

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY)	
KENTUCKY, INC. FOR (1) AN ADJUSTMENT OF)	
ELECTRIC RATES; (2) APPROVAL OF NEW)	CASE NO.
TARIFFS; (3) APPROVAL OF ACCOUNTING)	2022-00372
PRACTICES TO ESTABLISH REGULATORY)	
ASSETS AND LIABILITIES; AND (4) ALL OTHER)	
REQUIRED APPROVAL AND RELIEF)	

KENTUCKY SOLAR INDUSTRIES ASSOCIATION, INC.
WRITTEN COMMENTS

Comes now the Kentucky Solar Industries Association, Inc. (“KYSEIA”), by and through counsel, and submits its written comments for the Commission’s investigation into the Duke Energy Kentucky, Inc. (“Duke”) application in the instant proceeding.

INTRODUCTION

KYSEIA is a Kentucky 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 including within Duke’s service area.

KYSEIA’S objective is to provide leadership and promote sound policy in Kentucky as the power sector enters the solar age and has been an active participant in Commission proceedings concerning net metering, qualifying facilities (“QF”), and

interconnection.¹ KYSEIA has also been a party to each of the first three (3) application for rate adjustments for establishing rates for net metering service and QF rates.² KYSEIA also been active in consumer advocacy on behalf of net metering customers in Commission dockets concerning complaints regarding net metering.³ Each record in these latter proceedings speaks for itself. The Kentucky Office of the Attorney General (“KY OAG”) is not active in offering protection for or advocacy on behalf of net metering

¹ Case No 2022-00190, *Electronic Investigation of the Fuel Adjustment Clause Regulation 807 KAR 5:056, Purchased Power Costs, and Related Cost Recovery Mechanism*, (“Case No. 2022-00190 – FAC”) Written Comments (filed Dec. 2, 2022); Case No. 2020-00302, *Electronic Investigation of Interconnection and Net Metering Guidelines*, (“Case No. 2020-00302 – Interconnection”) (Ky. P.S.C. Nov. 6, 2020) (Order granting KYSEIA intervention); and Case No. 2019-00256, *Electronic Consideration of the Implementation of the Net Metering Act*, (“Case No. 2019-00256 – Implementation”) (Ky. P.S.C. July 30, 2019) (Order opening proceeding).

² Case No. 2020-00350, *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 Advance Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatment, and Establishment of a One-Year Surcredit*, (“Case No. 2020-00350 – LG&E”) (Ky. P.S.C. Dec. 30, 2020) (Order granting KYSEIA intervention); Case No. 2020-00349, *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 – KU”) (Ky. P.S.C. Dec. 30, 2020) (Order granting KYSEIA intervention); and 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 – KPC”) (Ky. P.S.C. July 15, 2020) (Order granting KYSEIA intervention).

³ Case No. 2021-00324, *Joseph J. Oka, Complainant, v. Duke Energy Kentucky, Inc.*, (“Case No. 2021-00324 – Oka”) Written Comments (filed Mar. 25, 2022); and Case No. 2020-00332, *Electronic Investigation Into Kenergy Corp.’s Compliance with KRS 278.160 and Its Net Metering Tariff*, (“Case No. 2020-00332 – Kenergy”) Written Comments (filed Dec. 28, 2020).

customers in the face of violations by jurisdictional utilities of their respective net metering tariffs.

KYSEIA offers these written comments to the Commission in the instant proceeding because it is unlikely that any party will advance the interests of net metering customers.⁴ Duke's proposal for a separate application for adjusting net metering rates is contrary to the intent of KRS 278.466 and is a request for the Commission to engage in single-issue ratemaking. Duke's discussion concerning its Clean Energy Connection ("CEC") initiative is premature and is a request for the Commission to provide an "advisory" approval of a proposal that is not yet sufficiently defined.

1. Duke's Proposal for a Separate Application for Adjustment Net Metering Rates is Contrary to the Intent of KRS 278.466 and is a Request for the Commission to Engage in Single-Issue Ratemaking.

