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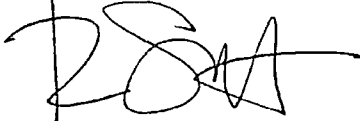
Gwen R. Pinson, Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RE: Administrative Case No. 2019-00256

Dear Ms. Pinson:

Please find attached the Written Comments of Kentucky Solar Industries Association ("KYSEIA") concerning the implementation of the Net Metering Act.

Should you have any questions or concerns regarding the attachment, please contact me at your earliest convenience.

Sincerely,


Randy Strobo
David Spenard
Strobo Barkley PLLC
Counsel for KYSEIA

Enclosures: KYSEIA Comments

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

OCT 15 2019

PUBLIC SERVICE
COMMISSION

In the Matter of:

ELECTRONIC CONSIDERATION OF THE)
IMPLEMENTATION OF THE NET METERING) CASE NO.
ACT) 2019-00256

WRITTEN COMMENTS OF KENTUCKY SOLAR
INDUSTRIES ASSOCIATION CONCERNING
IMPLEMENTATION OF THE NET METERING ACT

The Kentucky Solar Industries Association (“KYSEIA”), by counsel and pursuant to the Commission’s Order of procedure authorizing the filing of written comments into the record of the instant case, submits its written comments concerning the implementation of Senate Bill 100,¹ the 2019 amendments to Kentucky’s “Net Metering Act.”²

KYSEIA is a 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. KYSEIA’S objective is to provide leadership and promote sound policy in Kentucky as the power sector enters the solar age. KYSEIA members are proud to contribute to Kentucky’s vital energy sector and are

¹ 2019 Ky. Acts ch. 101.

² Codified in KRS 278.465 to KRS 278.468.

eager to contribute to energy diversity in the Commonwealth, while continuing to create in-state jobs, provide consumers a choice in their energy supply, and vitalize local economic development. KYSEIA has been intimately involved in net metering policy and legislation in Kentucky over the past several years.

Net metering is successfully and widely deployed across the United States, including Kentucky, as an effective policy tool and economic driver for fostering the installation of residential and small commercial electric generating facilities. KYSEIA recommends the Commission utilize policies for the implementation of Senate Bill 100 that (1) maintain fair, just, and reasonable rates through a transparent and well-documented process; (2) foster stability and predictability for utilities, consumers, and the market; and (3) promote consistency across retail electric suppliers. KYSEIA's comments address tariff revisions, rate-making policies, and monitoring and reporting requirements.³ In addition to this administrative proceeding, KYSEIA recommends that the Commission conduct a general data collection and analysis proceeding prior to individual rate-making proceedings and thoroughly investigate each application for an initial net metering order filed pursuant to KRS 278.466(3).

1. Implementation of the 2019 Amendments to Kentucky's Net Metering Act Raising the Rated Capacity Ceiling Set Forth in KRS 278.465(2)(c) from 30 Kilowatts to 45 Kilowatts, effective January 1, 2020, for Eligible Electric Generating Facilities Will Require Revisions to the Existing Tariffs of Each Retail Electric Supplier.

Currently and until January 1, 2020, KRS 278.465(2)(c) mandates a rated capacity ceiling of not greater than 30 kilowatts in order for an electric generating facility to fall within the

³ KYSEIA's written comments are submitted in furtherance of the PSC's development of a record regarding the implementation of the Net Metering Act in the instant action and the development of policy and guidance for subsequent administrative proceedings before the Commission. The written comments should not be construed as a waiver of any claims or arguments concerning the Net Metering Act that fall within the jurisdiction of other forums or that are otherwise outside the PSC's jurisdiction over rates and service.

definition of “eligible electric generating facility” as per KRS 278.465(2). Effective January 1, 2020, the rated capacity ceiling per KRS 278.465(2)(c) will increase from 30 kilowatts to 45 kilowatts.⁴ Because the Kentucky Legislature has expressly established a new rated capacity ceiling through the 2019 amendments, retail electric suppliers have no authority to utilize a rated capacity ceiling other than 45 kilowatts.

KRS 278.160 requires all jurisdictional utilities to file and display their general rates and conditions of service. To the extent that any net metering tariff on file on January 1, 2020, contains a rated capacity ceiling other than the not greater than 45 kilowatts standard in SB 100, the tariff provision is superseded and controlled by KRS 278.465 (2)(c) as amended.⁵

RECOMMENDATION:

Each retail electric supplier should issue and file with the Commission, as soon as reasonable, a revised tariff with language in conformity with the new 45 kilowatts rated capacity ceiling amount.

2. The Effective Date of the 2019 Amendments to the Net Metering Act is Separate and Distinct from the Effective Date of the Initial Net Metering Order of the Commission Identified in the Amended KRS 278.466(6).

Senate Bill 100 provides that its amendments to the Net Metering Act take effect on January 1, 2020.⁶ That date, however, is not the date for determining the eligible customer-generators who will continue net metering service pursuant the to the one-to-one (1:1) kilowatt-

⁴ 2019 Ky. Acts, ch. 101, Sections 1 and 4.

⁵ See, for background, Administrative Case No. 2008-00169, *Development of Guidelines for Interconnection and Net Metering for Certain Generators with Capacity Up to Thirty Kilowatts* (Ky. PSC Jan. 8, 2009) at Appendix A, introductory paragraphs (“To the extent this tariff conflicts with any federal law or regulation or any law or regulation of the Commonwealth of Kentucky, the law or regulation shall supersede and control over any conflicting tariff provision.”).

