

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**KENTUCKY SOLAR INDUSTRIES ASSOCIATION, INC.
POST-HEARING RESPONSE BRIEF**

Respectfully submitted,

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Notice And Certification For Filing and Service

Undersigned counsel provides notice that the electronic version of the paper has been submitted to the Commission by uploading it using the Commission's E-Filing System on this 18th of July 2024, in conformity with the Commission's January 5, 2024 Order of procedure in the instant case. Pursuant to the Commission's Orders in Case No. 2020-00085, *Electronic Emergency Docket Related to Novel Coronavirus Covid-19*, the paper, in paper medium, is not required to be filed. No party has been excused from the electronic filing procedures in the instant proceeding.

/s/ David E. Spenard

I INTRODUCTION

On June 26, 2024, Duke Energy Kentucky, Inc. (“Duke” and also “Company”) and the three (3) parties granted intervention into this proceeding each filed a brief on the merits concerning Duke’s proposals for revisions to its current Net Metering Rider tariff (to be renamed “Net Metering I Rider” and hereinafter for this Response Brief “NM-1”), a new tariff - Rider Net Metering II (hereinafter “NM-2”), and a new interconnection tariff concerning its provision of net metering service.¹ Pursuant to the Commission’s May 24, 2024 Order describing post-hearing procedures, KYSEIA tenders its Post-Hearing Response Brief to the initial briefs of Duke, the Kentucky Office of the Attorney General (“KY OAG”) and the Joint Intervenors, Kentucky Solar Energy Society and Kentuckians for the Commonwealth (“Joint Intervenors”). Unless expressly stated and addressed in this pleading, KYSEIA maintains its positions in its prior Memorandum Brief.

II. KYSEIA REPLIES TO ARGUMENTS IN OTHER MEMORANDUM BRIEFS

A. **The Joint Intervenors correctly convey that Duke was not required to make this filing on the deadline that Duke self-imposed.**²

There was a substantial revision to Kentucky’s net metering law through legislation enacted by the General Assembly in 2019.³ Among other things (such as legacy rights), SB100 addressed the transition to a revised framework for new net metering customers through KRS 278.466(3) which states, at pertinent part:

¹ Application (as tendered Dec. 12, 2023) at pages 1 and 2.

² Memorandum Brief of Joint Intervenors Kentucky Solar Energy Society and Kentuckians for the Commonwealth (filed June 26, 2024) at page 2 (hereinafter “Memorandum Brief of Joint Intervenors at page ___”).

³ 2019 Ky. Acts Ch. 101 (also known as “Senate Bill 100” and “SB 100”).

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.

The Joint Intervenors contest Duke's exercise of discretion in filing this application.⁴ The Joint Intervenors are correct. Duke was not required by SB 100 or any other provision of KRS Chapter 278 to file this application. Duke is engaging in single issue ratemaking and has dissociated the examination into its cost of service study submitted in support of its most recent general adjustment of rates (Case No. 2022-00372)⁵ from the development of net metering rates in the instant proceeding. KYSEIA agrees with the conclusion of the Joint Intervenors' argument, namely that this application should not have been filed.

Duke did not propose the establishment of successor net metering rates in Case No. 2022-00372. KYSEIA's position from Case No. 2022-00372 is that Duke "may propose the implementation of Successor Rates in its next application for a general increase in rates."⁶ The Commission's October 12, 2023 Order in Case No. 2022-00372, in discussing public comments in the record for that proceeding, states: KYSEIA "objected to Duke Kentucky's approach to filing a subsequent net-metering case, arguing it was

⁴ Memorandum Brief of Joint Intervenors at pages 11 and 12.

⁵ Case No. 2022-00372, *Electronic Application of Duke Energy Kentucky, Inc. for (1) An Adjustment of Electric Rates; (2) Approval of New Tariffs; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and (4) All Other Required Approvals and Relief*, (deficiencies cured and minimum filing requirements satisfied on Dec. 14, 2022).

⁶ Case No. 2022-00372, (Written Comments of KYSEIA filed into the record Feb. 9, 2023) at page 8.

contrary to the intent of KRS 278.466 and encourages the Commission to engage in single-issue ratemaking.”⁷

Duke, as the applicant in Case No. 2022-00372, and the Office of the Attorney General, as a party to the proceeding,⁸ are each charged with notice of the contents of the record for that case including the Commission’s Orders and the written comments. The Written Comments of KYSEIA for Case No. 2022-00372 filed into the record of that case are facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, specifically the Public Service Commission’s own records. KYSEIA respectfully requests this Commission take administrative notice of KYSEIA’s Written Comments for Case No. 2022-00372 and the (above-described) October 12, 2023 Order and incorporate them by reference into the instant case in support of the Joint Intervenors’ argument on this point.⁹ Duke’s approach to establishing successor net metering rates is antagonistic to the legislative intent for net metering.

