

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

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
UTILITIES COMPANY FOR AN ADJUSTMENT OF)	
ITS ELECTRIC AND GAS RATES AND)	CASE NO. 2025-00113
APPROVAL OF CERTAIN REGULATORY AND)	
ACCOUNTING TREATMENTS)	

In the Matter of:

ELECTRONIC APPLICATION OF LOUISVILLE)	
GAS AND ELECTRIC COMPANY FOR AN)	
ADJUSTMENT OF ITS ELECTRIC AND GAS)	CASE NO. 2025-00114
RATES AND APPROVAL OF CERTAIN)	
REGULATORY AND ACCOUNTING)	
TREATMENTS)	

**JOINT INTERVENORS KENTUCKIANS FOR THE COMMONWEALTH,
KENTUCKY SOLAR ENERGY SOCIETY, METROPOLITAN HOUSING
COALITION, AND MOUNTAIN ASSOCIATION’S REPLY TO KENTUCKY
UTILITIES COMPANY AND LOUISVILLE GAS AND ELECTRIC
COMPANY RESPONSE TO THEIR MOTION FOR REHEARING**

Jacob Elkin
Shannon Fisk
Pro Hac Vice - not admitted in Kentucky
Earthjustice
48 Wall St 15th Floor
New York, NY 10005
jelkin@earthjustice.org
sfisk@earthjustice.org

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

*Counsel for Joint Intervenors Kentuckians
for the Commonwealth, Kentucky Solar
Energy Society, Metropolitan Housing
Coalition and Mountain Association*

March 23, 2026

**JOINT INTERVENORS REPLY TO KENTUCKY UTILITIES COMPANY
AND LOUISVILLE GAS AND ELECTRIC COMPANY RESPONSE TO
THEIR MOTION FOR REHEARING**

Come now Kentuckians For The Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Coalition, and Mountain Association, (collectively, “Joint Intervenors” or “JIs”), by and through counsel, pursuant to 807 KAR 5:001 Section 5.(3), and offer the following reply to *Kentucky Utilities Company and Louisville Gas and Electric Company’s Joint Response to Joint Intervenors’ Motion for Rehearing*¹ of March 16, 2026.

The Companies continue to attempt to relitigate and confound issues at every turn, including in their Response to the Joint Intervenor’s reasonable Motion for Rehearing.² It is in fact the Companies’ arguments that are “self-defeating,” as there is a crucial distinction between “rates” for net metering and qualifying facility customer-generators, and the “framework that undergirds those rates.” The Commission has consistently applied the same rates for avoided cost components that the two share (i.e., avoided energy and avoided generation capacity), and it would be unreasonable not to update the rates for net metering customers here to recognize the Companies’ need for capacity.

The Commission rightly denied both the Companies’ proposed rates and conditions for qualifying facilities.

The Companies initially proposed an avoided generating capacity cost of zero dollars for both Qualifying Facilities (“QFs”) and net metering (“NM”)

¹ Case No. 2025-00113 (“KU Rate Case”) and Case No. 2025-00114 (“LG&E Rate Case”) (together “LG&E-KU Rate Cases”), *Kentucky Utilities Company and Louisville Gas and Electric Company’s Joint Response to Joint Intervenors’ Motion for Rehearing* (LG&E-KU, Mar. 16, 2026) (“Companies’ Response”).

² LG&E-KU Rate Cases, *Motion for Rehearing of Joint Intervenors Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Coalition, and Mountain Association* (JI, Mar. 9, 2026) (“JI Motion”).

customer-generators in this application.³ The Commission ultimately denied a zero dollar rate for both QFs and NM customer-generators, but set different rates for each.⁴

Commission Staff's fourth set of data requests asked for avoided costs analyses for both QF rates and NM-2 rates:

