

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Electronic Application Of Kentucky Power Company)	
For A Declaratory Order Related To Customer)	
Eligibility To Continue Taking Service Under Tariff)	Case No. 2025-00166
Net Metering Service II)	

VERIFIED APPLICATION FOR DECLARATORY ORDER

Kentucky Power Company (“Kentucky Power” or the “Company”) applies to the Public Service Commission of Kentucky (“Commission”) pursuant to 807 KAR 5:001, Section 19, for an Order to be issued **no later than July 31, 2025** declaring that the Martin County Health Department, (the “Customer”) cannot sell any excess generation arising from a proposed behind-the-meter battery storage facility under the rates contained in Tariff N.M.S. II. Kentucky Power requests an order to be issued on this application no later than July 31, 2025, so that the Company can move forward in processing the Customer’s application under the correct tariff provisions.

In support of its application Kentucky Power states:

APPLICANT

1. **Name and Address:** The Applicant’s full name and post office address is: Kentucky Power Company, 1645 Winchester Avenue, Ashland, Kentucky 41101. The Company’s electronic mail address is kentucky_regulatory_services@aep.com.

2. **Incorporation:** Kentucky Power is a corporation organized on July 21, 1919 under the laws of the Commonwealth of Kentucky. The Company currently is in good standing in Kentucky.¹

¹ A certified copy of the Company’s Articles of Incorporation and all amendments thereto was attached to the Joint Application in *In the Matter Of: The Joint Application Of Kentucky Power Company, American Electric Power*

3. **Business:** Kentucky Power is a public utility principally engaged in the provision of electricity to Kentucky consumers. The Company generates and purchases electricity that it distributes and sells at retail to approximately 163,000 customers located in all, or portions of, the Counties of Boyd, Breathitt, Carter, Clay, Elliott, Floyd, Greenup, Johnson, Knott, Lawrence, Leslie, Letcher, Lewis, Magoffin, Martin, Morgan, Owsley, Perry, Pike, and Rowan.

TARIFF N.M.S. II

4. The Company's Tariff N.M.S. II is available to customers who meet the definition of eligible customer-generators and are approved by the Company following review of the customer's Application for Interconnection and Net Metering ("Application").²

5. Tariff N.M.S. II defines, consistent with KRS 278.465(a), an eligible customer-generator as a "retail electric customer of the Company with a generating facility that:

- (1) Generates electricity using solar energy, wind energy, biomass or biogas energy, or hydro energy;
- (2) Has a rated capacity of not greater than forty-five (45) kilowatts;
- (3) Is located on the customer's premises;
- (4) Is owned and operated by the customer;
- (5) Is connected in parallel with the Company's electric distribution system; and
- (6) Has the primary purpose of supplying all or part of the customer's own electricity requirements."³

6. Upon receipt of an Application from a potential Tariff N.M.S. II customer, the Company's engineers review the Application to, among other things, confirm that the proposed

Company, Inc. And Central And South West Corporation Regarding A Proposed Merger, P.S.C. Case No. 99-149. The Company's June 26, 2025 Certificate of Existence is as **Exhibit 1** to this Application.

² Kentucky Power Company, P.S.C. Ky. No. 13 Original Sheet No. 19-1.

³ *Id.*

generating facility meets the definition of eligible customer generator and evaluate the potential impact of the generating facility on the Company's distribution system.

7. If the proposed generating facility meets the definition of eligible customer generator and the impacts of the generating facility on the distribution system, if any, have been mitigated, the customer may take service under Tariff N.M.S. II.

8. Under Tariff N.M.S. II, any excess generation produced by the eligible customer generator and injected into the distribution system is credited to the Tariff N.M.S. II customer at the appropriate avoided cost rate.

THE CUSTOMER'S PROPOSED EXPANSION OF ITS ELIGIBLE CUSTOMER-GENERATOR FACILITY

9. Kentucky Power is the retail electric utility with the exclusive right to serve the Customer, which is located within the Company's certified territory.

10. The Customer operates a behind-the-meter 44.6 kW solar-powered generating facility (the "Solar Facility") on its property located at 136 Rockcastle Rd., Inez, Kentucky 41224 (the "Property").

11. Consistent with the requirements of Tariff N.M.S. II, the Customer submitted an Application for the Solar Facility ("Solar Application"). Kentucky Power reviewed the Solar Application and approved the connection of Customer's Solar Facility to the Company's distribution system and the Customer's ability to take service under Tariff N.M.S. II.