B. Duke’s theory of an immediate dollar value for net metering is not expressly based in statute.¹⁰ The Joint Intervenors’ approach to calculating net metering over the billing period is consistent with legislative intent.

⁷ Case No. 2022-00372 (Ky. P.S.C. Oct. 12, 2023) at page 5.

⁸ Case No. 2022-00372, (Ky. P.S.C. Dec. 13, 2022) (Order granting KY OAG intervention into case).

⁹ A copy of the Written Comments is attached as Exhibit A to this pleading.

¹⁰ In reply to the argument in Duke’s Post-Hearing Brief at Section IV, part B., sub-part a., pages 10 through 12 and also in reply to the Memorandum Brief of the Joint Intervenors at Section IV, part D., pages 30 through 47.

Duke argues that “electricity ... fed back to the electric grid,’ is immediately viewed as a dollar value.”¹¹ Duke anchors this position in KRS 278.465(4).¹² Upon inspection of the plain language of KRS 278.465(4), the statute does not speak in terms of an immediate conversion to a dollar value. In fact, “[t]he Commission notes that the term ‘instantaneous credit’ and ‘instantaneous netting’ are not defined in KRS Chapter 278.”¹³ Therefore, Duke’s theory of an immediate dollar value for net metering is not expressly based in statute.

The objective for implementing Senate Bill 100 is to satisfy the legislative intent for revisions to the net metering law. If legislative intent was to require immediate conversion to dollar value or instantaneous netting, the statute would contain such language. The Joint Intervenors are correct. A statutory mandate for an immediate conversion or instantaneous netting is not present in the plain language text of KRS 278.465(4).

While Duke argues on behalf of a theory of immediate conversion, Duke built the argument through eliminating other text in KRS 278.465(4) which establishes an “over the same billing period” interval for determining dollar value rather than an “immediate” or “instantaneous” dollar value conversion approach. Statutes are construed to give all parts of the statute meaning. KRS 278.465(4) creates an interval methodology for determining dollar value. Duke’s approach for reading KRS 278.465(4) as requiring immediate

¹¹ Duke Post-Hearing Brief at page 11.

¹² Duke Post-Hearing Brief at page 11.

¹³ Case No. 2022-00030, *Alfred Saylor, Complainant v. Kentucky Utilities Company, Defendant*, (Ky. P.S.C. Dec. 12, 2022) at page 4.

conversion (aside from lacking a textual basis in the statute) renders meaningless the words “over the same billing period.”

The Joint Intervenors’ approach on this issue is consistent with KRS 278.465(4) and does not result in the phrase “over the same billing period” being rendered meaningless. The use of a dollar-denominated value was addressed by the Commission in Case No. 2020-00174.¹⁴ As explained by the Commission, it “determined a dollar-denominated value for net exports over a single billing period, rather than more than one netting period.”¹⁵

In Case Numbers 2020-00349¹⁶ and 2020-00350¹⁷ the Commission revisited the issue. Each Commission Order from these latter dockets each speaks for itself; however, the theory of “immediate” dollar value is not plainly stated in the text of the Commission’s Orders entered in these dockets on September 24, 2021 and November 4, 2021. Instead, the following language is found in the Commission’s September 24, 2021 Order:

¹⁴ *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* (deemed filed Jul. 15, 2020) (hereinafter “Case No. 2020-00174”).

¹⁵ Case No. 2020-00174, (Ky. P.S.C. May 14, 2021) discussion beginning on page 3.

¹⁶ *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*, (filed Nov. 25, 2020) (hereinafter “Case No. 2020-00349”).

¹⁷ *Electronic Application of Louisville Gas and Electric Company for An Adjustment of Its Electric and Gase 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*, (filed Nov. 25, 2020) (hereinafter “Case No. 2020-00350”).

Based upon the evidence of record, the Commission finds that LG&E/KU's proposed methodology for NMS 2 netting period is not fair, just and reasonable, and should be rejected. This is because LG&E/KU's proposed instantaneous credit for all energy exported on to the grid is inconsistent with the plain language of KRS 278.465(4), which provides that "net metering means the difference between" the dollar value of all electricity generated by an eligible customer-generator that is exported to the grid over a billing period and the dollar value of all electricity consumed by the eligible customer-generator over the same billing period. **(Emphasis added.)**¹⁸

LG&E/KU's proposed methodology for NMS 2 netting was rejected. Nonetheless, in the Order on rehearing identified by Duke in its Post-Hearing Brief,¹⁹ the Commission, at pertinent part, found:

LG&E/KU should continue to net the dollar value of the total energy consumed and the dollar value of the total energy exported by eligible customer generators over the billing period in NMS 2 consistent with the billing period netting period established in NMS 1.²⁰

What Duke's Post-Hearing Brief fails to state is only the "first sentence in the second paragraph" (appearing in above in bold) was stricken and replaced.²¹ Importantly, in "correcting an inadvertent omission," the Commission left undisturbed and retained the finding "LG&E/KU's proposed instantaneous credit for all energy exported on to the grid is inconsistent with the plain language of KRS 278.465(4)."²² The Commission did not

¹⁸ Case No. 2020-00349, (Ky. P.S.C. Sept. 24, 2021) at page 48.

