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PUBLIC SERVICE COMMISSION

Via Electronic Submission

Linda C. Bridwell, P.E., Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602

RE: Case No. 2023-00153, *Electronic Tariff Filing of East Kentucky Power Cooperative, Inc. and Its Member Distribution Cooperatives for Approval of Proposed Changes to Their Qualified Cogeneration and Small Power Production Facilities Tariffs*.

Dear Ms. Bridwell:

Please accept these Written Comments of the Kentucky Solar Industries Association, Inc. (KYSEIA), by and through counsel, with the request that they be placed into the Kentucky Public Service Commission's (PSC and Commission) file for the above-styled Case No. 2023-00153. KYSEIA's focus is upon, among other things, the promotion of the exchange of knowledge for solar energy and advocacy on behalf of solar energy constituents and members. KYSEIA appreciates the opportunity to provide these comments and hopes that they will present issues and develop facts that will assist the PSC in fully considering the instant case.

Case No. 2023-00153

Case No. 2023-00153 concerns the Commission's review of a filing of East Kentucky Power Cooperative, Inc. (EKPC) and its member distribution cooperatives (Member Cooperatives) which revises the tariff provisions for qualified cogeneration and small power production (COGEN/SPP) facilities. The proposed tariff sheets tendered to the Commission at issue include:

- COGEN/SPP Rate Schedule Over 100 kW from Dispatchable Generation Resources (P.S.C. No. 35, *Seventh* Revised Sheet No. 39);
- COGEN/SPP Rate Schedule Equal to or Less than 100 kW from Dispatchable Generation Resources (P.S.C. No. 35, *Seventh* Revised Sheet No. 42);
- COGEN/SPP Rate Schedule Over 100 kW from Non-Dispatchable Generation Resources (P.S.C. No. 35, *Seventh* Revised Sheet No. 44);

- COGEN/SPP Rate Schedule Equal to or Less than 100 kW from Non-Dispatchable Resources (P.S.C. No. 35, *Seventh* Revised Sheet No. 46).

Qualified cogeneration and small power production facilities are each a type of non-utility owned electric generation facility recognized under the federal Public Utilities Regulatory Policy Act (PURPA) as Qualifying Facilities (also known as "QFs"). Implementation of PURPA is a dual or shared federal and state effort; therefore, the instant case presents the intersection of federal statutes and regulations and Kentucky statutes and regulations.

Federal law encourages the development of Qualifying Facilities and central to this development are the federal rules governing the sale and purchase of electricity by and between electric utilities and Qualifying Facilities. Implementation of these rules, however, is a matter of state regulatory authority. Adding further complexity to this matter is EKPC's participation in PJM Interconnection, LLC (PJM), a regional transmission organization (RTO) that coordinates the movement of wholesale electricity in all or parts of 13 states and the District of Columbia.[1] Case No. 2023-00153, therefore, concerns PURPA, KRS Chapter 278, and PJM.

In the instant case, among other things, EKPC proposes to reduce the capacity rate set forth in the rate schedules for dispatchable QFs from $18.81 per kW per year to zero ($0.00). EKPC proposes to leave the capacity rate set forth in the rate schedules for non-dispatchable QFs at zero ($0.00).[2] In support of establishing a zero ($0.00) capacity rate for both dispatchable and non-dispatchable QFs, EKPC states that it "does not need capacity during the PURPA horizon."[3]

KYSEIA's primary concerns are that EKPC did not reasonably adhere to the Commission's instructions when preparing and presenting this tariff filing, EKPC presents matters regarding these three (3) subjects somewhat in isolation from one another rather than in a fully-integrated, forward-looking discussion, and EKPC's tariff proposals at issue continue to undervalue the capacity contribution of QFs.

The PSC's Instructions to EKPC for this Filing Were Clear. EKPC's Filing Did Not Adhere to the Instructions.

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[1] https://www.pjm.com/about-pjm "About PJM"

[2] March 31, 2023 Letter from Issac S. Scott to Linda C. Bridwell, P.E., filed in support of tariff ("March 31, 2023 Letter").

[3] March 31, 2023 Letter at page 3. The footnote in the letter states that the standard term for EKPC's PURPA contract is five years.