12. The Customer has subsequently filed another Application with Kentucky Power (the "Battery Application") seeking to install a battery storage project ("Battery Project") at the Property. The capacity of the proposed Battery Project is 50kW.

13. While the Customer asserts that the Battery Project is acting purely as a backup generator for the Property and is not intended for export to the grid, the proposal shows that the

Battery Project will be AC coupled to the Solar Facility and, therefore, not limited to import only. Because the 50kW Battery Project will be AC coupled to the 44.6kW Solar Facility, creating a 94.6kW combined facility, and will be able to export excess generation to the Kentucky Power distribution system, Kentucky Power has rejected the Battery Application.

14. The Customer has asserted that the addition of the Battery Project to the Solar Facility should be approved under Tariff N.M.S II relying on language in the Commission's May 14, 2021 Order in Case No. 2020-00174 and in the Commission's June 23, 2021 Order on Rehearing in the same proceeding.⁴ The Customer's position appears to be that the addition of battery storage regardless of size of the battery storage facility or, importantly, the proposed use of the battery storage facility has no impact on a customer's ability to take service under Tariff N.M.S. II. The Customer misinterprets the Commission's Orders in Case No. 2020-00174.

15. Accordingly, Kentucky Power seeks an order from the Commission, pursuant to 807 KAR 5:001, Section 19, ordering that the Customer must change the design configuration of Battery Project to import only to prevent discharge from the Battery Project to the Company's distribution system, or, in the event that the Customer does not change the configuration to limit the Battery Project to import only, that the Company be permitted to include the size of the Battery Project in determining which tariff applies to the total system which, in this case, would be the Company's COGEN/SPP I tariff.

⁴ See, April 25, 2025 Letter from Counsel for Customer to Counsel for Kentucky Power. A copy of this letter is **EXHIBIT 2** to this Application.

**THE CUSTOMER CANNOT RECEIVE CREDITS UNDER TARIFF N.M.S. II FOR EXCESS
GENERATION FROM THE BATTERY PROJECT**

16. The Customer cannot receive credits under Tariff N.M.S. II for excess generation from the Battery Project for two reasons. First, the Battery Project does not meet the plain language definition of definition of an eligible customer-generator under Tariff N.M.S. II or KRS 278.465(1). Second, the Customer’s interpretation of the Commission’s Orders in Case No. 2020-00174 that the size or proposed use of a battery storage facility has no impact on the availability of Tariff N.M.S. II is incorrect.

17. As discussed above, Tariff N.M.S. II defines an eligible customer-generator as a “retail electric customer of the Company with a generating facility that:

- (1) Generates electricity using solar energy, wind energy, biomass or biogas energy, or hydro energy;
- (2) Has a rated capacity of not greater than forty-five (45) kilowatts;
- (3) Is located on the customer’s premises;
- (4) Is owned and operated by the customer;
- (5) Is connected in parallel with the Company’s electric distribution system; and
- (6) Has the primary purpose of supplying all or part of the customer’s own electricity requirements.”⁵

18. A battery storage project is not authorized as a generating facility subject to Tariff N.M.S. II. As such, any excess generation from the Battery Project is not eligible for bill credits under Tariff N.M.S. II.

19. Additionally, the Customer misinterprets and overstates the Commission’s relevant Orders in Case No. 2020-00174.

⁵ *Id.*

20. In its May 14, 2021 order, the Commission considered Kentucky Power's proposal to close Tariff N.M.S. I off to customers as of January 1, 2020, and to establish Tariff N.M.S. II, which (1) changed the netting periods applicable to the monthly billing for customers; (2) changed the export rate paid for excess generation; (3) changed the cost recovery of payments made for Tariff N.M.S. II customers' excess self-generation; and (4) changed the application fee to reflect the cost of processing a net-metering application.⁶

21. The Commission determined that existing eligible customer-generators who take service under Tariff N.M.S. II should be allowed to take service under the then-existing two-part rate structure and netting period for 25 years.⁷ It then considered the effect of material changes to a legacy customer's existing eligible generating facility prior to the effective date of the Order approving Tariff N.M.S. II.⁸ Under Kentucky Power's proposal, eligible generating facilities would lose the legacy status by adding battery storage or generating capacity through a facility expansion. In considering this proposal, the Commission stated that:

Any modification or installation that materially increases the capacity of an eligible generating facility should be evaluated on the same basis as any other new application. Thus, we further find that if a customer's modification of their eligible generating facility results in a material increase in capacity, then that customer will no longer be eligible to take service under the NMS I tariff.⁹

⁶ Order at 5, *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*, No. 2020-00174 (Ky. P.S.C. May 14, 2021).