¹⁹ Duke Post-Hearing Brief at page 11.

²⁰ Case No. 2020-00349, (Ky. P.S.C. Nov. 4, 2021) at page 48.

²¹ Case No. 2020-00349, (Ky. P.S.C. Nov. 4, 2021) at pages 11, 12, and 25.

²² Case No. 2020-00349, (Ky. P.S.C. Nov. 4, 2021) at page 11.

approve instantaneous credit or, in turn, instantaneous metering or an immediate dollar value theory methodology in Case Numbers 2020-00349 or 2020-00359.

Duke's Post-Hearing Brief cannot reconcile its immediate dollar value methodology with the Commission's prior Orders for Kentucky Power Company in Case No. 2020-00174, because it is antagonistic to the framework established in that case. The source of Duke's immediate dollar value theory is not in statute, and the Commission precedent is inconsistent. The Joint Intervenors' proposed framework is the approach most closely matching legislative intent and produces fair, just, and reasonable rates.

C. Duke fails to follow express Commission precedent when developing its Avoided Cost Excess Generation Credit.²³

Duke proposes an Avoided Cost Excess Generation Credit (also "ACEGC"). The Duke ACEGC comprises eight (8) avoided cost components that should be included in export rates.²⁴ Duke, referencing Commission precedent, identifies the source for each of the eight (8) cost components.²⁵ The Joint Intervenors offer, overall, a more robust discussion of changes in the net metering law and the Commission's implementation of Senate Bill 100. In addition to the eight (8) avoided cost components identified by Duke,

²³ Duke Post-Hearing Brief at Section IV, part B, sub-part b., pages 12 through 22. KYSEIA also replies to the Joint Intervenors' arguments in their Memorandum Brief.

²⁴ See, for background, Case No. 2020-00174, (Ky. P.S.C. May 14, 2021) at pages 25 through 38 (Avoided Energy Cost; Avoided Generation Capacity Costs; Avoided Transmission Capacity Costs; Avoided Ancillary Service Costs; Avoided Distribution Capacity Costs; Avoided Carbon Cost; Environmental Compliance; and Jobs Benefits).

²⁵ Duke Post-Hearing Brief at page 12.

the Joint Intervenors further identify the issue of customer-generators participating in wholesale markets.²⁶

The Joint Intervenors' analysis appearing in Section IV, part b., sub-parts i. through iv, at pages 13 through 18, and Section IV, part c., sub-parts i through vi, at pages 18 through 30 is thorough and well-reasoned by reference to statute, Commission precedent, and the evidentiary record in the instant case and provides correct assessments of Duke ACEGC proposal. KYSEIA replies to endorse the Joint Intervenors regarding the ACEGC. KYSEIA, through this reply, adds focus upon two (2) specific failures of Duke, the party with the burden of proof, in its ACEGC proposal, specifically, the Jobs Benefits component and issues concerning customer-generators participating in the wholesale market.

1. Jobs Benefits

Regarding the Jobs Benefits component, Duke instructs the Commission that “[i]t seems likely this value [an evaluation of job benefits and economic development as an export rate component] would be immaterial.”²⁷ Thus, for this component, Duke does not “see evidence to support the inclusion of a job benefits component in the ACEGC.”²⁸ The unmistakable tenor of Duke’s position is that the Company will let the Commission know

²⁶ Memorandum Brief of Joint Intervenors at page 8. Duke’s Post-Hearing Brief also discusses customer-generators participating in wholesale markets.

²⁷ Duke Post-Hearing Brief at page 20. Strangely enough, Duke considers “any” increase in the rated capacity of the inverter for a customer-generator to be a “material” increase, yet summarily dismisses, without evidence, job benefits and economic development as immaterial because Duke thinks it “seems likely the value would be immaterial.” Duke concedes it was placed on notice concerning this component. Duke intentionally failed to supply the evaluation, and the failure to supply the evaluation, in this instance, was not supported by a motion for a deviation or otherwise through a demonstration of just cause (rather merely by Duke’s conclusory finding of immateriality).