As the March 31, 2023 letter filed in support of the instant filing demonstrates, EKPC was aware of the Commission directive that EKPC "in subsequent tariff update filings 'develop a robust record upon which avoided costs can be calculated.'"[4] The directive traces back to the Commission's discussion regarding the reasonableness of then-proposed revisions to tariffs for purchases from qualified cogeneration and small power production facilities at issue in Case No. 2021-00198 wherein the Commission stated:

> [I]n future filings, the Commission expects EKPC to develop a robust record upon which avoided costs can be calculated. In those future filings, EKPC should provide the most recent BRA [Base Residual Auction] and the actual cost for a unit of physical capacity, both if the capacity was purchased or built. Additionally, in those future filings EKPC should include robust information on the use of ELCC [Effective Load Carrying Capability] or like-kind calculations to determine the capacity contribution of non-dispatchable resources. The Commission believes it is patently contrary to the weighty evidence provided to it over numerous matters to assert that non-dispatchable resources provide no contribution to capacity, and therefore, should be compensated $0 for capacity. Maintaining such a position is also contrary to the rule applied to the PJM Capacity market that EKPC seeks this Commission to adopt prices from.[5]

From the above, three (3) elements of expected information for this filing were clearly identified.

- The most recent BRA;
- The actual cost for a unit of physical capacity, both if the capacity was purchased or built; and
- Robust information on the use of ELCC or like-kind calculations to determine the capacity contribution of non-dispatchable resources.

A review of EKPC's March 31, 2023 letter tendered in support of the filing reveals that these three (3) elements were ignored. EKPC's discussion of ELCC and BRA is limited to demonstration of a potential performance penalty. Information concerning the actual cost for a unit of physical capacity, both if the capacity was purchased or built, is absent. EKPC,

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[4] March 31, 2023 Letter at page 1.

[5] Case No. 2021-00198, *Electronic Tariff Filing of East Kentucky Power Cooperative, Inc. and Its Member Distribution Cooperatives for Approval of Proposed Changes to Their Qualified Cogeneration and Small Power Production Facilities Tariffs*, (Ky. P.S.C. Oct. 26, 2021), at pages 9 and 10 (footnote omitted). Note: Although EKPC sought rehearing of this Order, it was denied by an Order entered November 30, 2021.

instead, provided the information of its choice in support of the filing rather than a foundation that works from the identified elements. This deficiency was recognized by the Commission when establishing this investigation.[6]

The Commission expressly tailored the information it needs from EKPC to properly consider these issues and carry out its responsibilities under federal and state laws. The subsequent presentation of the schedules contains a significant shortfall. In a complex area in which the Commission seeks for EKPC and its Member Cooperatives, the various stakeholders, and itself to all get on the same page (which is difficult enough given the enormity of the laws, regulations, and rules that apply), EKPC went in a separate direction.

The March 31st letter fails to meet the expectations of the Commission's instructions.[7] KYSEIA (and quite likely any party or stakeholder) seeks the orderly presentation of evidence necessary for the Commission's consideration on a matter of extreme importance. When the Commission's instructions are not followed, the result for stakeholders is unduly complicated proceedings with increased difficulty for providing timely written comments on core issues identified by the Commission. Information sought by the Commission concerning capacity cost and contribution differs somewhat from information concerning the need for or advisability of planning for the addition of capacity.

EKPC states:

> [T]here are significant headwinds which make the task of providing adequate, efficient and reasonable service to consumers at rates that are fair, just and reasonable more complicated.
>
> …
>
> Since submission of that IRP for instance, the Environmental Protection Agency is currently promulgating nearly a dozen new rules that would force utilities to retire baseload generation resources prematurely in favor of non-dispatchable resources that are less reliable and often non-productive during periods of early morning peak-demand periods.[8]

Because of the complexity of relationships between regulators and laws and rules, more information rather than less is required, particularly since EKPC itself acknowledges that significant changes are occurring with current impacts. KYSEIA has no desire to limit

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[6] (Ky. P.S.C. May 25, 2023).

[7] *Id.*

[8] EKPC Response to PSC Staff's 2nd Request for Information (filed July 31, 2023), Item 5 at page 2 ("EKPC Response PSC Staff __-__").

EKPC in its presentation of evidence and arguments in support of its tariff filing. The information contained in the March 31, 2023, letter is relevant and valuable. In fact, KYSEIA encourages EKPC to supply information and discussion beyond the minimum requirements so that the Commission and interested parties can fully analyze the issue of avoided costs.[9] Therefore; EKPC following the Commission's instructions while simultaneously presenting additional evidence and arguments were clearly compatible options. Nevertheless, providing the information sought by the Commission is paramount.

EKPC Fails to Present a Fully-Integrated Discussion of the Issues.