⁷ *Id.* at 43

⁸ *Id.*

⁹ *Id.* at 44.

The Commission continued, “because the addition of battery storage does not increase the capacity of an eligible generating facility, we find that adding batter[y] storage to an eligible generating facility should not trigger a change in NMS I legacy status.”¹⁰

22. The Customer has construed this Commission decision incorrectly in two ways. First, the Customer is attempting to apply the Commission’s decision regarding a specific set of circumstances that do not apply to the current dispute. The Commission’s May 14, 2021 Order concerned Kentucky Power’s proposal that any material increase in capacity would make existing Tariff N.M.S. I take service under Tariff N.M.S. II. The Commission’s Order merely held that those customers on Tariff N.M.S. I would lose their legacy status and be transitioned to Tariff N.M.S. II in the event that they materially increased their capacity, and defined what would constitute “material.”

23. The Customer here, however, does not enjoy any sort of legacy status under Tariff N.M.S. II, as Kentucky Power has not revised the tariff to change its terms. This is distinguishable from those with legacy status, as the Customer’s Battery Project is a unilateral adjustment to its own generating facility—not the byproduct of Kentucky Power’s changes to the tariffs.

24. Second, the Customer has misconstrued the Commission’s conclusions regarding the addition of battery storage to mean that any addition of battery storage should be allowed regardless of how the battery storage would be used. This interpretation is illogical. The Commission’s June 23, 2021 Order on Rehearing, noted that evidence existed to refute the

¹⁰ *Id.*; see also Order at 31–32, *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*, No. 2020-00174 (Ky. P.S.C. June 23, 2021) (“Rehearing Order”).

Company's assertions that battery storage added capacity and pointed to the testimony of a KYSEIA witness and stated "adding battery storage was not equivalent to adding capacity, but instead allowed an eligible customer-generator to align usage with self-generation."¹¹ The testimony from the KYSEIA witness clarified that the size and anticipated use of the proposed battery storage facility matters in the analysis. The witness noted that in both California and Hawaii customers could add battery storage to a net metering facility, but only with conditions including in Hawaii that the combined battery and existing facility exports were limited to the capacity of the original facility.¹² Moreover, the KYSEIA witness noted that "the existing 45 kW maximum system size provides an additional "guardrail" on the extent to which an existing net metering facility can be expanded."¹³

25. Thus, a battery storage facility that is used solely to meet customer demands when the eligible customer-generation facility is not generating and does not itself export any generation to the distribution system does not add capacity to the eligible customer-generation facility. This is the only logical interpretation of the Commission's statement. The Commission did not hold that a battery storage facility used to increase the amount of excess customer generation credited back to a customer should not be considered an increase in capacity of the eligible customer-generation facility. The customer's potential use of the battery storage facility must be a part of the determination.

¹¹ Rehearing Order at 32.

¹² Direct Testimony of Benjamin D. Inskeep (Case No. 2020-00174)(filed Oct. 7, 2020) at 25.

¹³ *Id.* at 28.

EXHIBITS

19. The exhibits listed in the Appendix to this Application are attached to and made a part of this Application.

COMMUNICATIONS

20. Kentucky Power respectfully requests that communications in this matter be addressed to the e-mail addresses identified on Kentucky Power's May 28, 2025 Notice of Election of Use of Electronic Filing Procedures.

WHEREFORE, Kentucky Power Company respectfully requests that the Commission issue an Order no later than July 31, 2025:

(1) declaring that the Customer must change the design configuration of Battery Project to import only to prevent discharge from the Battery Project to the Company's distribution system, or, in the event that the Customer does not change the configuration to limit the Battery Project to import only, that the Company be permitted to include the size of the Battery Project in determining which tariff applies to the total system which, in this case, would be the Company's COGEN/SPP I tariff; and

(2) granting all other required approvals and relief.

Respectfully submitted,




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COMPANY

VERIFICATION

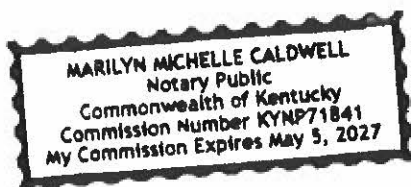
I, Jeffrey D. Newcomb, Vice President, Regulatory and Finance for Kentucky Power Company, after being duly sworn, state that the facts contained in this Application are true and accurate to the best of my knowledge.