²⁸ Duke Post-Hearing Brief at page 20.

when an evaluation requested by the Commission seems appropriate. Duke's disdain for supplying information of interest to the Commission regarding jobs and economic development within its service territory is troublesome enough. Duke's failure to demonstrate just cause for omitting evidence is a procedural default through which the Commission may deny the proposal.

2. FERC – Customer-generators participating in wholesale markets.²⁹

The subject area of Federal Energy Regulatory Commission ("FERC") requirements regarding customer-generator participating in wholesale markets is complex. It is also an area of uncertainty. Duke asserts that it is "[g]uided by the policies against double counting (i.e., double compensation of the same resource for the same service) in recent Federal Energy Regulatory Commission's (FERC) order and the most recent compliance filings made by PJM interconnection, LLC (PJM)."

Duke concedes that the recent PJM compliance filing "is still pending FERC approval and there is not yet complete certainty as to the text that will ultimately be approved."³⁰ Duke states: "[T]he Company believes that the [proposed] language in Rider NM I and II tariffs is in line with the available guidance and information to date and therefore reasonable."³¹ Duke is speculating, and in this area speculation is not reasonable for establishing policy.

In the instant case, Duke seeks to change the status quo of a tariff provision. Duke does not identify an Order of the FERC expressly requiring the language or an Order of

²⁹ Duke Post-Hearing Brief, Section IV, part A, pages 8 through 10.

³⁰ Duke Post-Hearing Brief at page 9.

³¹ Duke Post-Hearing Brief at pages 9 and 10.

the Kentucky Public Service Commission requiring the revision through this proceeding or at this time. Duke concedes that the matter is not yet settled; therefore, the proposal is simply not ripe for findings of fact and conclusions of law through the instant case. Duke bears the burden to demonstrate the reasonableness of the proposal. The burden is not satisfied in this instance through speculation.

KYSEIA recommends the Commission reject the proposed tariff language without any prejudice. Duke may pursue a tariff filing via 807 KAR 5:011 when the basis for the proposal is final action which is more substantial than Duke's speculation as to what may ultimately be accepted. There is nothing in the record mandating a different result, and the complexity of this issue merits deferral until findings of fact and conclusions of law can be based upon facts and final positions rather than speculation.

D. Duke's Post-Hearing Brief omits its own cost of service analysis.

Duke's Post-Hearing Brief omits its arguments based upon the cost of service study analysis in Mr. Sailers pre-filed direct testimony submitted in support of the Application.³² KYSEIA replies to the absence of any argument by Duke upon its own evidence as a failure to correct demonstrated errors and inconsistencies. The Company's cost of service analysis remains unreliable. Interestingly, even with its errors, Duke's cost of service analysis demonstrates that the revised values in the Company's Post-Hearing Brief fail to capture the favorable impact of solar generation upon the Company's other customers.³³

³² Application (tendered Dec. 11, 2023), Direct Testimony of Bruce L. Sailers at pages 9 through 13.

³³ Duke Post-Hearing Brief at pages 13 and 14.

E. The Post-Hearing Memorandum Brief of the Kentucky Office of the Attorney General offers sweeping commentary upon net metering but offers little for the findings of fact and conclusions of law the Commission must make in the instant proceeding.

The Kentucky Office of the Attorney General offers an overly broad discussion of net metering in Kentucky. Without referencing any evidence in the record in the instant case, any Order of this Commission from another docket, or any Act of the Kentucky General Assembly, the first full paragraph of page 2 of the Attorney General's Post-Hearing Memorandum is properly characterized, at best, as sweeping pensive commentary (though far more akin to unsupported allegations and accusations).

Also, from page 3 of the KY OAG Post-Hearing Memorandum Brief:

While customers electing to install rooftop solar should have the option to do so, that choice should not lead to unfair, unjust, and unreasonable rates for other retail customers in violation of the Commission's statutory mandate.

The first flaw in this argument is the Attorney General's innuendo that customers who engage in net metering (which is a public policy of this Commonwealth by virtue of express legislative action) somehow seek or promote unfair, unjust, or unreasonable rates for other retail customers through engaging in lawful activity. The set of facts, including those of the instant proceeding, is quite the opposite of the innuendo.

Duke's retail customers receiving net metering service are entitled to fair, just, and reasonable rates, and KYSEIA and the Joint Intervenors demonstrate, through the evidence of record and the corresponding legal framework for net metering, that Duke's

proposals should be denied.³⁴ The inference that Duke's remaining retail customers are harmed by net metering is unsubstantiated.