Duke is not proposing any revisions to its net metering tariff sheet in the instant case.⁵ Instead; Duke proposes to "separately" engage in single-issue ratemaking in a subsequent application.⁶ Duke states that "given the complexities and time requirements to fully address net metering topics," a separate proceeding is appropriate.⁷

⁴ Because Duke intentionally chose not to propose, as part of its pending application, a change in its net metering rates (or QF rates), KYSEIA did not seek intervention into the instant proceeding. Because Duke states that it plans on filing a successive application for net metering rates, KYSEIA opts to file written comments in this proceeding and seek intervention into the single-issue ratemaking application Duke files for proposing changes to its net metering rates.

⁵ Application, Volume 14, Direct Testimony of Bruce L. Sailors ("Sailors Direct Testimony"), (tendered Dec. 1, 2022) at page 30.

⁶ *Id.*

⁷ *Id.*

KYSEIA does not take issue with Duke's statutory right to propose for implementation net metering rates for each eligible electric generating facility entering into service "after the initial net metering order by the commission in accordance with subsection (3) of this section [KRS 278.466]."⁸ KYSEIA takes exception to the premise touted by Duke that KRS 278.466 affords Duke a right to engage in single-issue ratemaking. The statute does not contain or describe any such right.

KRS 278.466(3), at pertinent part, states that net metering service Successor Rates to be used for compensating eligible customer-generators "shall be set by the commission using the ratemaking processes under this chapter during a proceeding initiated by a retail electric supplier." The rates are set "[u]sing the ratemaking process provided by this chapter [KRS Chapter 278]."⁹

KRS 278.180 states how changes in rate are made. KRS 278.190 describes the procedure, for KRS Chapter 278, when a new schedule of rates is filed. 807 KAR 5:001, Section 16, among other provisions and requirements, describes the filing requirements to support a request for a general adjustment of rates. Duke is required to following these statutory and administrative requirements for its pending rate application; however, unlike Kentucky Power Company, Kentucky Utilities Company, and Louisville Gas and Electric Company, Duke does not want to follow these requirements for establishing its net metering Successor Rates.

⁸ See KRS 278.466 (5) and (6). Note: For these Written Comments, KYSEIA identifies the net metering rates established through an initial net metering order as "NMS-2" or "Successor Rates."

⁹ KRS 278.466(6).

In terms of guidance for applications to implement Successor Rates, the Commission stated:

The Commission's goal is to ensure fair, just, and reasonable rates **for net metered and non-net metered customers alike**. (Emphasis added)¹⁰

...

Additionally, although we do not make a finding on this point, the Commission agrees with certain commenters and stakeholders that proceedings under the Net Metering Act **should be thorough and transparent**. The Commission will carry out proceedings under the Net Metering Act in an organized and fair process, **similar to the procedures employed in regular rate and tariff filings**, which will include the opportunity for discovery and intervenor testimony, if necessary. (Emphasis added)¹¹

There is a clear, logical linkage between net metered and non-net metered customers when establishing fair, just, and reasonable rates, and, to date, Successor Rates have been proposed by utilities (appropriately so) as part of applications for a general adjustment of rates through which the interests of all customers, including net metered and non-net metered customers alike, are investigated and balanced. Establishment of Successor Rates as part of an application for a general adjustment in rates comports with the process established in KRS Chapter 278 and implements the statutory intent of KRS 278.466.

There are ample instances in KRS Chapter 278 through which the General Assembly identifies a clear intent to separate out consideration of certain ratemaking matters outside of a general adjustment in rates. Among other ratemaking mechanisms,

¹⁰ Case No. 2019-00256 – Implementation (Ky. P.S.C. Dec. 18, 2019), at page 31.

¹¹ *Id.*

KRS 278.023 (surcharge for certain federally-funded projects); 278.183 (surcharge for certain compliance costs); KRS 278.271 (purchase of electric power from a biomass energy facility); and KRS 278.509 (natural gas pipeline replacement program). If it had been the intent of the General Assembly have Successor Rates set in the manner proposed by Duke, it would have provided single-issue ratemaking instructions in KRS 278.466. It did not.