Refer to Case No. 2023-00404, August 30, 2025 final Order at 22-23 and LG&E/KU's response to Staff's First Request, Item 5. For both qualified facility (QF) rates and net-metering-2 (NM-2) rates, provide an update to the avoided cost analysis using a natural gas combined cycle (NGCC) unit that the utility is planning for, currently procuring, or constructing and as the avoided cost benchmark. Include in the updated analysis, the Seasonal Capacity Need as reflected in Case No. 2025-00045. In this analysis, explain why LG&E/KU chose the specific NGCC unit as a basis.⁵

The Companies gave four tables, each labeled as representing costs only for QFs.⁶ However, the Avoided Capacity Rates for solar and wind projects were set at 0.00 across the board, as the Company had originally proposed.⁷

In post-hearing data requests Commission Staff directed the Companies to:

Refer to LG&E/[KU]'s response to Commission Staff's Fourth Request for Information, Item 14. Provide an updated avoided capacity cost analysis for qualifying facility (QF) rates utilizing the methodology approved in 2023-00404 and the updated assumptions listed in Item 14. Provide this information in Excel spreadsheet format with all formulas, rows, and columns unprotected and fully accessible.⁸

³ LG&E-KU Rate Cases, *Direct Testimony of Charles R. Schram Vice President, Energy Supply and Analysis on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company*, at 30-38 (LG&E-KU, May 30, 2025) ("Schram Direct").

⁴ For QFs, see KU Rate Case, Order at 201-03 (Feb. 16, 2026); LG&E Rate Case, Order at 210-12 (Feb. 16, 2026); for NM customer-generators, see KU Rate Case, Feb. 16, 2026 Order at 217; LG&E Rate Case, Feb. 16, 2026 Order at 225.

⁵ KU Rate Case, *Commission Staff's Fourth Request for Information to Kentucky Utilities Company*, Question 14 (Sept. 11, 2025); LG&E Rate Case, *Commission Staff's Fourth Request for Information to Louisville Gas and Electric Company*, Question 14 (Ky. P.S.C. Sep. 11, 2025) (emphasis added, internal citation omitted).

⁶ *Response of Kentucky Utilities Company to the Commission Staff's Fourth Request for Information Dated September 11, 2025*, at A-14 (KU, Sep. 23, 2025); *Response of Louisville Gas & Electric Company to the Commission Staff's Fourth Request for Information Dated September 11, 2025*, at A-14 (LG&E, Sep. 23, 2025).

⁷ Schram Direct at 30-38.

⁸ KU Rate Case, *Commission Staff's Post-Hearing Request for Information to Kentucky Utilities Company*, Question 40.d. (Nov. 12, 2025), LG & E Rate Case, *Commission Staff's Post-Hearing Request for*

Of course, utilizing the methodology ordered by the Commission in Case No. 2023-00404, the avoided capacity costs were, in fact, not zero dollars, but “based on the cost of Brown 12 in 2030 and scaled by availability factors for QF technology options.”⁹ The Commission ultimately found that “avoided capacity cost, as it relates to solar and wind, is unreasonable and therefore is denied,” and “that the appropriate avoided capacity cost analysis should be based on the cost of Brown 12 as described above, as avoided capacity costs are based on the type of generating facilities that the utility is planning for, currently procuring, or constructing,” and set rates on this basis.¹⁰

As noted in the Commission’s Orders, the Companies also proposed a new tariff provision for QFs in the “availability section of both its SQF and LQF tariffs to state that ‘Seller may enter into a PPA with Company only if Seller simultaneously sells the entire output of Seller’s qualifying facility to Company while purchasing all of Seller’s own requirements from Company.’”¹¹ The Commission likewise denied the proposed new condition of the Companies, stating “the Commission finds that KU’s/[LG&E’s] proposed tariff revision should be denied. . . . The Commission does not find a utility’s categorical refusal to agree to enter into PPAs unless a QF enters a buy-all sell- all agreement reasonable.”¹²

The Companies seem to ignore this denial by arguing that because “all net metering generation is *by definition* behind-the-meter generation,” it could not qualify for

Information to Louisville Gas and Electric Company, Question 40.d. (Nov. 12, 2025) (emphasis added, internal citation omitted).