The second flaw is the Attorney General's discussion of Idaho, Indiana, West Virginia, North Carolina, and California.³⁵ He fails to identify any constitutional or statutory mandate through which the laws of these jurisdictions are binding upon the Commonwealth of Kentucky, a separate sovereign. Therefore, the laws of these foreign jurisdictions do not implicate the legal requirements at issue for the Application; instead, the legal requirements for this Application are found in KRS Chapter 278 and the Orders of this Commission.

If these foreign laws have value, their value is strictly as evidence potentially informative or persuasive. The Attorney General waited until after the close of his opportunity to develop or present evidence before advancing arguments based upon evidence that he did not introduce into the record. He does not point to any portion of the record in the instant case through which the laws of these jurisdictions were introduced as evidence or otherwise placed into the record.

The Attorney General did not ask that the Commission take administrative notice of these laws, and KYSEIA objects to administrative notice of these laws because the Attorney General has not (1) demonstrated the evidence as relevant to an adjudicative fact that the Commission must determine or (2) demonstrated his claims regarding these

³⁴ The public policy of the Commonwealth is for the applicant seeking a change in rates to bear the burden of proof. KRS 278.190(3) ("At any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility[.]").

³⁵ KY OAG Post-Hearing Memorandum Brief at pages 3 through 5.

laws as not subject to reasonable dispute, particularly because he intermingles his own qualitative opinions and conclusions in describing the laws.

The Attorney General's Post-Hearing Memorandum Brief does not link any of his discussion in Section I to the evidentiary record of the instant proceeding by reference to the Application, responses to the various requests for information, or the transcript of the evidentiary hearing. This point is also true for Section II of the Attorney General's Post-Hearing Memorandum Brief.³⁶ The only testimony identified by the Attorney General concerns PJM, is testimony presented at a legislative hearing, and is something relied upon without any reference to where such testimony was introduced into the record of the instant case.³⁷

III. CONCLUSION

WHEREFORE, KYSEIA tenders its reply to the post-hearing memorandums of Duke, the Kentucky Office of the Attorney General, and the Joint Intervenors and respectfully requests this Commission enter an Order consistent with the positions set forth by KYSEIA in its Memorandum Brief and this reply.

³⁶ KY OAG Post-Hearing Memorandum Brief at pages 5 and 6.

³⁷ KY OAG Post-Hearing Memorandum Brief at page 6, footnote 10.

EXHIBIT A

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY)	
KENTUCKY, INC. FOR (1) AN ADJUSTMENT OF)	
ELECTRIC RATES; (2) APPROVAL OF NEW)	CASE NO.
TARIFFS; (3) APPROVAL OF ACCOUNTING)	2022-00372
PRACTICES TO ESTABLISH REGULATORY)	
ASSETS AND LIABILITIES; AND (4) ALL OTHER)	
REQUIRED APPROVAL AND RELIEF)	

KENTUCKY SOLAR INDUSTRIES ASSOCIATION, INC.
WRITTEN COMMENTS

Comes now the Kentucky Solar Industries Association, Inc. ("KYSEIA"), by and through counsel, and submits its written comments for the Commission's investigation into the Duke Energy Kentucky, Inc. ("Duke") application in the instant proceeding.

INTRODUCTION

KYSEIA is a Kentucky trade association of solar business supporters that unites businesses across the solar industry including the contractors responsible for building solar arrays, the developers creating new power plants, the solar manufacturers crafting innovative products, the many businesses that support the industry, and the customers that install solar systems. KYSEIA's members span the state with active or completed projects across the Commonwealth including within Duke's service area.

KYSEIA'S objective is to provide leadership and promote sound policy in Kentucky as the power sector enters the solar age and has been an active participant in Commission proceedings concerning net metering, qualifying facilities ("QF"), and

interconnection.¹ KYSEIA has also been a party to each of the first three (3) application for rate adjustments for establishing rates for net metering service and QF rates.² KYSEIA also been active in consumer advocacy on behalf of net metering customers in Commission dockets concerning complaints regarding net metering.³ Each record in these latter proceedings speaks for itself. The Kentucky Office of the Attorney General (“KY OAG”) is not active in offering protection for or advocacy on behalf of net metering

¹ Case No 2022-00190, *Electronic Investigation of the Fuel Adjustment Clause Regulation 807 KAR 5:056, Purchased Power Costs, and Related Cost Recovery Mechanism*, (“Case No. 2022-00190 – FAC”) Written Comments (filed Dec. 2, 2022); Case No. 2020-00302, *Electronic Investigation of Interconnection and Net Metering Guidelines*, (“Case No. 2020-00302 – Interconnection”) (Ky. P.S.C. Nov. 6, 2020) (Order granting KYSEIA intervention); and Case No. 2019-00256, *Electronic Consideration of the Implementation of the Net Metering Act*, (“Case No. 2019-00256 – Implementation”) (Ky. P.S.C. July 30, 2019) (Order opening proceeding).