Whatever the limits of the Commission's plenary authority to set rates, a utility's rights are not coextensive with the Commission's discretionary authority for implementing KRS Chapter 278. Otherwise stated: Even in a scenario in which the Commission determines that a methodology not expressly established in statute is permissible, it does not follow that the Commission is required to permit use of a non-statutory mechanism. Duke has a statutory right to propose successor rates through an application for a general adjustment in rates pursuant to KRS 278.180 and KRS 278.190. It does not have any right to use a different process.

The Commission expressly addressed the resources it will allocate to a review of proposals for net metering Successor Rates.

Although the Commission Staff is well prepared to facilitate the disposition of ordinary rate cases, the initial proceedings under the amended Net Metering Act are not ordinary matters.

...

[T]he Commission will award a contract for a consultant to assist us in reviewing, analyzing, and evaluating new net metering tariffs, alternative rate designs, and net metering rate applications, for the purpose of establishing utility-specific compensation rates for net metered customers. The Commission believes that the engagement of an outside, independent, consultant to help review and analyze the filings in proceedings under the Net Metering Act will bring to bear

expertise and experience from other states and proceedings that Commission staff itself does not possess.¹²

KYSEIA agrees with Duke that Successor Rates are complex matters. Nonetheless: As it did for three prior dockets regarding Successor Rates, the Commission applies the resource that it needs to fully consider the various matters. The Commission review of applications for Successor Rates has been, consistent with the principle set forth in Case No. 2019-00256, alongside and as part of the review of all rates, those of both net metered and non-net metered customers. Duke's proposal cuts against both the statutory intent for KRS Chapter 278 and Commission precedent.

Duke's proposal for singling out net metering customers is no different in character from a proposal to adjust rates only for a particular customer class in the absence of the remaining customers. There is no difference between what Duke is proposing for its net metering customers and a proposal to adjust rates for residential customers in isolation from the remaining customer classes. The proposal is contrary to the guidance provided by the Commission in Case No. 2019-00256 and understood and respected by Kentucky Power Company, Kentucky Utilities Company, and Louisville Gas and Electric Company in their respective pursuits of Successor Rates.

While the Commission cannot pre-adjudicate an application that is not yet filed, the Commission is certainly entitled to comment upon Duke's proposal to engage in single-issue ratemaking. Duke's divide and conquer mentality is clearly against the legislative intent of KRS 278.466 and Commission precedent. As it was in the instant case, Duke is entitled to propose implementation of Successor Rates in an application for a general

¹² *Id.*, at page 33.

adjustment in rates. It may propose the implementation of Successor Rates in its next application for a general increase in rates.

2. Duke's Discussion Concerning Its Clean Energy Connection ("CEC") Initiative is Premature and is a Request for the Commission to Provide an "Advisory" Approval of a Proposal that is not Sufficiently Defined.

Duke requests approval of a placeholder tariff in this proceeding.¹³ Per Duke:

If the Commission approves this **concept** in this proceeding, the Company will aggressively obtain initial subscriptions and file a CPCN for approval of the actual CEC project. (Emphasis added)¹⁴

Thus, Duke acknowledges that its ability to move forward with such an initiative is dependent upon a specific proposal supported by and requiring a certificate of convenience and public necessity to be pursued in a future proceeding. Rather than wait until it can present a specific proposal in combination with a CPCN application, Duke adds a request for consideration of its CEC concept in this proceeding.

The irony, of course, is that Duke, the same utility that finds, for itself, net metering much too complex a subject to include as part of its application for a general adjustment in rates, offers in support of its CEC concept a "value stack [that] resembles the avoided cost categories the Commission has established in net metering cases including generation capacity, energy, ancillary services, transmission, distribution, environmental, and carbon."¹⁵ While Duke asserts that net metering is too tough for consideration in this

¹³ Application, Volume 13, Direct Testimony of Paul L. Halstead ("Halstead Direct Testimony"), (tendered Dec. 1, 2022) at page 21.

