

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**RESPONSE OF DUKE ENERGY KENTUCKY, INC. TO JOINT INTERVENORS
KENTUCKY SOLAR ENERGY SOCIETY AND KENTUCKIANS FOR THE
COMMONWEALTH’S PETITION FOR REHEARING**

Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company) respectfully requests that the Kentucky Public Service Commission (Commission) deny Kentucky Solar Energy Society and Kentuckians for the Commonwealth’s (Joint Intervenors) Petition for Rehearing (Petition) of the Commission’s October 11, 2024, Order in this proceeding (Order). The Petition should be denied, as Joint Intervenors fail to identify “any new evidence on rehearing to evidence not readily discoverable at the time of the original hearings,” “any material errors or omissions,” or “any findings that are unreasonable or unlawful.”¹

Additionally, the Kentucky Solar Industries Association, Inc. (KYSEIA) filed a response to the Petition on November 4, 2024 (KYSEIA Petition), which purports to “adopt[] and incorporate[] by reference the arguments in the Petition,” and “respectfully

¹ *In the Matter of Electronic Application of Kentucky Corp. for a Certificate of Public Convenience and Necessity for the Construction of a High-Speed Fiber Network and for Approval of the Leasing of the Network’s Excess Capacity to an Affiliate to be Engaged in the Provision of Broadband Service to Unserved and Underserved Households and Businesses of the Commonwealth*, Case No. 2021-00365, Order, p. 1 (Aug. 10, 2022).

requests the Commission grant rehearing of the matters identified in the Petition.”² Although captioned as a “Response,” the KYSEIA Petition is actually a petition for rehearing filed more than 20 days after the Order, and therefore untimely pursuant to KRS 278.400. Accordingly, the KYSEIA Petition should also be denied.

If this response is silent to any particular issue(s) raised in the Petition, that silence should not be construed as approval or agreement with Joint Intervenors and/or KYSEIA on that issue.

I. LAW AND ARGUMENT

A. Joint Intervenors’ Carry the Burden of Establishing Grounds for Rehearing.

KRS 278.400 provides an opportunity for parties to seek rehearing of an order. However, this opportunity is “limit[ed] to correct[ing] material errors or omissions, and findings that are unreasonable or unlawful, or to weigh[ing] new evidence not readily discoverable at the time of the original hearings.”³ A Commission Order is unreasonable “only when ‘the evidence presented leaves no room for difference of opinion among reasonable minds.’”⁴ An order is only unlawful “if it violates a state or federal statute or constitutional provision.”⁵ However, there is no basis for granting rehearing when a party merely seeks to “relitigate a matter fully addressed in the original Order.”⁶

As the parties seeking rehearing, Joint Intervenors have the burden of establishing

² *In the Matter of Electronic Application of Duke Energy Kentucky, Inc. for an Adjustment to Rider NM Rates and for Tariff Approval*, Case No. 2023-00413, Response to Petition for Rehearing, p. 2 (Nov. 4, 2024) (KYSEIA Petition).

³ *In the Matter of Electronic Application of Kentucky Corp. for a Certificate of Public Convenience and Necessity for the Construction of a High-Speed Fiber Network and for Approval of the Leasing of the Network’s Excess Capacity to an Affiliate to be Engaged in the Provision of Broadband Service to Unserved and Underserved Households and Businesses of the Commonwealth*, Case No. 2021-00365, Order, p. 2 (Aug. 10, 2022).

⁴ *Id.*, pp. 1-2.

⁵ *Id.*, p. 2.

⁶ *Id.*

one of the above grounds.⁷ If they fail to do so, rehearing must be denied.

B. The Commission Should Deny Rehearing on All Issues Related to Components of the ACEGC.

1. The Commission should deny rehearing as to the avoided capacity cost.

Joint Intervenors write that the Commission simply “accepts Duke’s cost calculations,” which implies that the Commission accepted the proposed avoided capacity cost as proposed in the Company’s Application in its entirety.⁸ However, that is not the case—the Commission stated its concern that the Company’s calculations “understat[ed] costs,” and addressed this concern in the Order, by requiring the Company to make an additional subsequent net metering filing and adjusting the Company’s proposed avoided generation capacity cost upward.

The Commission did not simply accept the Company’s calculation but replaced a portion of the Company’s calculation with a higher set of values. As explained in the Order, the Company had based its calculation of avoided generation capacity cost by calculating the fixed cost of constructing, financing, and staffing a Combustion Turbine (CT).⁹ The Commission ordered the Company to modify this calculation, by replacing its estimate of O&M costs with higher values from a post-hearing data request:

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

⁷ See, e.g., *In the Matter of Electronic Joint Application of American Electric Power Company, Inc., Kentucky Power Company and Liberty Utilities Co. for Approval of the Transfer of Ownership and Control of Kentucky Power Company*, Case No. 2021-00481, Order, p. 10 (“[T]he Commission finds that Attorney General/KIUC failed to meet its burden of proof, and therefore Attorney General/KIUC’s motion for rehearing is denied.”).