⁶ 2019 Ky. Acts, ch. 101, Section 4.

hour denominated energy credit (“One-to-One Energy Credit”). Further, January 1, 2020, is not the start date for calculating the 25-year period in which the One-to-One Energy Credit shall remain in effect. The applicable date specified through Senate Bill 100 for these two points is the effective date of each utility’s initial net metering order.

The version of KRS 278.466(6) that will go into effect on January 1, 2020, provides the following:

For an eligible electric generating facility in service prior to the **effective date of the initial net metering order by the commission in accordance with subsection (3) of this section**, the net metering tariff provisions in place when the eligible customer-generator began taking net metering service, including the one-to-one (1:1) kilowatt-hour denominated energy credit provided for electricity fed into the grid, shall remain in effect at those premises for a twenty-five (25) year period, regardless of whether the premises are sold or conveyed during that twenty-five (25) year period. For any eligible customer-generator to whom this subsection applies, each net metering contract or tariff under which the customer takes service shall be identical, with respect to energy rates, rate structure, and monthly charges, to the contract or tariff to which the same customer would be assigned if the customer were not an eligible customer-generator. **(Emphasis added)**⁷

The version of KRS 278.466(3) that will go into effect on January 1, 2020, provides the following:

A retail electric supplier serving an eligible customer-generator shall compensate that customer for all electricity produced by the customer's eligible electric generating facility that flows to the retail electric supplier, as measured by the standard kilowatt-hour metering prescribed in subsection (2) of this section. **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. (Emphasis added)**

⁷ 2019 Ky. Acts, ch. 101, Section 2.

Therefore, among other things, prior to any change in the One-to-One Energy Credit or change in the availability of net metering under a supplier's current tariff provisions, a Commission order through the ratemaking processes under Chapter 278 is required. The ratemaking processes of Chapter 278 include, among other things, notice to the Commission pursuant to KRS 278.180 and the investigation of any schedule stating new rates pursuant to KRS 278.190. Therefore, the initial net metering order should be the product of an application for an adjustment in rates that includes a comprehensive investigation of the utility's new rates.

Each retail electric supplier is required, by KRS 278.160, to adhere to its filed tariffs including the provisions which make available net metering to additional eligible customer-generators upon proper request. Clearly, net metering customers who begin service prior to the entry of an initial net metering order fall within the class of customers who receive the One-to-One Energy Credit that will remain in effect at those premises for a twenty-five (25) year period. Thus, there may be an incentive for customers pursuing the establishment of net metering service for a premise to begin service prior to the entry of an initial net metering order.

Because the date of the entry of the initial net metering order rather than January 1, 2020, determines the effective date after which the One-to-One Energy Credit is no longer available to new customers as well as the start date of the twenty-five (25) year period in which the One-to-One Credit shall remain in effect for an eligible electric generating facility in service prior to the initial net metering order, KYSEIA has a concern that a retail electric supplier may, whether intentionally or unintentionally, frustrate or delay actions on applications for net metering service. Any frustration or unreasonable delay by a retail electric utility in processing an application for net metering service which prevents an eligible facility from going into service prior to the initial

net metering order results in the loss of benefits otherwise available pursuant to statute and the utility's filed tariffs.

The pursuit of beginning new service prior to the entry of an initial net metering order is permissible under the Net Metering Act. The utility may not suspend or defer availability of new net metering service until the entry of an initial net metering order. KRS 278.160 prohibits such a result. The Net Metering and Interconnection Guidelines developed and issued in Case No. 2008-00169 require prompt utility communication and action on each net metering application.⁸ Each retail electric utility should take reasonable steps to ensure that it acts upon applications for new net metering service in a timely manner.

Additionally, KRS 278.466(6), effective as of January 1, 2020, states, in pertinent part: “an eligible electric generating facility in service prior to the effective date of the initial net metering order.” The phrase “in service” is not defined by KRS 278.465. It is not clear whether in service means the moment that the facility is connected in parallel with the electric distribution system or whether it is determined by reference to another event; for examples, the moment that the facility generates electricity or the moment when the utility issues or provides a final approval.

The Commission should provide guidance on the event that determines when a facility is considered “in service” for purposes of KRS 278.466(6). KYSEIA recommends that an eligible electric generating facility be considered in service as early as possible and by no later than the date of the successful completion of an inspection by the authority having jurisdiction or responsibility to conduct the inspection, such as the local electrical inspector.

⁸ Case No. 2008-00169, (Ky. PSC Jan. 8, 2009) at Appendix A, pages 4 and 5.

Presently, during the process for approval and interconnecting net metering systems, utilities exercise significant discretion. Yet, some utilities engage in practices that vary from their net metering tariff provisions. Too frequently utilities fail to provide proper notification to applicants within the timeframes established through the Commission's existing guideline and required as conditions of their filed tariffs. The failure of utilities to act within the timeframes established by the Commission and set forth in tariff provisions is a problem.

The Commission should use this opportunity to again remind utilities that they must follow the provisions of their tariffs and act within the periods specified for acting upon applications for approvals of Level 1 and Level 2 facilities. Further, the utilities should be encouraged to maintain better tracking of the status of an application so that information regarding the application can be conveyed as each milestone in the approval process is reached and readily provided to the applicant upon request.

Further, when there is an approval of an application, that approval may be subject to successful completion of an initial installation inspection and witness test, if required by the utility. The Commission should further standardize the application process and clarify that, for a Level 1 facility, in the absence of a utility indicating that an inspection and witness test is required, approval of the application constitutes a final approval and permission to operate. The Commission should also consider whether the notification of approval or denial for Level 1 facilities should be reduced from 20 business days to 10 business days.