¹⁴ *Id.*

¹⁵ Sailors Direct Testimony at page 20; also see Halstead Direct Testimony at pages 12 and 13.

proceeding, it includes within its CEC concept advocacy the request for the Commission to compare the CEC Program to a net metering framework.¹⁶

It is also noteworthy to point out that much of the information supporting Duke's value analysis is withheld from public scrutiny.¹⁷ Setting aside the fact that Duke's analysis is untested, concealing information concerning the development of rates Duke proposes to recover from its customers through its CEC initiative cuts against the Commission's stated objective of proceedings that impact net metering rates be "thorough and transparent."¹⁸

As with the development of a cost of service study Duke asserts should be fixed in this proceeding for use in a future net metering proceeding,¹⁹ Duke likewise seeks to fix in this proceeding determinations concerning the value stack for avoided costs for use in a future net metering proceeding. Yet again, Duke employs a divide and conquer mentality for advancing its advocacy against net metering.

The costs of the CEC initiative are unspecified, and Duke concedes that the supporting calculations for Rider CEC Tariff Charges are not provided.²⁰ The analysis that Duke provides is, by design, not transparent. The initiative is wholly and necessarily dependent upon the grant of a CPCN in a future proceeding. The request by Duke for an

¹⁶ Halstead Direct Testimony at pages 12 and 13; Attachment PLH-1.

¹⁷ *Id.*, at pages 14 through 17.

¹⁸ Case No. 2019-00256 – Implementation (Ky. P.S.C. Dec. 18, 2019), at page 31.

¹⁹ See Sailors Direct Testimony at page 30. There is no general principle through which a cost of service study is conclusive or binding upon the Commission or any party in a subsequent proceeding.

²⁰ Sailer Direct Testimony at page 20.

approval of the CEC initiative is a request for the Commission to issue the equivalent of an advisory opinion approving the subject.

The renewable generation asset(s) will be part of the overall Duke Energy Kentucky generation.²¹ In that Duke plans to park within its generation fleet and allocate “to all customers like any other rate-based asset” the costs of unsubscribed amounts,²² Duke should not be given any type of green light to move forward in soliciting subscriptions until it is prepared to present a defined proposal, specifically one that allows potential subscribers to compare Duke’s CEC initiative along side of net metering alternatives.

When pressed upon the issue, Duke concedes, among other things, the following:

The final subscription will be determined once the asset's CPCN is filed. Duke Energy Kentucky is filing in this proceeding the framework for the program to ensure any questions regarding the program’s framework/mechanics are answered. Once the underlining asset(s) are at a point that subscription/bill credits can be finalized, Duke Energy Kentucky will file the program values for Commission approval.²³

Duke’s request for consideration of its CEC initiative is premature. It acknowledges that Duke cannot finalize subscription/bill credits at this time; yet it alleges that, somehow, marketing efforts require Commission approval of a (generously self-described) “framework” while subscription/bill credits are tentative and program values available to potential subscribers are not known. The Commission should decline Duke’s invitation for

²¹ Duke Response to KY OAG 1-34 (filed Jan. 25, 2023).

²² Duke Response to KY OAG 1-42(b) (filed Jan. 25, 2023).

²³ Duke Response to KY OAG 1-21(a) (filed Jan. 25, 2023).

an advisory approval of its CEC initiative. If Duke's true intent was to limit if not reduce complexities, it would have deferred introduction of the CEC Program initiative until no earlier than its readiness to seek the Certificate of Public Convenience and Necessity ("CPCN") that Duke concedes is necessary to move forward with its plan and in a proceeding in which the value stack could be considered for both a substantially final CEC initiative and net metering Successor Rates.²⁴

WHEREFORE, KYSEIA submits its Written Comments with a request for the Commission to place Duke on notice that KRS 278.466 does not specify single-issue ratemaking for net metering Successor Rates and any proposal for adjusting net metering rates should occur as part of an application for a general rate adjustment. FURTHER, KYSEIA requests the Commission decline Duke's invitation for an advisory approval of its CEC "framework" and, instead, advise Duke that consideration of such a proposal is properly deferred until no earlier than when Duke can offer a specific proposal rather than a simple "framework."

Respectfully submitted,

/s/ David E. Spenard

Randal A. Strobo

David E. Spenard

STROBO BARKLEY PLLC

730 West Main Street, Suite 202

Louisville, Kentucky 40202

Phone: 502-290-9751

Facsimile: 502-378-5395

Email: rstrobo@strobobarkley.com

Email: dspenard@strobobarkley.com

Counsel for KYSEIA

²⁴ Halstead Direct Testimony at page 3.