² 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 Advance Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatment, and Establishment of a One-Year Surcredit*, (“Case No. 2020-00350 – LG&E”) (Ky. P.S.C. Dec. 30, 2020) (Order granting KYSEIA intervention); 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*, (“Case No. 2020-00349 – KU”) (Ky. P.S.C. Dec. 30, 2020) (Order granting KYSEIA intervention); and 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*, (“Case No. 2020-00174 – KPC”) (Ky. P.S.C. July 15, 2020) (Order granting KYSEIA intervention).

³ Case No. 2021-00324, *Joseph J. Oka, Complainant, v. Duke Energy Kentucky, Inc.*, (“Case No. 2021-00324 – Oka”) Written Comments (filed Mar. 25, 2022); and Case No. 2020-00332, *Electronic Investigation Into Kenergy Corp.’s Compliance with KRS 278.160 and Its Net Metering Tariff*, (“Case No. 2020-00332 – Kenergy”) Written Comments (filed Dec. 28, 2020).

customers in the face of violations by jurisdictional utilities of their respective net metering tariffs.

KYSEIA offers these written comments to the Commission in the instant proceeding because it is unlikely that any party will advance the interests of net metering customers.⁴ Duke's proposal for a separate application for adjusting net metering rates is contrary to the intent of KRS 278.466 and is a request for the Commission to engage in single-issue ratemaking. Duke's discussion concerning its Clean Energy Connection ("CEC") initiative is premature and is a request for the Commission to provide an "advisory" approval of a proposal that is not yet sufficiently defined.

1. Duke's Proposal for a Separate Application for Adjustment Net Metering Rates is Contrary to the Intent of KRS 278.466 and is a Request for the Commission to Engage in Single-Issue Ratemaking.

Duke is not proposing any revisions to its net metering tariff sheet in the instant case.⁵ Instead; Duke proposes to "separately" engage in single-issue ratemaking in a subsequent application.⁶ Duke states that "given the complexities and time requirements to fully address net metering topics," a separate proceeding is appropriate.⁷

⁴ Because Duke intentionally chose not to propose, as part of its pending application, a change in its net metering rates (or QF rates), KYSEIA did not seek intervention into the instant proceeding. Because Duke states that it plans on filing a successive application for net metering rates, KYSEIA opts to file written comments in this proceeding and seek intervention into the single-issue ratemaking application Duke files for proposing changes to its net metering rates.

⁵ Application, Volume 14, Direct Testimony of Bruce L. Sailors ("Sailors Direct Testimony"), (tendered Dec. 1, 2022) at page 30.

⁶ *Id.*

⁷ *Id.*

KYSEIA does not take issue with Duke's statutory right to propose for implementation net metering rates for each eligible electric generating facility entering into service "after the initial net metering order by the commission in accordance with subsection (3) of this section [KRS 278.466]."⁸ KYSEIA takes exception to the premise touted by Duke that KRS 278.466 affords Duke a right to engage in single-issue ratemaking. The statute does not contain or describe any such right.

KRS 278.466(3), at pertinent part, states that net metering service Successor Rates to be used for compensating eligible customer-generators "shall be set by the commission using the ratemaking processes under this chapter during a proceeding initiated by a retail electric supplier." The rates are set "[u]sing the ratemaking process provided by this chapter [KRS Chapter 278]."⁹

KRS 278.180 states how changes in rate are made. KRS 278.190 describes the procedure, for KRS Chapter 278, when a new schedule of rates is filed. 807 KAR 5:001, Section 16, among other provisions and requirements, describes the filing requirements to support a request for a general adjustment of rates. Duke is required to following these statutory and administrative requirements for its pending rate application; however, unlike Kentucky Power Company, Kentucky Utilities Company, and Louisville Gas and Electric Company, Duke does not want to follow these requirements for establishing its net metering Successor Rates.

⁸ See KRS 278.466 (5) and (6). Note: For these Written Comments, KYSEIA identifies the net metering rates established through an initial net metering order as "NMS-2" or "Successor Rates."

⁹ KRS 278.466(6).

In terms of guidance for applications to implement Successor Rates, the Commission stated:

The Commission's goal is to ensure fair, just, and reasonable rates **for net metered and non-net metered customers alike**. (Emphasis added)¹⁰

...