In the event that an inspection and witness test is required, the utility should be required, upon successful completion of an inspection and test, to issue a formal final approval and permission to operate as of the date of successful completion. For a Level 2 facility, the utility should provide an Interconnection Agreement for the customer to sign at the same time that it

provides its formal final approval. Overall, the utilities should improve their communications with applicants regarding the status of their applications and the steps necessary to complete the approval process.

KYSEIA also notes that KRS 278.466(7) requires, among other things, that all systems and interconnecting equipment “shall meet all applicable safety and power quality standards established by the National Electrical Code (NEC)” which, in turn, requires inspection by a duly licensed authority having jurisdiction or authority to conduct the inspection. While the NEC inspection results in a date-stamped permission to operate from a proper authority, it does not constitute an action by the utility that permits operation. While some utilities are efficient in their net metering application reviews, including the inspection process, others delay the application process by months and the interconnection process by additional months.

Efficient processing of applications within established timeframes and prompt provision of interconnection agreements, where applicable, is the regulatory standard. The Commission should further refine its guidance as a means to eliminate undue delays in the application process. In light of the need for additional defined standards and uniformity of process amongst utilities that protect applicants against unreasonable delays, KYSEIA again recommends that an eligible electric generating facility be considered in service as early as possible and by no later than the date of the successful completion of an inspection by the authority having jurisdiction or responsibility to conduct the inspection.

The transition period between January 1, 2020, and the date of the initial order modifying net metering for each utility is a unique time period which presents specific and unique risks and uncertainties to applicants who are considering a net metering application. The process of bringing

a solar photovoltaic system “in service” can take weeks or months from the initial contact between the customer and installer.

The fact that a net metering tariff may change before a system can be placed into service creates uncertainty and risk for the customer-applicant. There is the possibility that the Commission’s initial net metering order for a utility will dramatically reduce the financial viability of a solar energy system in the utility’s service territory. For customers making investments in solar photovoltaic systems in reliance upon the current one-to-one kilowatt-hour compensation rate, a failure to bring the system “in service” before the initial net metering order is a very unfortunate outcome.

While, in pertinent part, the intent of the amendments to Kentucky’s Net Metering Act is to change the compensation rate, the creation of hardships and adverse outcomes is not the intent of the amendments. The amendments were not meant to “chill” the installation of electric generating facilities. Indeed, the raising of the ceiling from 30 kilowatts to 45 kilowatts manifests the intent to promote installation. The plain language of the amendments, in many instances, create safeguards, protections for customer-generators and, by reasonable extension, safeguards should be recognized for applicants for service.

KYSEIA recommends the Commission to implement the amendments to the Net Metering Act in a manner that minimizes risk and uncertainty for customer-generators and customer-applicants for net metering service. In particular, issue of when a system is “in service” creates vulnerability to customer-applicants who want to begin taking net metering service prior to an initial net metering order. KYSEIA urges the Commission to minimize risk to these customer-applicants.

RECOMMENDATIONS:

The Commission's guidance should identify the availability of the One-to-One Energy Credit for any electric generating facility in service prior to the effective date of the initial metering order entered by the Commission in a ratemaking proceeding initiated pursuant to KRS Chapter 278, including any facility through which the eligible customer began taking net metering service after January 1, 2020, but prior to the effective date of the initial metering order.

The Commission's guidance should convey that the amendments to the Net Metering Act do not suspend or reduce a utility's responsibility to timely process and act upon applications for interconnection and net metering. Further, the guidance should convey that an increase in applications for interconnection and net metering will not serve as grounds to reduce a utility's responsibility to timely process and act upon applications.

The Commission should clarify the event at which an electric generating facility is "in service." KYSEIA recommends that an eligible electric generating facility be considered in service as early as possible and by no later than the date of the successful completion of an inspection by the authority having jurisdiction.

The Commission should reaffirm its prior guidance regarding the timeframes for reviewing applications and further refine its guidance to eliminate undue delays in the processing of applications.

The Commission should require utilities to provide formal written notice regarding action on applications including approvals and permission to operate and also provide, where applicable, timely interconnection agreements for the customer to sign.

The Commission should encourage utilities to maintain better tracking of applications for net metering service and provide updates to applicants upon reaching various milestones in the application process and improve their communications regarding the status of applications and the steps necessary to complete the approval process.

The Commission should consider reducing the notification period for Level 1 facilities from 20 business days to 10 business days.

The Commission should implement the amendments to the Net Metering Act in a manner that minimizes risk and uncertainty for customer-generators and customer-applicants for net metering service.

3. The 2019 Amendments to the Net Metering Act Require the Initial Net Metering Order Be Established Through Existing Ratemaking Processes. KRS 278.190 is the Ratemaking Process that Applies to a Proceeding Initiated by a Retail Electric Supplier or Generation and Transmission Cooperative on Behalf of One or More Retail Electric Suppliers for a New Schedule of Rates for Compensating Net Metering Customers. The Commission Should Consider Opening a New Proceeding to Investigate Net Metering in Kentucky to Create a Standardized Approach that All Jurisdictional Utilities Should Be Required to Adhere to in their Individual Net Metering Ratemaking Proceedings

The version of KRS 278.466(5) that will go into effect on January 1, 2020, provides:

Using the ratemaking process provided by this chapter, each retail electric supplier shall be entitled to implement rates to recover from its eligible customer-generators all costs necessary to serve its eligible customer-generators, including but not limited to fixed and demand-based costs, without regard for the rate structure for customers who are not eligible customer-generators. (Emphasis added.)