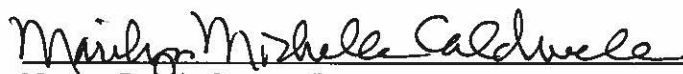


Jeffrey D. Newcomb

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF BOYD)

Subscribed and sworn to before me by Jeffrey D. Newcomb on this the 27th day of June, 2025.





Notary Public State at Large

My Commission Expires: May 5, 2027

APPENDIX

EXHIBIT 1

June 26, 2025 Certificate of Existence

EXHIBIT 2

April 25, 2025 Letter from Counsel for Customer to Counsel for
Kentucky Power

Commonwealth of Kentucky
Michael G. Adams, Secretary of State

Michael G. Adams
Secretary of State
P. O. Box 718
Frankfort, KY 40602-0718
(502) 564-3490
<http://www.sos.ky.gov>

Certificate of Existence

Authentication number: 337752
Visit <https://web.sos.ky.gov/ftshow/certvalidate.aspx> to authenticate this certificate.

I, Michael G. Adams, Secretary of State of the Commonwealth of Kentucky, do hereby certify that according to the records in the Office of the Secretary of State,

KENTUCKY POWER COMPANY

KENTUCKY POWER COMPANY is a corporation duly incorporated and existing under KRS Chapter 14A and KRS Chapter 271B, whose date of incorporation is July 21, 1919 and whose period of duration is perpetual.

I further certify that all fees and penalties owed to the Secretary of State have been paid; that Articles of Dissolution have not been filed; and that the most recent annual report required by KRS 14A.6-010 has been delivered to the Secretary of State.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at Frankfort, Kentucky, this 26th day of June, 2025, in the 234th year of the Commonwealth.



Michael G. Adams

Michael G. Adams
Secretary of State
Commonwealth of Kentucky
337752/0028317

April 25, 2025

Via Electronic Mail Only

Katie M. Glass
Stites & Harbison, PLLC
P.O. Box 634
Frankfort, KY 40602-0634
kglass@stites.com

RE: AEPDER 25-00757 (Notice of Battery Storage Only)

Katie M. Glass:

Strobo Barkley PLLC represents the Martin County Health Department (MCHD).¹ Kentucky Power Company (Company) is the retail electric utility with the exclusive right to serve MCHD, a customer located within the Company's certified territory. MCHD, which already has approval for a 44.6 kW electric generating facility (AEPDER 24-08144; February 6, 2025) has been working with Solar Energy Solutions LLC (SES) for the installation of a battery storage project. The inverter power rating of the proposed electric generating facility is 44.6 kilowatts; therefore, the electric generating facility has a rated capacity that falls within the definition of an "eligible electric generating facility" as that phrase is defined and described through KRS 278.465(2)(c). MCHD is seeking the addition of battery storage through notice as per the Company's Tariff N.M.S. The reference for the battery storage notice is "Project AEPDER 25-00757."

MCHD plans to combine its behind-the-meter eligible electric generating facility with behind-the-meter battery storage. Among other things, the "AEP DG Coordinator" has taken the position that "[t]his battery is an AC couple battery which will contribute to the AC system size of the system." Further, the AEP DG Coordinator states: "This battery, combined with the existing equipment will increase the system size to over 45kW, making the system no longer eligible for Net Metering." The AEP DG Coordinator's position is directly contrary and in violation of the plain language of the Kentucky Public Service Commission's (Commission or PSC) Orders for the Company directly on this point, specifically, that battery storage and the inverter power rating for (or capacity of) an electric generating facility are separate matters. Battery storage does not add capacity to an eligible electric generating facility, and the Company is violating Orders of the Commission for which all rights of appeal have been exhausted.

¹ "Martin Co. Health Department" is the name of the account holder.

In 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), the Company argued, among other things, that “adding battery storage or generating capacity through a facility expansion” was a material change to an eligible generating facility.² The Commission expressly found that “the addition of battery storage does not increase the capacity of an eligible generating facility.”³ Although the Commission’s finding was in the context of net metering legacy status, the finding plainly states that “battery storage does not increase the capacity of an eligible generating facility.”

The Company sought rehearing on several issues including through the claim that the Commission had erred in finding that the addition of battery storage does not increase the capacity of an eligible generating facility.⁴ Through its Motion for Rehearing, the Company squarely put the issue to the Commission through the claim “adding battery storage results in an increase in capacity.”⁵ In fact, the Company expressly stated that resolution of the battery storage issue in Case No. 2020-00174 “should not and cannot await the resolution of issues sometime in the future.”⁶ Thus, the Company expressly admitted and conceded through its pleadings in Case No. 2020-00174 that the Commission’s finding on battery storage was a finding essential to resolution of issues in that case.