Additionally, although we do not make a finding on this point, the Commission agrees with certain commenters and stakeholders that proceedings under the Net Metering Act **should be thorough and transparent**. The Commission will carry out proceedings under the Net Metering Act in an organized and fair process, **similar to the procedures employed in regular rate and tariff filings**, which will include the opportunity for discovery and intervenor testimony, if necessary. (Emphasis added)¹¹

There is a clear, logical linkage between net metered and non-net metered customers when establishing fair, just, and reasonable rates, and, to date, Successor Rates have been proposed by utilities (appropriately so) as part of applications for a general adjustment of rates through which the interests of all customers, including net metered and non-net metered customers alike, are investigated and balanced. Establishment of Successor Rates as part of an application for a general adjustment in rates comports with the process established in KRS Chapter 278 and implements the statutory intent of KRS 278.466.

There are ample instances in KRS Chapter 278 through which the General Assembly identifies a clear intent to separate out consideration of certain ratemaking matters outside of a general adjustment in rates. Among other ratemaking mechanisms,

¹⁰ Case No. 2019-00256 – Implementation (Ky. P.S.C. Dec. 18, 2019), at page 31.

¹¹ *Id.*

KRS 278.023 (surcharge for certain federally-funded projects); 278.183 (surcharge for certain compliance costs); KRS 278.271 (purchase of electric power from a biomass energy facility); and KRS 278.509 (natural gas pipeline replacement program). If it had been the intent of the General Assembly have Successor Rates set in the manner proposed by Duke, it would have provided single-issue ratemaking instructions in KRS 278.466. It did not.

Whatever the limits of the Commission's plenary authority to set rates, a utility's rights are not coextensive with the Commission's discretionary authority for implementing KRS Chapter 278. Otherwise stated: Even in a scenario in which the Commission determines that a methodology not expressly established in statute is permissible, it does not follow that the Commission is required to permit use of a non-statutory mechanism. Duke has a statutory right to propose successor rates through an application for a general adjustment in rates pursuant to KRS 278.180 and KRS 278.190. It does not have any right to use a different process.

The Commission expressly addressed the resources it will allocate to a review of proposals for net metering Successor Rates.

Although the Commission Staff is well prepared to facilitate the disposition of ordinary rate cases, the initial proceedings under the amended Net Metering Act are not ordinary matters.

...

[T]he Commission will award a contract for a consultant to assist us in reviewing, analyzing, and evaluating new net metering tariffs, alternative rate designs, and net metering rate applications, for the purpose of establishing utility-specific compensation rates for net metered customers. The Commission believes that the engagement of an outside, independent, consultant to help review and analyze the filings in proceedings under the Net Metering Act will bring to bear

expertise and experience from other states and proceedings that Commission staff itself does not possess.¹²

KYSEIA agrees with Duke that Successor Rates are complex matters. Nonetheless: As it did for three prior dockets regarding Successor Rates, the Commission applies the resource that it needs to fully consider the various matters. The Commission review of applications for Successor Rates has been, consistent with the principle set forth in Case No. 2019-00256, alongside and as part of the review of all rates, those of both net metered and non-net metered customers. Duke's proposal cuts against both the statutory intent for KRS Chapter 278 and Commission precedent.

Duke's proposal for singling out net metering customers is no different in character from a proposal to adjust rates only for a particular customer class in the absence of the remaining customers. There is no difference between what Duke is proposing for its net metering customers and a proposal to adjust rates for residential customers in isolation from the remaining customer classes. The proposal is contrary to the guidance provided by the Commission in Case No. 2019-00256 and understood and respected by Kentucky Power Company, Kentucky Utilities Company, and Louisville Gas and Electric Company in their respective pursuits of Successor Rates.

While the Commission cannot pre-adjudicate an application that is not yet filed, the Commission is certainly entitled to comment upon Duke's proposal to engage in single-issue ratemaking. Duke's divide and conquer mentality is clearly against the legislative intent of KRS 278.466 and Commission precedent. As it was in the instant case, Duke is entitled to propose implementation of Successor Rates in an application for a general

¹² *Id.*, at page 33.

adjustment in rates. It may propose the implementation of Successor Rates in its next application for a general increase in rates.

2. Duke's Discussion Concerning Its Clean Energy Connection ("CEC") Initiative is Premature and is a Request for the Commission to Provide an "Advisory" Approval of a Proposal that is not Sufficiently Defined.

Duke requests approval of a placeholder tariff in this proceeding.¹³ Per Duke:

If the Commission approves this **concept** in this proceeding, the Company will aggressively obtain initial subscriptions and file a CPCN for approval of the actual CEC project. (Emphasis added)¹⁴

Thus, Duke acknowledges that its ability to move forward with such an initiative is dependent upon a specific proposal supported by and requiring a certificate of convenience and public necessity to be pursued in a future proceeding. Rather than wait until it can present a specific proposal in combination with a CPCN application, Duke adds a request for consideration of its CEC concept in this proceeding.