With regard to KRS 278.466(5), KYSEIA submits that the Legislature clearly intends for the Commission to establish rates through the standard examination and hearing process of KRS 278.190, the normal ratemaking process. Had it been the Legislature's intent to proscribe the use of KRS 278.190 or establish a specific, unique ratemaking process for determining net metering rates, it would have would have done so through express language or enacted a separate single-issue procedure such as KRS 278.183, the environmental surcharge statute.

KRS 278.183 establishes the framework for the Commission's environmental surcharge ratemaking. The Legislature's intent for the Commission to utilize ratemaking processes that differ from the regular processes of KRS Chapter 278, including KRS 278.190, is manifest in the plain language of KRS 278.183(1) that states, in pertinent part, "[n]otwithstanding any other provision of this chapter [KRS Chapter 278]." Indeed, KRS 278.183 sets forth, in detail, the unique manner through which the Commission shall review the surcharge filings.⁹

⁹ KRS 278.183(2) and (3); also see, for examples, Case No. 2019-00206, *Electronic Examination by the Public Service Commission of the Environmental Surcharge Mechanism of Louisville Gas and Electric Company for the Two-Year Billing Period Ending April 30, 2019*, (Ky. PSC Jun. 28, 2019) (six-month review), and Case No. 2006-00307, *The*

In authorizing environmental surcharges, the Legislature expressly displaced the Commission's general examination process under KRS 278.190 with a specific and exclusive examination process contained in KRS 278.183. Senate Bill 100, in comparison, does not create an exclusive review procedure or otherwise establish single-issue ratemaking review for the initial net metering order. Senate Bill 100, instead, expressly confirms existing "ratemaking processes." Because there is no existing ratemaking process for establishing a going-forward rate for compensation under the Net Metering Act ("Compensation Rate"); consistent with the language of KRS 278.466(3), the Commission should review any schedule filed initiating a new rate for net metering service through the procedure of KRS 278.190 and the regular ratemaking processes of KRS Chapter 278.

While the Commission may defer consideration of questions unique to a utility until the utility files an application for an adjustment in its rates, the Commission should consider opening a new proceeding to investigate net metering in a statewide context to create a standardized approach that all jurisdictional utilities should adhere to in their individual ratemaking proceedings to implement the provisions of the Net Metering Act. Otherwise; multiple utility ratemaking proceedings separately adjudicating similar issues under the Net Metering Act could result in major differences across the utilities that could be detrimental to customers, inefficiently use Commission and staff resources, create unnecessary costs for potential intervenors, and create unnecessary costs to utilities and their ratepayers.

In this proceeding or in a separate proceeding prior to individual rate-making proceedings, the Commission should conduct a robust stakeholder engagement process along with engaging

Application of Kentucky Power Company for Approval of An Amended Compliance Plan for Purposes of Recovering Additional Costs of Pollution Control Facilities and to Amend Its Environmental Surcharge Recovery Tariff, (Ky. PSC Aug. 16, 2006) (investigation of compliance plan and rate surcharge).

experts to facilitate greater understanding of these complex issues. The Commission should also consider having an independent study conducted on the benefits and costs of net metering in Kentucky.

Numerous states have conducted such studies on net metering to better identify the impacts, both positive and negative, of net metering on customers, utilities, and society more generally before any changes to net metering were adopted. Most studies have found that the value of retail rate net-metered solar exceeds the costs. As conveyed by the Kentucky Office of Energy Policy in its comments in the instant case, learning from other state actions relating to net metering implementation is essential. Such a proceeding would, among other things, help foster a uniform approach to cost-of-service and rate design issues and reduce or eliminate problems that might occur if considered solely on a case-by-case basis.

RECOMMENDATION:

The Commission's guidance should confirm that Senate Bill 100 requires the use of existing ratemaking processes in KRS Chapter 278 and did not create a new process. KRS 278.190 is the examination process that applies to proceedings initiated by a retail electric supplier or generation and transmission cooperative on behalf of one (1) or more retail electric suppliers for obtaining an initial net metering order.

The Commission should expand this proceeding or open a new proceeding to collect and analyze data and investigate net metering in the Kentucky context to create a standardized approach that all jurisdictional utilities should be required to adhere to in their individual ratemaking proceedings that implement the provisions of the Net Metering Act.

4. The 2019 Amendments to the Net Metering Act Set Forth An Instruction Concerning Rate Design; However, the 2019 Amendments Do Not Proscribe Examination of the Reasonableness of Any Cost, the Applicant's Cost-of-Service, or Any Other Relevant Consideration Concerning the Proposed Implementation of the Rate.

As noted previously, the version of KRS 278.466(5) that will go into effect on January 1, 2020, provides:

Using the ratemaking process provided by this chapter, each retail electric supplier shall be entitled to implement rates to recover from its eligible customer-generators **all costs** necessary to serve its eligible customer-generators, including but not limited to fixed and demand-based costs, **without regard for the rate structure for customers who are not eligible customer-generators. (Emphasis added.)**

By comparison, pursuant to the current version of KRS 278.466(4), which remains effective through December 31, 2019:

Each net metering contract or tariff shall be identical, with respect to energy rates, **rate structure**, and monthly charges, to the contract or tariff to which the same **customer would be assigned if the customer were not an eligible customer-generator. (Emphasis added.)**

For the reasons stated in Section 2 of these Written Comments, eligible customer-generators who begin taking service prior to the entry of an initial net metering order will be subject to the 25-year period set forth in KRS 278.466(6). Accordingly, KYSEIA limits its Written Comments on this portion of Senate Bill 100 to the change in law that applies to eligible customer-generators who begin taking service after the Commission's entry of an initial net metering order.

