Petition for Rehearing at 15.

by the eligible customer-generator over the same period at the tariff rate. Therefore, the Commission's findings were neither unreasonable or unlawful and no material errors or omissions were made.

As to the Joint Intervenors' argument that past Commission precedent favors their interpretation for how net metering bills should be calculated, the Commission addressed and rejected this argument in the October 11, 2024 Order.⁴⁵ As Duke Kentucky's proposed netting methodology matched that of other utilities, the Commission found it to be reasonable.

The Commission finds that the Joint Intervenors' motion regarding the netting methodology should be denied because it failed to establish the existence of new evidence not readily discoverable at the time of the original hearings, material errors or omissions in the October 11, 2024 final Order, or that the October 11, 2024 final Order is unreasonable or unlawful.

IT IS THEREFORE ORDERED that:

1. The effective date for Duke Kentucky's updated Rider NM-1 and NM-2 shall be January 1, 2025.
2. Joint Intervenors' petition for rehearing is denied.
3. This case is closed and removed from the Commission's docket.

⁴⁵ Order (Ky. PSC Oct. 11, 2024) at 41.

PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

B8957738-D2F1-4D5E-83C2-0EB9088DBA3A : 000084 of 000085

ATTEST:



Executive Director

ENTERED
NOV 20 2024 AH
KENTUCKY PUBLIC
SERVICE COMMISSION

Case No. 2023-00413

*L. Allyson Honaker
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 1203
Lexington, KENTUCKY 40509

*Thomas J FitzGerald
Counsel & Director
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KENTUCKY 40602

*Minna Sunderman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*John G Horne, II
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Rocco O D'Ascenzo
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Ashley Wilmes
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KENTUCKY 40602

*Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202

*Randal A. Strobo
Strobo Barkley PLLC
239 South 5th Street
Ste 917
Louisville, KENTUCKY 40202

*Audrey Ernstberger
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KENTUCKY 40602

*Larisa Vaysman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Byron Gary
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KENTUCKY 40602

*Lawrence W Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Debbie Gates
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Matt Partymiller
President
Kentucky Solar Industries Association
1038 Brentwood Court
Suite B
Lexington, KENTUCKY 40511

*Honorable David Edward Spenard
Strobo Barkley PLLC
239 South 5th Street
Ste 917
Louisville, KENTUCKY 40202

*J. Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204