COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC PETITION OF KENERGY CORP. FOR A DECLARATORY ORDER	))	CASE NO. 2023-00309

O R D E R

On September 13, 2023, Kenergy Corp. (Kenergy) filed a petition for declaratory order requesting an interpretation of a section of its Schedule 46 (Net Metering) of its Tariff. On September 14, 2023, the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General) filed a motion to intervene. The Commission granted the motion on October 3, 2023. On November 13, 2023, Attorney General filed a response to Kenergy's petition.

On October 13, 2023, the Kentucky Solar Energy Industry Association (KYSEIA) filed a motion to intervene. The Commission denied the motion on October 20, 2023, and stated that KYSEIA could file, as a non-party, a response to Kenergy's petition. On November 20, 2023, KYSEIA filed a response to the petition and, in the alternative, a motion for rehearing. On November 20, 2023, Kenergy filed a response to the motion for rehearing. The Commission denied the motion for rehearing on December 1, 2023. Neither Commission Staff nor Attorney General filed requests for information nor requested a hearing, and this matter stands ready for decision on the record.

BACKGROUND

Kenergy is a jurisdictional utility that provides retail electric service in Breckinridge, Caldwell, Crittenden, Daviess, Hancock, Henderson, Hopkins, Livingston, Lyon, McLean, Muhlenberg, Ohio, Union, and Webster counties, Kentucky. Kenergy offers net metering service to its members pursuant to Schedule 46 of its tariff, which sets forth the terms under which members may interconnect a solar facility to Kenergy's distribution system.

Kenergy in its petition requested the Commission to issue a declaratory order on two issues. First, Kenergy requested the Commission to issue an order interpreting the first condition for approval of a Level 1 Interconnection to a radial distribution circuit under Kenergy's Net Metering Tariff:

> (1) For interconnection to a radial distribution circuit, the aggregated generation on the circuit, including the proposed generating facility, will not exceed 15% of the Line Section's most recent one hour peak load. A line section is the smallest part of the primary distribution system the generating facility could remain connected to after operation of any sectionalizing devices.[1]

Kenergy stated in its petition that a radial circuit is the set of distribution lines that run from a substation to customers in the same manner that spokes in a wheel run from the wheel hub. Each line has sections that are separated by devices designed to trip in the event of an overload or short and thereby to isolate the outage.

Kenergy stated that it has recently received two inquiries from members that want to install solar generating facilities on their properties and to interconnect these facilities with Kenergy's distribution circuit. One customer's proposed facility would have total generating capacity of 320 kW and the other a total load of 135 kW. Kenergy stated that the smallest part of the primary distribution system 320 kW solar generating facility could remain connected to after operation of a sectionalizing device has an annual peak load of 95 kW, and the smallest part of the primary distribution system the 135 kW solar

[1] Kenergy Tariff, Schedule 46 – Net Metering, Sheets 46B and 46A.

generating facility could remain connected to after operation of a sectionalizing device has a peak load of 115 kW. Kenergy stated that it interprets its Net Metering Tariff to allow it to deny an application to interconnect a solar generating facility if the facility would cause a 15 percent or greater increase in a line section's most recent annual one-hour peak load.

Kenergy submitted with its petition a map that it asserted shows an actual circuit with a proposed installation and also with a hypothetical installation.[2] Kenergy stated that the map was provided to better frame the issue.

Kenergy further requested the Commission to issue a declaratory order that any upgrades to Kenergy's system necessary to allow the interconnection of a member solar generating facility must be borne by the member desiring to install the facility and should not be borne among the membership of Kenergy as a whole. Kenergy asserted that distribution lines at issue were constructed in anticipation of typical modest rural residential and agricultural loads, and that proposed solar generating facilities were not anticipated at the time the lines were constructed. Kenergy contended that connecting the proposed generating facilities to its system would require upgrades of the lines, the cost of which could be substantial. Kenergy asserted that costs of the upgrades should be borne by the solar generating members and not by other members on the system.

The Attorney General stated in its response to Kenergy's petition that the Commission should grant Kenergy's declaratory order and find that the cost of any distribution upgrades required to serve these solar generating facilities should be borne by the member or members driving those costs; and that those costs should not be

[2] Petition (filed Sept. 14, 2023), Exhibit B.

allocated to the utility's other customers. The Attorney General did not take a position on the interpretation of Kenergy's Net Metering Tariff.

KYSEIA argued that Kenergy's petition fails to present a matter that is ripe or otherwise proper for adjudication and should be dismissed. KYSEIA claimed that the petition is not ripe because the petition does not concern application of the tariff language to an actual, pending application for interconnection but rather seeks an order on the basis of a hypothetical question.

KYSEIA argued that no order is warranted on the issue of responsibility for the cost of upgrades necessary for an interconnection because Kenergy's tariff is clear that such costs must be borne by the customer-generator. KYSEIA argued that no declaratory order is warranted on KRS 278.466(9), which likewise provides that interconnection costs must be borne by the customer generator, because the statute is unambiguous.

LEGAL STANDARD

Kenergy filed its petition pursuant to Section 19 of 807 KAR 5:001:

> (1) The commission may, upon application by a person substantially affected, issue a declaratory order with respect to the jurisdiction of the commission, the applicability to a person, property, or state of facts of an order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.

The issuance of a declaratory order is permissive and at the discretion of the Commission.[3]

[3] Case No.2021-00370, *Electronic Investigation of the Rates, Services and Facilities of East Kentucky Power Company* (Ky. PSC Oct.8, 2021) at 5.