The language in KRS 278.466(5) of the revised Net Metering Act, effective January 1, 2020, enacts new flexibility in rate design for the net metering rate. As between new eligible customer-generators who begin service after the Commission's entry of an initial net metering order and customers who are not an eligible customer-generator, identical rate structure treatment is not required.

KRS 278.466(5) entitles or authorizes, but does not require or mandate, the utility to assign all costs necessary to serve eligible customer-generators who begin service after the entry of an initial net metering order to its eligible customer-generators. On this point, Senate Bill 100 sets

forth an instruction on rate recovery, specifically, a retail electric supplier may, upon proper application, assign all costs of serving the relevant eligible customer-generators to that group. The Commission may not, on its own initiative, reassign the recovery of these costs from its eligible customer-generators to customers who are not eligible customer-generators.

Nonetheless, KRS 278.190(3) assigns the burden of proof regarding a proposed Compensation Rate to the applicant. Therefore, the Commission retains the power to fully-examine and determine whether the cost proposed for recovery pursuant to KRS 278.466(5) is prudently incurred and reasonable in amount. The Commission retains the power to examine the applicant's cost-of-service assumptions and proposals and may consider the reasonableness of an applicant's cost-of-service study in determining issues concerning the necessity of assigning all or part of a cost to eligible customer-generators.

While KRS 278.466(5) contains an instruction concerning rate design and cost recovery from certain eligible customer-generators, the Commission has the plenary authority to review any proposal to implement rates and utilize all regular ratemaking processes, including the principles of gradualism and avoidance of rate shock, in tailoring an initial rate order for each applicant. For rate design, the Commission is fully authorized to consider all relevant factors in addition to costs, including the full range of net metering benefits to the utility, its ratepayers, and stakeholders, in establishing an initial Compensation Rate that is fair, just, and reasonable.¹⁰

The Commission may reject a proposed cost as unreasonable in amount, may reject a proposed cost-of-service methodology or assumption as unreasonable, and it may reject a proposed

¹⁰ See, for example, PSC Commissioners' letter to Representative Jim Gooch, Jr., Chair, Natural Resources and Energy Committee (Feb. 14, 2019) at page 2 (Commission has plenary authority to regulate and investigate utilities and to ensure that rates charged are fair, just, and reasonable, and "Any concerns that the Commission will not be allowed to consider customer-generators' evidence of the quantifiable benefits of solar energy are unfounded.")

implementation plan as unreasonable. Senate Bill 100 does not prohibit the Commission from considering excess net metering credits when considering the cost-of-service or designing rates. The only proscription is that the Commission may not, over the objection of the applicant, reassign costs determined by the Commission to be proper for recovery from the eligible customer-generator group to customers outside of the former group.

For reasons previously stated in Sections 2 and 3 of these Written Comments, KYSEIA also submits that “without regard for the rate structure for customers who are not eligible customer-generators” does not authorize a review and implementation of the initial Compensation Rate to take place outside of the process of KRS 278.190. In fact, entry of an initial rate order on net metering in the absence of a Commission examination pursuant to KRS 278.190 is out of harmony with the plain language of Senate Bill 100 which calls for the regular, existing ratemaking processes in KRS Chapter 278.

The Commission may want to provide guidance on the issue of the rate case costs to the utility associated with the implementation of a new compensation rate. While utilities have a statutory right to implement new rates, the Commission retains jurisdiction to consider the reasonableness of rate case costs and to disallow recovery of portions of rate case costs that are excessive or unreasonable in view of the benefit to the utility and its ratepayers of the relief sought, particularly when the relief sought, if granted, is immaterial.

RECOMMENDATIONS:

The Commission’s guidance should confirm that the Commission retains jurisdiction to (1) determine if a cost proposed for recovery is prudently incurred and reasonable in amount and (2) examine the applicant’s cost-of-service assumptions and proposals to determine the necessity of assigning all or part of a cost to eligible customer-generators.

The Commission’s guidance should confirm that the Commission retains the jurisdiction to investigate the reasonableness of the rate and service and

may utilize rate design techniques and principles from its regular ratemaking process, including the full range of net metering benefits to the utility, its ratepayers, and stakeholders, in establishing a fair, just, and reasonable Compensation Rates.

5. The 2019 Amendments to the Net Metering Act Establish a Twenty-Five (25) Year Period in Which An Eligible Customer-Generator That Began Taking Net Metering Service Prior to the Effective Date of the Initial Net Metering Order Shall Continue Service Under The Net Metering Tariff Provisions In Place When It Began Service.

The version of KRS 278.466(6) that will go into effect on January 1, 2020, provides:

For an eligible electric generating facility in service prior to the effective date of the initial net metering order by the commission in accordance with subsection (3) of this section, the **net metering tariff provisions in place when the eligible customer-generator began taking net metering service, including the one-to-one (1:1) kilowatt-hour denominated energy credit provided for electricity fed into the grid, shall remain in effect at those premises for a twenty-five (25) year period, regardless of whether the premises are sold or conveyed during that twenty-five (25) year period.** For any eligible customer-generator to whom this subsection applies, each net metering contract or tariff under which the customer takes service shall be identical, with respect to energy rates, rate structure, and monthly charges, to the contract or tariff to which the same customer would be assigned if the customer were not an eligible customer-generator. **(Emphasis added.)**¹¹

The Commission's guidance concerning the implementation of Senate Bill 100 should address issues pertaining to the twenty-five (25) year period ("25-Year Period") and the corresponding tariff provisions in place for the period ("Grandfathered Tariff Provisions"). Among other things, the Commission should provide guidance concerning the repair and replacement of existing facilities, increases in generating facility capacity, transfer of premises, and termination of service. The Commission's implementation policy, in a manner wholly consistent with the intent of the legislation, should foster the preservation of the benefits of an eligible electric generating

¹¹ 2019 Ky. Acts, ch. 101, Section 2.

facility under the Grandfathered Tariff Provisions. There should be a presumption against the loss of the benefit of the Grandfathered Tariff Provisions.