⁸ See Petition, p. 6.

⁹ Order, p. 12.

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.¹⁰

Additionally, the Commission ordered the Company to “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.”¹¹

Thus, the Commission has already considered and addressed the Joint Intervenors’ concerns by both increasing this cost component and incorporating publicly available data into the calculation, as well as ordering a future net metering application filing. Joint Intervenors do not acknowledge the Commission’s efforts in this regard or discuss them, much less identify anything unlawful or unreasonable about the Commission’s determination in this regard. For this reason, the Commission should deny rehearing on the issue of avoided generation capacity cost.

2. The Commission should deny rehearing as to avoided transmission cost.

Joint Intervenors claim that the Commission’s “referenced value of \$0.003330 per kWh doesn’t seem to appear anywhere in Mr. Sailers’ rebuttal,” but this is incorrect. This value appears as part of the rate calculation in Confidential Rebuttal Attachment BLS-1.¹² As Mr. Sailers testified in rebuttal, “I believe the Company’s proposal remains appropriate although it could be updated consistent with Confidential Rebuttal Attachment BLS-1.”¹³

¹⁰ Order, p. 31 (emphasis added).

¹¹ See *id.*, p. 33.

¹² See “Res Rate Calculations” tab, cell E32.

¹³ Rebuttal Testimony of Bruce L. Sailers, p. 15.

Thus, contrary to Joint Intervenors' contention, it is entirely clear "what value the Order is referencing."¹⁴

Also, Joint Intervenors' reference to the Commission's remark on page 31 of the Order regarding the Company "consistently understating costs in its modeling,"¹⁵ is highly misleading. The Commission only made this statement in assessing the Company's choice of CT model for the calculation of avoided capacity costs; it had no bearing on the Company's calculation of avoided transmission costs.

Thus, Joint Intervenors have failed to establish any basis for rehearing as to avoided transmission costs and therefore rehearing on this issue should be denied.

3. The Commission should deny rehearing as to avoided distribution cost.

Just as with the Commission's selected value for avoided transmission costs, the Joint Intervenors similarly overlooks the source of the Commission's selected value for avoided distribution costs, claiming that the value of \$0.006719 per kWh "doesn't appear directly in Sailers' rebuttal testimony."¹⁶ In fact, this value also appears in Confidential Rebuttal Attachment BLS-1,¹⁷ which Mr. Sailers cites in his testimony. The Commission explained that it preferred these costs to the costs in Mr. Sailers' initial testimony because they were more updated.¹⁸ Joint Intervenors fail to identify anything incorrect, illegal, or unreasonable about this determination. Accordingly, Joint Intervenors' request for rehearing regarding avoided distribution costs should be denied.

¹⁴ Petition, p. 8.

¹⁵ *See id.*, p. 8.

¹⁶ *Id.*, p. 9.

¹⁷ *See* "Res Rate Calculations" tab, cell I39.

¹⁸ *See* Order, pp. 31-33.

4. *The Commission should deny rehearing as to avoided environmental and carbon costs.*

Joint Intervenors seek rehearing on the Commission’s determination 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.”¹⁹ They claim that the Commission “offers no further explanation” beyond this conclusion, but that is false. In fact, the sentence immediately preceding this conclusion *is* the further explanation:

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 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.²⁰

The full context evinces ample explanation.

Joint Intervenors cite that Company witness Kalemba stated at hearing that “capital costs of additional required environmental compliance are not necessarily included in avoided capacity or energy costs,”²¹ but they do not explain that Mr. Kalemba also testified that the model’s capital cost to construct a CT does include certain environmental controls, such as selective catalytic reduction (SCR).²² While there may be some uncertainty with regard to future environmental compliance capital costs in the Company’s model, the Commission’s manner of addressing this was neither unlawful nor unreasonable. Thus,

¹⁹ See Order, p. 36; Petition, pp. 9-11.

²⁰ Order, pp. 35-36.

²¹ Petition, p. 9 (citing HVT at 16:39 to 16:45).

²² See HVT at 7:43:40 to 7:44:15.

Mr. Kalembe's testimony at hearing offers no basis for rehearing of the Commission's Order on either environmental or carbon costs.

As for carbon costs, Joint Intervenors claim that the Commission acted "directly contrary to Commission precedent" by not requiring carbon costs to be calculated separately.²³ However, there is no "direct[]" precedent on this point, as neither of the Commission's two prior orders dealt with a forecast of marginal energy prices that already embedded avoided environmental and carbon costs in its prediction of future price values.²⁴ Thus, the Joint Intervenors' request for rehearing on this point should be denied.