KRS 278.466 sets forth the obligation of each retail electric supplier to make net metering service available to eligible customer generators. KRS 278.465(1) defines "eligible customer generator" as "a customer of a retail electric supplier who owns and operates an electric generating facility that is located on the customer's premises, for the primary purpose of supplying all or part of the customer's own electricity requirements."

DISCUSSION AND FINDINGS

Ripeness

The Commission will first address KYSEIA's argument that Kenergy's application fails to present a matter that is ripe or otherwise proper for adjudication. KYSEIA claimed that the petition is not ripe because the petition does not present an actual controversy but rather seeks an advisory opinion on the basis of a hypothetical question.

The Commission has declined to issue advisory opinions in the past. In Case No. 2013-00413,[4] the Commission found that it was unable to render what it said would amount to an advisory opinion regarding the scope of its jurisdiction under an electric service contract because there was no actual contractual dispute at the time.

More recently, in Case No. 2020-00095, the Commission considered an application by Kenergy for a declaratory order that its proposed method of allocating a potential rate change by Big Rivers Electric Corporation (BREC) was consistent with the requirements of KRS 278.455.[5] Intervenors in the case argued for a different interpretation of the statute. Intervenors also argued that because BREC was not seeking

[4] Case No. 2013-00413, *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order* (Ky. PSC Jan. 30, 2014), Order at 19

[5] Case No. 2020-00095, *Electronic Application of Kenergy Corp. For a Declaratory Order* (Ky. PSC March 11, 2021), Order.

a change in rates, there was no present actual controversy, and that the Commission should decline to issue an advisory opinion. In determining to consider the merits of the application, the Commission noted that unlike the Kentucky Declaratory Judgment Act, 807 KAR 5:001, Section 19, does not require an "actual controversy" in order for the Commission to an issue a declaratory order. Rather, it states, in relevant part, that the Commission may issue a declaratory order with respect to the meaning and scope of a provision of KRS Chapter 278 "upon application by a person substantially affected."

In this case, the Commission elects to consider the merits of Kenergy's application. Although KYSEIA does not advance a contrary interpretation of Kenergy's net metering tariff, issuing a declaratory order on the tariff provision at issue will provide certainty to Kenergy and potential applicants for interconnection, and thus, promote the economic use of resources.

<u>Line Section</u>

The term "line section" is defined in the first condition under Kenergy's Net Metering Tariff for a Level 1 Interconnection:

> (1) For interconnection to a radial distribution circuit, the aggregated generation on the circuit, including the proposed generating facility, will not exceed 15% of the Line Section's most recent one hour peak load. **A line section is the smallest part of the primary distribution system the generating facility could remain connected to after operation of any sectionalizing devices.**[6]

The 15 percent threshold was adopted by the Commission in Case No. 2008-00169, in which the Commission established interconnection and net metering guidelines and

[6] Kenergy Tariff, Schedule 46 – Net Metering, Sheets 46B and 46A (emphasis added).

uniform net metering tariff language for all retail electric utilities in Kentucky.[7] In initiating the proceeding, the Commission found that that the Model Interconnection Procedures and Agreement for Small Distributed Generation Resources (Oct. 2003) developed by the National Association of Regulatory Utility Commissioners should be used in conjunction with the utilities' existing tariffs as the starting point for developing Kentucky-specific guidelines.[8]

The 15 percent capacity penetration threshold is one of the screening tools developed to expedite interconnection of small, low-impact generators without the need for additional technical studies. The 15 percent threshold is intended to mitigate possible unsafe conditions that can be caused when distributed generation continues to feed excess power back into the grid after the utility source of power is de-energized, which can result in an unintentional "island," a condition can pose a risk to utility equipment, personnel, and to appliances.[9]

Based on the purpose of the 15 percent capacity penetration threshold, the Commission finds the term "sectionalizing device" as used in Kenergy's net metering tariff is any safety device that can isolate distributed solar generation from the rest of Kenergy's distribution grid. The Commission further find that the term "line section" is the portion of Kenergy's distribution system connected to a customer-generator bounded by the first

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[7] Case No. 2008-00169, *Interconnection and Net Metering Guidelines for Retail Electric Suppliers and Qualifying Customer-owned Generators* (Ky. PSC Jan. 8, 2009).

[8] Case No. 2008-00169, Jan. 8, 2009 Order at 3.

[9] National Renewable Energy Laboratory, *Updating Interconnection Screens for PV System Integration* (Feb. 2012) at 2-5, https://www.nrel.gov/docs/fy12osti/54063.pdf.

sectionalizing device upstream from the customer's proposed facility and the end of the radial distribution line.

<u>Interconnection upgrades</u>

The Commission finds that the cost of any upgrades to Kenergy's system necessary to allow the connection of a proposed solar generating facility must be borne by customer-generator. Both KRS 278.466(9) and Kenergy's net metering tariff clearly and unambiguously provide that any upgrade of the interconnection between Kenergy and the customer-generator required for net metering must be made at the expense of the customer-generator.

IT IS THEREFORE ORDERED that:

1. Kenergy's request for a declaratory order interpreting the first condition under Kenergy's Net Metering Tariff for a Level 1 Interconnection is granted.

2. The term "line section" in the first condition under Kenergy's Net Metering Tariff for a Level 1 Interconnection means the portion of Kenergy's distribution system connected to a customer-generator bounded by the first sectionalizing device upstream from the customer's proposed facility and the end of the radial distribution line.

3. Kenergy's request for a declaratory order that the cost of any upgrades to its system necessary to allow the connection of a proposed solar generating facility must be borne by customer-generator is granted.

4. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION

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Chairman

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Vice Chairman

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Commissioner

ENTERED

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KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST:

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