As discussed in Section 2 of these Written Comments, the effective date of the initial net metering order is the date for determining the eligible electric generating facilities subject to the 25-Year Period as well as the start date for calculating the 25-Year Period.

- a. Facility Expansion and the Repair and Replacement of Existing Facilities is Permissible and Does Not Terminate the 25-Year Period.

The intent of Senate Bill 100, through its plain language, is to preserve certain net metering tariff provisions in place when the eligible customer-generator began taking net metering service for an eligible electric generating facility. The intent of Senate Bill 100 is to preserve the status quo for such a facility for twenty-five (25) years, to “grandfather” the benefits for 25 years.

As part of its Guidelines for Interconnection and Net Metering established through Case No. 2008-00169, the Commission stated that increases in generating facility capacity require a new application for interconnection and net metering.¹² The Commission should revisit this requirement in light of the need to install additional solar panels in order for the facility to maintain up to the customer’s annual electricity usage, and to account for and correct the degradation of a customer-generator’s facility over time.

As part of the same guidance in Case No. 2008-00169, the Commission stated:

Repair and replacement of existing generating facility components with like components that meet UL 1741 certification requirements for Level 1 facilities and not resulting in increases in generating facility capacity is allowed without approval.¹³

¹² Case No. 2008-00169 (Ky. PSC Jan. 8, 2009) at Appendix A, page 8.

¹³ *Id.*

If a customer-generator is required to repair or replace an existing generating facility, the eligible electric generating facility continues to fall within the intent for the 25-Year Period, and the status quo for the facility must be maintained in order to satisfy the intent of Senate Bill 100. KYSEIA further submits a repair and replacement should be permissible without a loss of the benefit of the 25-Year Period for both Level 1 and Level 2 facilities.

While there may be the need for communications between the net metering customer and utility regarding a repair or replacement, which may in proper instances include a review process, Senate Bill 100 does not call for the termination of the 25-Year Period due to repair or replacement. Increased capacity, repairs, and replacements are wholly consistent with the 25-Year Period and should not result in the termination of the benefits of the Grandfathered Tariff Provisions for that facility.

Further, an interruption in the ongoing operation of the generating facility for the purpose of repair or replacement should not be grounds for termination. In the event of a casualty loss of the generating facility, the replacement of the facility should not be grounds for termination or the discontinuance of the Grandfathered Tariff Provisions as long as the replacement facility does not result in an increase in generating facility capacity and its replacement occurs within a reasonable amount of time.

- b. If a Utility Asserts that a Change to an Eligible Customer-Generator's Facility Subject to the 25-Year Period May Change that Customer Generator's Grandfathered Status, the Retail Electric Supplier Should Be Required to Obtain, in Writing, an Acknowledgement and Waiver from that Customer that Approval of the Application Places the Customer's Continuation of Benefit at Risk.

If a customer submits an application to increase the capacity of a generating facility that falls within the 25-Year Period, and a utility asserts that the application places the continuation of benefits of the Grandfathered Tariff Provisions associated with the eligible electric generating

facility at risk, the loss of the benefits of the Grandfathered Tariff Provisions for all or a portion of the 25-Year Period would be a loss of a benefit created by the Legislature. The retail electric supplier should be required to explain the alleged potential loss of benefit to the customer. Further, the retail electric supplier should be required to obtain, in writing, an acknowledgement and waiver from that customer that approval of the application places the Grandfathered Tariff Provisions at risk.

The Commission, pursuant to KRS 278.467, has jurisdiction over any net metering dispute, including an alleged loss of benefit. The Commission may want to include in its guidelines the steps that a utility must take in order to discontinue service to a customer-generator that is provided under the Grandfathered Tariff Provisions. KYSEIA recommends that a utility should adequately document such a discontinuance including its written communications with the customer-generator.

As part of its Guidelines for Interconnection and Net Metering established through Case No. 2008-00169, the Commission required communication regarding the utility's net metering program.¹⁴ KYSEIA's recommended communication and documentation for the implementation of Senate Bill 100 is consistent with the application and approval guidance provided in Case No. 2008-00169, and also furthers the intent of Senate Bill 100 on this point, the preservation of the Grandfathered Tariff Provisions.

A written acknowledgement and waiver should be a condition precedent for the processing of any application regarding an eligible electric generating facility subject to the 25-Year Period for which the utility asserts a discontinuance of the Grandfathered Tariff Provisions. The failure

¹⁴ Case No. 2008-00169 (Ky. PSC Jan. 8, 2009) at Appendix A, pages 2 and 3.

to obtain the written acknowledgement should render any assertion of a discontinuance unenforceable or otherwise void. Further, the 25-Year Period should not be terminated if an application is denied or withdrawn.

- c. Senate Bill 100 Applies the 25-Year Period to Eligible Electric Generating Facility Even if the Premises are Sold or Conveyed.

