



Ms. Stephanie L. Stumbo
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

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E.ON U.S. LLC
State Regulation and Rates
220 West Main Street
PO Box 32010
Louisville, Kentucky 40232
www.eon-us.com

Rick E. Lovekamp
Manager - Regulatory Affairs
T 502-627-3780
F 502-627-3213
rick.lovekamp@eon-us.com

November 13, 2008

**Re: INTERCONNECTION AND NET METERING GUIDELINES
FOR RETAIL ELECTRIC SUPPLIERS AND QUALIFYING
CUSTOMER-OWNED GENERATORS – ADMINISTRATIVE
CASE NO. 2008-00169**

Dear Ms. Stumbo:

On behalf of Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (collectively, “Companies”), I respectfully submit these comments concerning the Commission Staff’s Informal Conference Memorandum that was issued on November 3, 2008 in the above-referenced case. Briefly, the Companies object to the Memorandum’s characterization of the draft Net Metering Guidelines as a tariff, and to changing the title of the Guidelines to “Net Metering Tariff – Kentucky,” and respectfully request that the Guidelines be titled and characterized as guidelines pursuant to KRS 278.467.

In addition to summarizing the telephonic informal conference held in this proceeding on October 16, 2008, the Commission Staff’s November 3, 2008 Informal Conference Memorandum discusses, and its attachment contains, the Commission Staff’s changes to the draft Net Metering Guidelines collectively drafted by the parties to this proceeding. The Companies respectfully object to amending the Guidelines’ title to be, “Net Metering Tariff – Kentucky,” and to the Memorandum’s characterization of the title change as “clarify[ing] that the document is not ‘Net Metering Guidelines,’ but rather a tariff”¹

¹ *In the Matter of Interconnection and Net Metering Guidelines for Retail Electric Suppliers and Qualifying Customer-Owned Generators*, Case No. 2008-00169, Commission Staff’s Informal Conference Memorandum at 1 (Nov. 3, 2008).

The Companies believe it would be inconsistent with KRS 278.467 (the statute giving rise to this proceeding) to characterize the Net Metering Guidelines that will issue from this proceeding as anything other than guidelines. KRS 278.467 prescribes a two-step process by which Commission-jurisdictional electric utilities are to issue or amend their net metering tariffs. The first step is to conduct this proceeding to develop “interconnection and net metering guidelines for all retail electric suppliers operating in the Commonwealth.”² After the Commission approves the final Net Metering Guidelines, each jurisdictional electric utility will have ninety days to complete the second and distinct step; namely, “to file with the commission a net metering tariff and application forms to comply with those guidelines.”³ Clearly KRS 278.467 does not contemplate the Guidelines acting as a tariff for any or all of the Commission-jurisdictional electric utilities; indeed, such an interpretation would render superfluous the tariff-filing process KRS 278.478(3) prescribes. Kentucky’s courts have repeatedly stated that it is a canon of statutory interpretation to avoid interpreting statutes in such a way as to render parts of a statute ineffectual: “Our mandate is to construe a statute, if possible, so that no part of it is meaningless or ineffectual.”⁴ To keep from rendering KRS 278.467(3) “meaningless or ineffectual,” the Guidelines must remain guidelines and not tariffs under KRS 278.160.

In addition to the statutory conflict that calling the Guidelines a “tariff” creates, the Guidelines themselves explicitly anticipate separate tariff filings for the relevant utilities. For example, the “Metering” section of the Guidelines states:

Due to variations among utilities in Kentucky in the types of meters used, it is impractical to have common language for this section that clearly describes the type of meter that will be used by any one utility to enable net metering.

Likewise, the “Billing” section states:

Due to variations among utilities in Kentucky in rate tariff structure, billing system capabilities, and net metering equipment described above, it is impractical to have common language for this

² KRS 278.467(2).

³ KRS 278.467(3).

⁴ *Stevenson v. Anthem Casualty Insurance Group*, 15 S.W.3d 720, 724 (Ky. 1999). See *Hamilton v. International Union of Operating Engineers*, 262 S.W.2d 695, 699 (Ky. 1953) (“[I]t will not be presumed that the legislature intended a useless or futile thing”)

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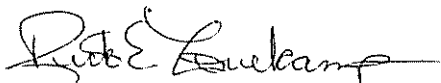
section that clearly describes the billing details of any one utility. Each Utility will provide language in its tariff filing that uniquely describes its billing practice consistent with the requirements in KRS 278.465 to 278.468.

These quotes show that the Guidelines are intended to be guidelines, and that the parties developed them to be such, not a tariff; otherwise, the parties would not have left in language pointing toward individual tariff proceedings for the various utilities.

Because each utility's operating environment and customer base varies from those of other utilities, the flexibility inherent in the Guidelines was crucial to reaching agreement on the language therein. Changing the title and character of the Guidelines would therefore be inconsistent with the parties' understanding of, and approach to, negotiating and drafting them.

In sum, because the statute giving rise to this proceeding, KRS 278.467, and the text of the Guidelines themselves show that the Net Metering Guidelines are meant not to be a tariff, but rather to be objective guidelines for the evaluation of individual tariffs. The Companies therefore respectfully object to the Commission Staff's Informal Conference Memorandum and the changes made to the Guidelines that in any way characterize the Guidelines as a tariff, and respectfully request the Guidelines be titled and characterized as guidelines.

Sincerely,



Rick E. Lovekamp

cc: Parties of Record