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[9] As the Commission has noted in the previous FERC petition filed against it by EKPC (Docket No. EL22-50-000, dismissed), and in the subsequent appeal filed against it by EKPC in U.S. District Court, Eastern District of Kentucky (Case No. 3:22-CV-00063, pending), the burden is on EKPC to produce a robust record for the PSC to make findings on EKPC's proposed avoided cost capacity rate. *See Protest and Answer of Ky. P.S.C. in Opposition to the Petition of East Kentucky Power Cooperative, Inc*. at 16, FERC Docket No. *EL22-50-000* (Apr. 9, 2022) ("The burden lies with EKPC to present a transparent, viable methodology along with reasonable alternatives to the Kentucky PSC in order to determine an appropriate avoided cost of capacity. The final decision, however, lies with the Kentucky PSC."); *Defendant's Motion to Dismiss* at 6, Case No. 3:22-CV-00063 (E.D. Ky. Dec. 5, 2022) ("The PSC opined that it expected EKPC to use future tariff filings to develop a more robust record including the most recent BRA results, EKPC's actual cost for a unit of physical capacity, whether purchased or built, and information regarding the capacity contribution of non-dispatchable resources, upon which the PSC could make findings and best determine the most appropriate proxy for EKPC's avoided capacity cost rate going forward"); *Id*. at 17 ("Whether a utility has a defined capacity need can only be made through a finding by the PSC—a utility cannot determine this on its own. Each utility has the burden to prove that the conditions of its system, i.e., the amount and nature of capacity, would not allow for the avoidance of capacity costs in order to be relieved from the obligation to make capacity payments"); *Defendant's Motion to Dismiss* at 7, Case No. 3:22-CV-00063 (E.D. Ky. Jul. 28, 2023) ("The PSC stated that it expected EKPC to use future tariff filings to develop a more robust record including the most recent BRA results, EKPC's actual cost for a unit of physical capacity, whether purchased or built, and information regarding the capacity contribution of non-dispatchable resources, upon which the PSC could make findings and best determine the most appropriate proxy for EKPC's avoided capacity cost rate going forward"); *Id*. at 14 ("EKPC's quibble with the PSC's regulations is not that the regulations do not allow for a utility to pay $0 for QF capacity (they do) but that EKPC does not want to go through the process of making such a showing. Instead EKPC is relying upon the Court to make a quite sweeping pronouncement that, once a utility (and not a regulatory body) determines the utility has excess capacity to meet its load requirements, it no longer has an obligation to provide payment for QF capacity"). EKPC has failed to produce that record, and the record it has produced suggests that capacity rate schedules for dispatchable and non-dispatchable QFs at zero dollars ($0.00) undervalues the capacity contribution of QFs. The record certainly does not reflect that a capacity performance penalty should be included.

As noted above, the tariff filing at issue falls within the scope of three (3) subject area, the federal law, state law, and PJM rules. EKPC identifies a decision of the Federal Energy Regulatory Commission (FERC) for the premise that avoided capacity costs can be zero.[10] EKPC asserts that it does not need capacity during the Public Utilities Regulatory Policy Act (PURPA) horizon, "therefore its avoided capacity rate for both dispatchable and non-dispatchable Small Power Production and cogeneration facilities is $0."[11] It is an unduly narrow discussion of capacity.[12]

EKPC, a winter peaking utility, states that its PJM capacity obligation is based on its summer load.[13] EKPC conveys that it has from 497 MW to 192 MW of excess summer generation through 2038.[14] Thus, EKPC does not state a need for summer capacity through 2038, and EKPC meets PJM's capacity requirements. However, in terms of capacity, those facts are not the only considerations. EKPC remains subject to KRS 278.030(2), and winter capacity is equally important to consider.[15] Otherwise stated: The fact that EKPC has excess when contemplating PJM's requirements does not obviate EKPC's requirements under state law.

On this point, EKPC reasons:

> EKPC will satisfy its obligations by making monthly or seasonal purchases based on the economic analysis. If EKPC were to acquire or construct a new capacity resource anytime there was a small forecasted deficit, the cost to consumers would outweigh the marginal risk of making a monthly or seasonal purchase from

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[10] March 31, 2023 at page 2.

[11] *Id.*

[12] For example, within EKPC's owner-members' service territories alone, thirty-two new projects yielded $2.89 billion in new investment and over 2,000 new jobs. The load growth associated with this economic development activity is also taken into account as EKPC considers how best to optimize its future fleet. The transition of the transportation sector from petroleum based fuels to electric energy also promises to dramatically impact future utility loads although the timing and extent of this transition remains very imprecise. EKPC Response to PSC Staff 2-5.

[13] EKPC Response to PSC Staff 2-4.

[14] EKPC Response to PSC Staff 1-1.