Senate Bill 100 expressly provides for the continuation of the 25-Year Period at the premises of an eligible electric generating facility in service prior to the effective date of the initial net metering order even if the premises are sold or conveyed. The Commission's guidance should address the process through which the 25-Year Period continues through changes in ownership. The legislative intent is for the 25-Year Period to survive changes in ownership; therefore, each utility should be required to adopt a clear and simple process for continuation of the Grandfathered Tariff Provisions that correspond to the eligible electric generating facility on the premises.

Consistent with the Commission's guidance in Case No. 2008-00129,¹⁵ each utility should adopt a clear and simple process for notice to the utility when a premise is sold or conveyed. Upon a change in the account holder for service to an account for an eligible electric generating facility subject to the 25-Year Period, the utility shall provide written notice to the new account holder of the steps necessary to continue service under the Grandfathered Tariff Provisions and allow a reasonable amount of time for compliance.

The utility should be permitted to verify that the facility is in compliance with the utility's net metering tariffs. In the event that the facility is not in compliance, the utility should provide written notification that the facility is no longer in compliance with the tariff and supply a written

¹⁵ Case No. 2008-00169, (Ky. PSC Jan. 8, 2009) at Appendix A, page 9.

list that documents what must be done to place the facility in compliance. The customer should be provided a reasonable amount of time to return the facility into compliance prior to any effort for the utility to terminate service under the Grandfathered Tariff Provisions.

- d. The Termination of Service for an Eligible Electric Generating Facility Subject to the 25-Year Period Should be Subject to Reasonable Safeguards.

KYSEIA acknowledges that utilities have a responsibility to abide by their tariffs and also provide safe and reliable service. KYSEIA submits, nonetheless, that the Commission may and should issue guidelines that include reasonable safeguards against the termination of service for an eligible electric generating facility, particularly those subject to the 25-Year Period.

The express intent of Senate Bill 100, in pertinent part, is to preserve the position of an eligible customer-generator that placed an eligible electric generating facility in service prior to the effective date of the initial net metering order to the net metering tariff provisions in place when the customer began taking service. Consistent with the legislative intent to protect these customers, the Commission's guidance should include reasonable safeguards relating to protection of the Grandfathered Tariff Provisions. The primary safeguards are written notice of noncompliance and a reasonable time to cure noncompliance.

RECOMMENDATIONS:

An expansion, repair, or replacement of an existing generating facility is permissible and does not terminate the 25-Year Period or applicability of the Grandfathered Tariff Provisions.

The utility may upon request by the customer or as required by statute, administrative regulation, order, or approved tariff, communicate with an eligible customer-generator concerning an expansion, repair, or replacement of a generating facility. Any objection to or disapproval of a proposed expansion, repair, or replacement shall be made in writing and shall contain the reasons for the objection or disapproval. Instances in which the expansion, repair, and replacement of existing generating components require approval should be specified.

The utility may make inspections, as necessary, of a repair or replacement. If a repair or replacement requires an approval, the review and approval shall not require a new application.

An interruption of the ongoing operating of a generating facility for the purpose of repair or replacement should not be grounds for termination of the net metering contract or the application of the tariff under which the customer takes service.

If an eligible customer-generator subject to the 25-Year Period submits an application to increase the generating facility capacity, the retail electric supplier may continue the benefit of Grandfathered Tariff Provisions to the customer. However, if the utility asserts that grandfathering is no longer applicable as a result of the application, prior to acting on an application, the retail electric supplier should be required to obtain, in writing, an acknowledgement and waiver from that customer that approval of the application places the Grandfathered Tariff Provisions at risk.

Each utility should adopt a clear and simple process for notice to the utility when a premise is sold or conveyed. Upon a change in the account holder for service to an account for an eligible electric generating facility subject to the 25-Year Period, the utility shall provide written notice to the new account holder of the steps necessary to continue service under the Grandfathered Tariff Provisions and allow a reasonable amount of time for compliance with the steps.

Each utility should be permitted to verify that the facility is otherwise in compliance with the utility's net metering tariffs. In the event that the facility is not in compliance, the utility should provide written notification that the facility is no longer in compliance with the tariff and supply a written list that documents what must be done to place the facility in compliance. The customer should be provided a reasonable amount of time to return the facility into compliance.

6. The 2019 Amendments to the Net Metering Act Revise the Circumstances in which the Retail Electric Supplier is no Longer Obligated to Offer Net Metering to Any New Customer-Generator.

Currently and through December 31, 2019, KRS 278.466(1) provides:

Each retail electric supplier shall make net metering available to any eligible customer-generator that the supplier currently serves or solicits for service. If the cumulative generating capacity of net metering systems reaches **one percent (1%) of a supplier's single hour peak load during the previous**

year, the obligation of the supplier to offer net metering to a new customer-generator may be limited by the commission. (emphasis added)

Effective January 1, 2020, as amended by Senate Bill 100, KRS 278.466 (1), will state:

Each retail electric supplier shall make net metering available to any eligible customer-generator that the supplier currently serves or solicits for service. If the cumulative generating capacity of net metering systems reaches one percent (1%) of a supplier's single hour peak load during a calendar year, the supplier shall have no further obligation to offer net metering to any new customer-generator at any subsequent time. (Emphasis added)

Senate Bill 100 revises the circumstances in which a retail electric supplier is no longer obligated to offer net metering service to any new customer-generators. Through December 31, 2019, and upon the cumulative generating capacity of net metering systems reaching one percent (1%) of a supplier's single hour peak load during the previous year, the Commission may limit the obligation to offer net metering to new customer-generators. On January 1, 2020, upon reaching this threshold, the supplier is no longer obligated to offer net metering to any new customers.