Through its Order on the Company’s motion for rehearing, the Commission stated:

[T]he Commission was not persuaded by Kentucky Power’s argument that battery storage added capacity to an eligible generation facility. Kentucky Power cited nothing to persuade us to the contrary.

Here, Kentucky Power seeks to relitigate what has already been litigated and decided. The Commission weighed the evidence and made a finding of fact based upon the evidence in the record

² Case No. 2020-00174, Order (Ky. P.S.C. May 14, 2021) at page 12.

³ Case No. 2020-00174, Order (Ky. P.S.C. May 14, 2021) at page 44.

⁴ Case No. 2020-00174, Motion of Kentucky Power Company for Rehearing (filed June 3, 2021), pages 16 and 17.

⁵ Case No. 2020-00174, Motion of Kentucky Power Company for Rehearing (filed June 3, 2021), page 16.

⁶ Case No. 2020-00174, Reply of Kentucky Power Company In Support of Motion for Rehearing (filed June 15, 2021), page 12.

that Kentucky Power failed to carry its burden of proof that battery storage adds capacity to an eligible generation facility. Because the issue was fully litigated, the Commission finds that Kentucky Power failed to meet its burden of proof that the Commission made a material error, and therefore, rehearing on this issue is denied.⁷

Therefore, in Case No. 2020-00174, the Commission made a finding of fact on an issue that the Company urged was essential to that proceeding. The issue was fully litigated, and the Commission plainly determined that battery storage does not add capacity to an eligible generation facility. Kentucky Power Company sought judicial review of the Commission's Order in Case No. 2020-00174,⁸ and the Commission's Orders were affirmed by the Franklin Circuit Court. All rights to further appeal of the Orders from Case No. 2020-00174 are (long since) exhausted.

In Case No. 2020-00174, as the Commission's Order on the motion for rehearing reflects, an intervenor had presented testimony that the Company "should be notified of a customer's intent to add battery storage."⁹ That evidence, however, further noted that "adding battery storage was not equivalent to adding capacity."¹⁰ Therefore, while the Company's Commission-approved tariffs for applications for net metering service interconnection include an information requirement for battery storage, such information has no bearing upon the power rating of the energy source because the Commission has determined that battery storage does not add capacity to an eligible generation facility. The appearance of the information requirement in the Commission-approved tariff cannot support an inference that the Commission has expressly rejected.

Pursuant to KRS 278.465(2)(c), an eligible electric generating facility can have a rated capacity of not greater than forty-five (45) kilowatts. The proposed system will have an inverter power rating of 44.6 kilowatts; therefore, it falls within the statutory definition of a system otherwise eligible for net metering. Kentucky Power Company's decision "count" battery storage as capacity is in violation the plain language of Commission Orders that state that battery storage does not add capacity.

Battery storage does not generate electricity or otherwise add capacity. The Commission clearly recognizes this distinction and has equally clearly rejected Kentucky Power Company's argument to the contrary. While the Company appears to ignore the

⁷ Case No. 2020-00174, Order (Ky. P.S.C. June 23, 2021) at page 32.

⁸ *Kentucky Power Company v. Public Service Commission of Kentucky, et al*, Civil Action No. 21-CI-00211 (Franklin Circuit Court, Division II).

⁹ Case No. 2020-00174, Order (Ky. P.S.C. June 23, 2021) at page 32.

¹⁰ Case No. 2020-00174, Order (Ky. P.S.C. June 23, 2021) at page 32.

findings of the Commission through suggesting that the finding is only applicable to issues concerning legacy rights, the plain language of the Orders establishes that the finding that battery storage does not add capacity is applicable for all issues concerning the impact of battery storage upon the capacity of an eligible electric generating facility.

The Company's refusal to approve the battery storage Project AEPDER 25-00757 upon the premise that the eligible electric generating facility will have a capacity in excess of the statutory limit is in error and in violation of Commission Orders directly on point. The Commission has expressly denied the Company's request to count battery storage as capacity when determining eligibility for net metering service. We ask that you correct this error as soon as possible and otherwise complete the review process for Project AEPDER 25-00757 for battery storage service for MCHD.

Thank you in advance for your attention to this request.

Best regards,

/s/ David Spenard

David Spenard
Counsel for Martin County Health Department