The irony, of course, is that Duke, the same utility that finds, for itself, net metering much too complex a subject to include as part of its application for a general adjustment in rates, offers in support of its CEC concept a "value stack [that] resembles the avoided cost categories the Commission has established in net metering cases including generation capacity, energy, ancillary services, transmission, distribution, environmental, and carbon."¹⁵ While Duke asserts that net metering is too tough for consideration in this

¹³ Application, Volume 13, Direct Testimony of Paul L. Halstead ("Halstead Direct Testimony"), (tendered Dec. 1, 2022) at page 21.

¹⁴ *Id.*

¹⁵ Sailors Direct Testimony at page 20; also see Halstead Direct Testimony at pages 12 and 13.

proceeding, it includes within its CEC concept advocacy the request for the Commission to compare the CEC Program to a net metering framework.¹⁶

It is also noteworthy to point out that much of the information supporting Duke's value analysis is withheld from public scrutiny.¹⁷ Setting aside the fact that Duke's analysis is untested, concealing information concerning the development of rates Duke proposes to recover from its customers through its CEC initiative cuts against the Commission's stated objective of proceedings that impact net metering rates be "thorough and transparent."¹⁸

As with the development of a cost of service study Duke asserts should be fixed in this proceeding for use in a future net metering proceeding,¹⁹ Duke likewise seeks to fix in this proceeding determinations concerning the value stack for avoided costs for use in a future net metering proceeding. Yet again, Duke employs a divide and conquer mentality for advancing its advocacy against net metering.

The costs of the CEC initiative are unspecified, and Duke concedes that the supporting calculations for Rider CEC Tariff Charges are not provided.²⁰ The analysis that Duke provides is, by design, not transparent. The initiative is wholly and necessarily dependent upon the grant of a CPCN in a future proceeding. The request by Duke for an

¹⁶ Halstead Direct Testimony at pages 12 and 13; Attachment PLH-1.

¹⁷ *Id.*, at pages 14 through 17.

¹⁸ Case No. 2019-00256 – Implementation (Ky. P.S.C. Dec. 18, 2019), at page 31.

¹⁹ See Sailors Direct Testimony at page 30. There is no general principle through which a cost of service study is conclusive or binding upon the Commission or any party in a subsequent proceeding.

²⁰ Sailer Direct Testimony at page 20.

approval of the CEC initiative is a request for the Commission to issue the equivalent of an advisory opinion approving the subject.

The renewable generation asset(s) will be part of the overall Duke Energy Kentucky generation.²¹ In that Duke plans to park within its generation fleet and allocate “to all customers like any other rate-based asset” the costs of unsubscribed amounts,²² Duke should not be given any type of green light to move forward in soliciting subscriptions until it is prepared to present a defined proposal, specifically one that allows potential subscribers to compare Duke’s CEC initiative along side of net metering alternatives.

When pressed upon the issue, Duke concedes, among other things, the following:

The final subscription will be determined once the asset's CPCN is filed. Duke Energy Kentucky is filing in this proceeding the framework for the program to ensure any questions regarding the program’s framework/mechanics are answered. Once the underlining asset(s) are at a point that subscription/bill credits can be finalized, Duke Energy Kentucky will file the program values for Commission approval.²³

Duke’s request for consideration of its CEC initiative is premature. It acknowledges that Duke cannot finalize subscription/bill credits at this time; yet it alleges that, somehow, marketing efforts require Commission approval of a (generously self-described) “framework” while subscription/bill credits are tentative and program values available to potential subscribers are not known. The Commission should decline Duke’s invitation for

²¹ Duke Response to KY OAG 1-34 (filed Jan. 25, 2023).

²² Duke Response to KY OAG 1-42(b) (filed Jan. 25, 2023).

²³ Duke Response to KY OAG 1-21(a) (filed Jan. 25, 2023).

an advisory approval of its CEC initiative. If Duke's true intent was to limit if not reduce complexities, it would have deferred introduction of the CEC Program initiative until no earlier than its readiness to seek the Certificate of Public Convenience and Necessity ("CPCN") that Duke concedes is necessary to move forward with its plan and in a proceeding in which the value stack could be considered for both a substantially final CEC initiative and net metering Successor Rates.²⁴

WHEREFORE, KYSEIA submits its Written Comments with a request for the Commission to place Duke on notice that KRS 278.466 does not specify single-issue ratemaking for net metering Successor Rates and any proposal for adjusting net metering rates should occur as part of an application for a general rate adjustment. FURTHER, KYSEIA requests the Commission decline Duke's invitation for an advisory approval of its CEC "framework" and, instead, advise Duke that consideration of such a proposal is properly deferred until no earlier than when Duke can offer a specific proposal rather than a simple "framework."

Respectfully submitted,

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²⁴ Halstead Direct Testimony at page 3.