For a retail electric supplier that has tariff provisions concerning the availability of net metering service with language that is inconsistent with the version of KRS 278.466(1) that will be effective January 1, 2020,¹⁶ the retail electric supplier should issue and file, as soon as reasonable, a revised tariff with language in conformity with statute. For any retail electric supplier that does not have tariff provisions concerning the availability of net metering service, the utility should issue and file, as soon as reasonable, a revised tariff with language in conformity with KRS 278.466(1).

¹⁶ See, for example, *Schedule of Rates, Classifications Rules and Regulations for Electric Service of Duke Energy of Kentucky, Inc.*, P.S.C. KY. Electric No. 2, Fourth Revised Sheet No. 89, at page 1.

For notice to customers and potential applicants, the Commission should require each retail electric supplier to include in its annual report to the Commission, as a separate line item, the cumulative generating capacity of net metering systems as a percentage of the supplier's single hour peak load during the calendar year. Each retail electric supplier should provide written notice to the Commission upon the cumulative generating capacity of its net metering customers reaching or exceeding 0.9 percent of a retail electric supplier's single hour peak load during a calendar year.

The Commission should encourage each retail electric utility to keep its customers, and potential applicants for net metering service informed regarding its provision of net metering service and relevant information through its website, publications, and other communications. Once the cumulative generating capacity of net metering customers reaches or exceeds 0.9 percent of a retail electric supplier's single hour peak load during a calendar year, the utility should update its information on its website on a weekly basis and take steps to make sure that its customer service representatives who answer questions and process net metering applications have up-to-date information.

For each electric utility required by 807 KAR 5:058 to file an Integrated Resource Plan with the Commission, the plan should include a specific discussion of the utility's net metering systems, the cumulative generating capacity of net metering systems, single peak hour load, and projections of growth in the capacity of net metering systems and the single peak hour load over the course of the period covered by the plan.¹⁷

While the revised KRS 278.466(1) relieves the obligation of a retail electric supplier from offering net metering to any new customer generators upon reaching the one percent (1%)

¹⁷ See, for example, Case No. 2017-00384, *Integrated Resource Plan of Big Rivers Electric Corporation*, (Ky. PSC Oct. 1, 2019) at 46.

threshold, the Commission should require the closing of net metering service to be through issuing and filing revised tariffs with the Commission which state that the net metering tariff is no longer available for new customer generators and which establishes a new method of interconnection for new customer generators.

RECOMMENDATION:

Each retail electric supplier that has tariff provisions concerning the availability of net metering service with language that is inconsistent with the version of KRS 278.466(1) that will be effective January 1, 2020, the retail electric supplier should issue and file, as soon as reasonable, a revised tariff with language in conformity with statute.

For any retail electric supplier that does not have tariff provisions concerning the availability of net metering service, the utility should issue and file, as soon as reasonable, a revised tariff with language in conformity with KRS 278.466(1).

The Commission should require each retail electric supplier to include in its annual report to the Commission, as a separate line item, the cumulative generating capacity of net metering systems as a percentage of the supplier's single hour peak load during the calendar year.

Each retail electric supplier should provide written notice to the Commission upon the cumulative generating capacity of its net metering customers reaching or exceeding 0.9 percent of a retail electric supplier's single hour peak load during a calendar year.

The Commission should encourage retail electric utilities to keep customers and potential applicants for net metering service informed regarding the system statistics through its website, publications, and other communications. Each retail electric utility should take steps to ensure that its customer service representative who answer questions and process net metering application have up-to-date information, particularly once the utility reaches or exceeds the 0.9 percent threshold.

For each electric utility required by 807 KAR 5:058 to file an Integrated Resource Plan with the Commission, the plan should include a specific discussion of the utility's net metering systems, the cumulative generating capacity of net metering systems, single peak hour load, and projections of growth in the capacity of net metering systems and the single peak hour load over the course of the period covered by the plan.

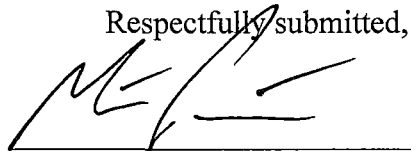
While the revised KRS 278.466(1) relieves the obligation of a retail electric supplier from offering net metering to any new customer generators upon reaching the one percent (1%) threshold, the Commission should require the closing of new metering service to be through issuing and filing a revised tariffs by the Commission which state that the net metering tariff is no longer available for new customer generators and establishes a new method of interconnection for new customer generators.

CONCLUSION

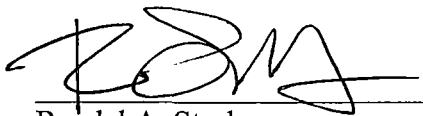
KYSEIA appreciates the opportunity to provide the Kentucky Public Service Commission with comments regarding the implementation of the 2019 amendments to Kentucky's Net Metering Act. KYSEIA hopes that the Commission finds these comments of assistance and looks forward to the opportunity to again assist the Commission by providing more detailed comments in further proceedings including the individual rate-making proceedings.

WHEREFORE, the KYSEIA submits its Written Comments concerning the implementation of Senate Bill 100, the 2019 Amendments to Kentucky's Net Metering Act into the record of the instant case.

Respectfully submitted,



Matthew Partymiller, President
The Kentucky Solar Industries Association



Randal A. Strobo
David E. Spenard
STROBO BARKLEY PLLC
239 S 5th St, Ste 917
Louisville, KY 40202
(502) 290-9751 - telephone
(502) 378-5395 - facsimile
rstrobo@strobobarkley.com
dspenard@strobobarkley.com
www.strobobarkley.com