5. *The Commission should deny rehearing as to jobs benefits.*

Joint Intervenors contend that rehearing is warranted because the Commission did not specifically discuss job benefits "in the Order's Discussion and Findings," and request that the Commission now "require an analysis of these benefits by Duke, . . . by a date specific."²⁵ The Commission summarized the parties' discussion as to job benefits,²⁶ and ultimately did not order such an analysis in this proceeding. But Joint Intervenors' witness himself did not assign a specific amount of avoided cost per kWh to the jobs benefits component in his direct testimony. Given the record in this case, the Commission's

²³ See Petition, pp. 10-11.

²⁴ See *In the Matter of 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, Order, pp. 25-26 (May 14, 2021) (avoided energy costs were estimated based on "based on residual aggregate forward pricing contracts between counterparties"); *In the Matter of Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Case No. 2020-00349, Order, p. 12 (September 24, 2021) (avoided energy costs were developed using a business plan and production cost model).

²⁵ Petition, p. 11.

²⁶ See Order, pp. 13, 26.

declining to order such an analysis was reasonable. Rehearing on this issue should be denied.

C. The Commission Should Deny Rehearing on Netting Methodology.

Joint Intervenors continue to advocate their preferred approach to netting,²⁷ despite the Commission's explicit repudiation of their preferred interpretation of its past orders, most recently in its Order but also previously in its Answer in another case. Rehearing as to the netting methodology ordered by the Commission should be denied.

Joint Intervenors claim that the Commission "depart[ed] from precedent," while completely ignoring the Commission's explicit explanation in the Order regarding the Commission's interpretation of the same precedent:

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.²⁸

The Commission has already considered and rejected Joint Intervenors' reading of both the statute and its prior orders, and Joint Intervenors offer nothing new in this regard.

Furthermore, Joint Intervenors cite the utility's complaint seeking review of a prior order in support of their argument,²⁹ but misleadingly omit any mention of the

²⁷ See Petition, pp. 12-14.

²⁸ Order, p. 41.

²⁹ See Petition, p. 13.

Commission's Answer, which was cited by both the Company briefing and the Commission in its Order.³⁰ In that Answer, the Commission stated:

The plain language of the September 24, 2021 and November 4, 2021 Orders are consistent with KRS 278.465 and KRS 278.466 because, for each billing period, KU/LG&E were directed to net the dollar value of the total energy consumed by an eligible customer-generator and the dollar value of all energy produced and exported by an eligible customer-generator over the billing period. The PSC further states that, consistent with the September 24, 2021 and November 4, 2021 Orders, KU/LG&E filed and the PSC accepted NMS-2 tariffs¹ (attached as Exhibit 1 and Exhibit 2) that reflect the methodology approved by the PSC in the September 24, 2021 and November 4, 2021 Orders, with the dollar value of the total energy consumed by an eligible customer-generator netted against the dollar value of the total energy exported by an eligible customer-generator.³¹

Thus, between the Order and the Answer above, it is clear that the Commission has already amply considered its own precedent, and Joint Intervenors are now seeking to relitigate their original arguments. As explained by the Commission on numerous occasions, rehearing does not offer an opportunity to "relitigate a matter fully addressed in the original Order."³² Accordingly, rehearing on the issue of netting should be denied.

II. CONCLUSION

For the foregoing reasons, Duke Energy Kentucky, Inc., respectfully requests that the Commission deny the Joint Intervenors' Petition and the KYSEIA Petition.

³⁰ See Duke Energy Kentucky Reply Brief, p. 3; Order, p. 41.

³¹ *Ky. Utils. Co. & Louisville Gas & Elec. Co.*, Case No. 21-CI-00872, Answer, p. 3 (Cir. Ct. Franklin Cty. Dec. 15, 2021).

³² *In the Matter of Electronic Application of Kentucky Corp. for a Certificate of Public Convenience and Necessity for the Construction of a High-Speed Fiber Network and for Approval of the Leasing of the Network's Excess Capacity to an Affiliate to be Engaged in the Provision of Broadband Service to Unserved and Underserved Households and Businesses of the Commonwealth*, Case No. 2021-00365, Order, p. 2 (Aug. 10, 2022).

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing is a true and accurate copy of the document in paper medium; that the electronic filing was transmitted to the Commission on November 7, 2024; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that submitting the original filing to the Commission in paper medium is no longer required as it has been granted a permanent deviation.³³

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³³*In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Order, Case No. 2020-00085 (Ky. P.S.C. July 22, 2021).