⁹ KU Rate Case, *Response of Kentucky Utilities Company to the Commission Staff’s Post-Hearing Request for Information Dated November 12, 2025*, at A-40.d.(KU, Nov. 25, 2026); LG&E Rate Case, *Response of Louisville Gas & Electric Company to the Commission Staff’s Post-Hearing Request for Information Dated November 12, 2025*, at A-40.d. (LG&E, Nov. 25, 2026).

¹⁰ KU Rate Case, Feb. 16, 2026 Order at 201, 203; LG&E Rate Case, Feb. 16, 2026 Order at 210-12 (in almost identical language).

¹¹ KU Rate Case, Feb 16, 2026 Order at 203; LG&E Rate Case, Feb. 16, 2026 Order at 212.

¹² KU Rate Case, Feb. 16, 2026 Order at 206-07; LG&E Rate Case, Feb. 16, 2026 Order at 215.

any avoided generating capacity rates if it were instead a QF.¹³ It is clear from this alone, that the Companies either misapprehend or are misconstruing the Commissions' Order.

Conditions and Rates are distinct.

However, even given that twisted construction of the Commission's Order, the Companies' Response falls short. The Companies themselves acknowledge the distinction between the rates charged or paid, and the "framework" that differs between QFs and NM customer-generators.¹⁴ As stated in JIs' motion for rehearing, the Commission has consistently set the same rates for avoided generating capacity for QFs and NM customer-generators,¹⁵ however it has not at any time imposed the same *conditions* for QFs and NM customer-generators.¹⁶

Indeed, the Commission could not legally impose the same conditions on net metering customer-generators as on QFs. The requirement for QFs comes from the U.S. Public Utility Regulatory Policies Act of 1978 ("PURPA"),¹⁷ while the requirement to offer net metering comes from Kentucky Statutes, with their separate set of

¹³ Companies' Response at 2.

¹⁴ *Id.*

¹⁵ *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, and *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Case No. 2020-00350 (together, "2020 LG&E-KU Rate Cases"), Order at 50-51 (Ky. P.S.C. Sep. 24, 2021); Case no. 2023-00404, *Electronic Tariff Filings of Louisville Gas and Electric Company and Kentucky Utilities Company to Revise Purchase Rates for Small Capacity and Large Capacity Cogeneration and Power Production Qualifying Facilities and Net Metering Service-2 Credit Rates*, Order at 23-24 (Ky. P.S.C. Aug. 30, 2024); see also Case No. 2023-00404, *Response of Kentucky Utilities Company and Louisville Gas And Electric Company to the Commission Staff's First Request for Information Dated January 11, 2024*, Resp. to Question 5.b (Ky. P.S.C. Jan. 25, 2024).

¹⁶ See generally, 2020 LG&E KU Rate Cases, Sept. 24, 2021 Order and Case No. 2023-00404, Aug. 30, 2024 Order.

¹⁷ 16 U.S.C. §§ 2601-2645; see also 18 C.F.R. Part 292.

requirements.¹⁸ The Commission has broad discretion in the weighing of factors it may consider in setting fair, just, and reasonable rates.¹⁹ The Commission has adopted and followed a set of principles²⁰ and factors²¹ for setting rates and conditions for NM customer-generators after changes to Kentucky’s Net Metering statute in 2019. But it has not, and *could not* impose the requirement of a “legally-enforceable obligation” (“LEO”) as the Companies advocate.²² Kentucky’s net metering statute requires that “[e]ach retail electric supplier shall make net metering available to any eligible customer-generator that the supplier currently serves or solicits for service.”²³ “Eligible customer-generator” is defined as “a customer of a retail electric supplier who owns and operates an electric generating facility that is located on the customer's premises, for the primary purpose of supplying all or part of the customer's own electricity requirements.”²⁴ Therefore, the Commission may, however, set the “rate to be used for ... compensation.”²⁵

With regard to rates, it has set a precedent of setting the avoided generating capacity commensurate with the Companies’ actual current capacity costs,²⁶ which it did

¹⁸ KRS 278.465-468.