[15] It is in many instances difficult to conclude that EKPC is conveying anything other than the position that it has ***no*** capacity needs until its summer capacity falls below the PJM (summer) capacity obligation.

> the market. Nevertheless, EKPC remains committed to having "steel on the ground" to meet its known and anticipated load in a reasonable least-cost manner.[16]

Further demonstrating this lack of a fully integrated discussion is that fact that EKPC acknowledges the aforementioned pending promulgation of rules by the U.S. EPA that could result in resource retirements that affect the PJM capacity market when it suits its narrative, yet EKPC's discussion fails to address the potential effects on its capacity needs, whether during the summer or winter season.

Through its plain language, EKPC's response suggests that QFs, both dispatchable and non-dispatchable, have no value as a resource in addressing a capacity deficit or avoiding acquisition or construction of capacity unless or until there is a large forecasted deficit. The position remains contrary to the evidence that non-dispatchable (as well as dispatchable) resources provide contribution to capacity.[17] While EKPC's position is clear, the supporting analysis is not.

EKPC, nonetheless, adds:

> Capacity markets, which are intended to provide clear pricing signals to encourage the development of new generation resources, are out of step with actual grid reliability needs and are the subject of numerous stakeholder efforts at PJM and proceedings before the Federal Energy Regulatory Commission.[18]

EKPC's information in support of its tendered tariff sheets is woefully inadequate to identify those clear pricing signals. Upon consideration of EKPC's requirements under KRS Chapter 278 with its winter generation needs, which show a deficit in 2028 - within the time-frame of EKPC's standard PURPA contract, its valuing the capacity rate of dispatchable and non-dispatching QFs at zero will likely ensure that QFs will have no value as a resource. This approach seems directly at odds with both PURPA and KRS Chapter 278. It is also unreasonably limited because EKPC acknowledges that these types of resources are at the center of the discussions concerning the future of generation.[19] EKPC does not offer a fully-integrated discussion. The filing fails to articulate and reconcile the actual grid reliability needs with the capacity issues presented.

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[16] Staff 1-1b.

[17] Case No. 2021-00198 (Ky. P.S.C. Oct. 26, 2021) at page 9.

[18] EKPC Response to PSC Staff 2-5.

[19] EKPC Response to PSC Staff 2-5.

Turning to the matter of the PJM's capacity performance mechanism and potential penalties levied on resources that do not perform during capacity emergencies, the Commission should consider several highly relevant factors that EKPC conveniently ignores. First, to the best of KYSEIA's knowledge, the PJM has only broadly triggered the Performance Assessment Interval ("PAI") structure on one occasion, during Winter Storm Elliott, since the Capacity Performance system went into effect in 2016.[20] Second, there is no factual basis for assuming that any future PAI calls would occur during hours of poor QF generation (e.g., night time for standalone solar resources), Such events could just as easily occur during a hot summer afternoon, in which case solar resources could receive performance awards rather than penalties.

Finally, the entire character of capacity performance and performance penalties in the coming years will likely be different than the structure that existed during Winter Storm Elliot. Among other things, the PJM recently received approval from the FERC to revise and narrow the PAI trigger conditions starting June 1, 2023.[21] This makes it comparatively less likely that PAIs will be triggered in the future (although an event such as Winter Storm Elliot would still do so). Second, the PJM's Critical Issue Fast Path – Resource Adequacy ("CIFP-RA") stakeholder group has been considering a variety of capacity market reforms that could materially change the capacity performance structure. It is our understanding that the CIFP-RA group may have voted on advancing one or more of such reforms at its August 23, 2023 meeting, but as of this writing the meeting results do not appear to be available. A PJM filing with the FERC is anticipated to be filed by October 1.[22] We believe that it would be inadvisable to reach any decisions on the risks of performance penalties of the type that EKPC describes while the underlying market rules are in flux.

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[20] See PJM Tariff Filing in FERC Docket No. ER23-1996, stating at p. 3 "While the Capacity Performance construct was established in 2016, there have been only a few and localized Performance Assessment Intervals, which had been limited in duration, until the first RTO wide Emergency Action was declared during Winter Storm Elliott." Available at: https://www.pjm.com/directory/etariff/FercDockets/7379/20230530-er23-1996-000.pdf

[21] FERC Docket No. FERC Docket No. ER23-1996, Order dated July 28, 2023. Available at: https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20230728-3053

[22] *See* PJM CIFP-RA materials, available at: https://www.pjm.com/committees-and-groups/cifp-ra

WHEREFORE, KYSEIA submits its written comments to this Commission and requests that the Commission take them into consideration during its review of the instant proceeding.

Respectfully submitted,

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