¹⁹ *Nat'l-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 512 (Ky. App. 1990).

²⁰ Case No. 2020-00174, *Electronic Application of Kentucky Power Company for (1) a General Adjustment of Its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; And (5) All Other Required Approvals and Relief*, Order at 21-24 (Ky. P.S.C. May 14, 2021); 2020 LG&E-KU Rate Cases, Sept. 24, 2021 Order at 41-42.

²¹ Case No. 2020-00174, Order at 25-40; 2020 LG&E-KU Rate Cases, Sept. 24, 2021 Order at 48-58.

²² Companies’ Response at 2.

²³ KRS 278.466(1).

²⁴ KRS 278.465(1). “*Eligible* electric generating facility” is not specifically a part of the definition of “eligible customer-generator,” but is defined as “an electric generating facility that: (a) Is connected in parallel with the electric distribution system; (b) Generates electricity using: 1. Solar energy; 2. Wind energy; 3. Biomass or biogas energy; or 4. Hydro energy; and (c) Has a rated capacity of not greater than forty-five (45) kilowatts.” KRS 278.465(2).

²⁵ KRS 278.466(3).

²⁶ 2020 LG&E KU Rate Cases, Sept. 24, 2021 Order at 32, and Case No. 2023-00404, Aug. 30, 2024 Order at 21.

here for QFs,²⁷ but not for NM customer-generators.²⁸ It is this deviation from precedent without explanation that the JIs have asked the Commission to reconsider as unreasonable.²⁹

The settlement did not include the sole party representing the interests of net metering customers.

Even in the context of the wider settlement, now generally modified by the Commission in a number of ways, the deviation from precedent without explanation is unreasonable. Aside from JIs and the Kentucky Solar Energy Industries Association (“KYSEIA”), “[n]o other intervenors specifically discussed or submitted evidence regarding avoided generation capacity cost.”³⁰ Neither JIs nor KYSEIA were parties to the settlement,³¹ and it therefore does not represent the interests of the NM customer-generators for whom they have advocated.

Wherefore, Joint Intervenors respectfully request that the Commission grant rehearing and find that the NMS-2 rates should be revised consistent with avoided energy and generation capacity costs for a 7-year PPA for fixed-tilt solar qualifying facilities, consistent with precedent.

[SIGNATURES ON FOLLOWING PAGE]

²⁷ KU Rate Case, Feb. 16, 2026 Order at 202; LG&E Rate Case, Feb. 16, 2026 Order at 211.

²⁸ KU Rate Case, Feb. 16, 2026 Order at 217; LG&E Rate Case, Feb. 16, 2026 Order at 225.

²⁹ JI Motion, generally.

³⁰ LG&E Rate Case, Feb. 16, 2026 Order at 225; KU Rate Case, Feb. 16, 2026 Order at 217 (with nearly identical language).

³¹ LG&E-KU Rate Cases, *Stipulation Testimony Exhibit 1: Stipulation and Recommendation*, at 2 (Oct. 20, 2025).

Jacob Elkin
Shannon Fisk
Pro Hac Vice - not admitted in Kentucky
Earthjustice
48 Wall St 15th Floor
New York, NY 10005
jelkin@earthjustice.org
sfisk@earthjustice.org

Respectfully Submitted,



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

*Counsel for Joint Intervenors Kentuckians
for the Commonwealth, Kentucky Solar
Energy Society, Metropolitan Housing
Coalition and Mountain Association*

CERTIFICATE OF SERVICE

In accordance with the Commission's July 22, 2021 Order in Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, this is to certify that the electronic filing was submitted to the Commission on March 23, 2026; that the documents in this electronic filing are a true representation of the materials prepared for the filing; and that the Commission has not excused any party from electronic filing procedures for this case at this time.



Byron L. Gary