COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF KENTUCKY UTILITIES COMPANY AND LOUISVILLE GAS AND ELECTRIC COMPANY FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND SITE COMPATIBILITY CERTIFICATES AND APPROVAL OF A DEMAND SIDE MANAGEMENT PLAN AND APPROVAL OF FOSSIL FUEL-FIRED GENERATING UNIT REQUIREMENTS	)))))))))	**CASE No. 2022-00402**

REPLY BRIEF OF JOINT INTERVENORS METROPOLITAN HOUSING COALITION, KENTUCKIANS FOR THE COMMONWEALTH, KENTUCKY SOLAR ENERGY SOCIETY, AND MOUNTAIN ASSOCIATION

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JOINT INTERVENORS'
REPLY BRIEF

Metropolitan Housing Coalition, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Mountain Association ("Joint Intervenors"), in accordance with the August 30, 2023, Order of the Kentucky Public Service Commission ("Commission"), herewith offer their joint reply brief responding to issues raised in other parties' respective briefs.

I. DEMAND-SIDE MANAGEMENT AND ENERGY EFFICIENCY PROGRAMS

A. The Commission has Authority to Direct a Regulated Utility to Meet Reasonable Savings Expectations.

Consistent with the recommendations of Mr. Grevatt, Joint Intervenors' Initial Brief asked the Commission to approve the proposed DSM/EE Programs *and* direct the Companies to perform the necessary reanalysis to propose a portfolio of programs capable of achieving at least 1% savings as a percent of sales by 2027, and maintaining that level of program savings through 2030.[1] Contrary to assertions in the Companies' Initial Brief, this recommendation is entirely consistent with Kentucky law and is well within the Commission's power and discretion.[2]

The Commission has broad authority, as necessary to ensure that every utility furnishes adequate, efficient, and reasonable service at rates that are fair, just, and reasonable.[3] The

[1] Initial Brief of Joint Intervenors Metropolitan Housing Coalition, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Mountain Association, *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402, at 6–13 (Sept. 22, 2023) ("JI Br.").
[2] Post-Hearing Brief of Kentucky Utilities Company and Louisville Gas and Electric Company, *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402, at 52 (Sept. 22, 2023) ("LGE/KU Br").
[3] KRS 278.030(1)–(2).

Commission's "powers are purely statutory" and include " such powers as conferred expressly, by necessity, or by fair implication."[4]

The Demand-Side Management statute explicitly invites the Commission to exercise its discretion and bring its unique expertise to bear in determining the reasonableness of a proposed DSM/EE plan in at least two ways. First, KRS 278.285(1) explicitly provides that the Commission "may determine the reasonableness" of a DSM plan, with "[f]actors to be considered in this determination *includ[ing]*, but not limited to," eight enumerated factors.[5] "The statute is permissive, not prescriptive"[6]—it "does not restrict the Commission's consideration to the factors specified in the statute."[7]

Second, the enumerated factors are themselves notably broad and supportive of cost-effective plans. The Commission is to consider whether "the plan provides programs which are available, affordable, and useful to all customers;"[8] whether programs "are consistent with" a utility's most recent IRP;[9] where demand-side management planning is expected to be an integrated part of least-cost planning;[10] and whether there has been an adequate "cost and benefit

[4] *Ky. Indus. Utils. Customers v. Ky. Pub. Serv. Cmm'n*, 504 S.W.3d 695, 705 (Ky. Ct. App. 2016) (citing *Croke v. Pub. Serv. Comm'n of Ky.*, 573 S.W.2d 927 (Ky. Ct. App. 1978)).
[5] KRS 278.285(1) (emphasis added).
[6] Case No. 2014-00003, *In re LG&E-KU for Review, Modification, and Continuation of Existing, and Addition of New, Demand-side Management and Energy Efficiency Programs*, Order at 24 (Ky. PSC Nov. 14, 2014).
[7] *Id.* at 24.
[8] KRS 278.285(1)(g).
[9] KRS 278.285(1)(d).
[10] 807 KAR 5:058 ("This administrative regulation prescribes rules for regular reporting and commission review of load forecasts and resource plans of the state's electric utilities to meet future demand with an adequate and reliable supply of electricity at the lowest possible cost for all customers within their service areas, and satisfy all related state and federal laws and regulations."); *id.* Sec. 8(2)(b) (requiring that the Resource Assessment and Acquisition Plan include discussion of "all options considered for inclusion in the plan including: . . . (b) Conservation and load management or other demand-side programs not already in place . . .").

analysis *and other justification* for specific demand-side management programs and measures included in a utility's proposed plan."[11] Even without exercising that discretion to consider additional factors, these statutory factors empower the Commission to require a regulated utility to reach as many customers as cost-effectively possible, consistent with least-cost service principles, and with an adequate demonstration of benefits.

Here, the record evidence shows that the Companies did not reasonably estimate savings potential in their service territories,[12] and did not attempt to develop programs capable of maximizing cost-effective savings potential.[13] Because of that, even though the Companies propose expanded DSM/EE budgets, the record shows they are still delaying or missing significant cost-effective potential. Their programs have been out of date since at least October 2020,[14] and Commission direction and prodding is needed to encourage the Companies to invest in energy savings potential. Nothing prohibits the Commission from doing so by ordering the Companies to reassess savings potential, develop empirical knowledge of customer needs, reengage in a collaborative stakeholder process, and present a cost-effective portfolio capable of achieving a target 1% annual savings by 2027. If, after seriously making that effort, such a portfolio remains out of reach, the Companies can instead present credible evidence to explain

[11] KRS 278.285(1)(b) (emphasis added).
[12] JI Br. at 16–21.
[13] *Id.*
[14] *Contra* LG&E/KU Br. at 51 ("Based on the premise that the DSM-EE programs would have been out of date had the Companies not, of their own volition, proposed an update and expansion of DSM-EE programs . . ."). The Companies misstate, or misunderstand, Joint Intervenors' position. The Companies' DSM/EE Programs have been out of date since at least October 2020, when the Companies acknowledged a near-term capacity need by 2027/28. Three years later, the Companies *still* have not reassessed energy savings potential based on reasonable avoided capacity cost values, updated measure characterizations, or updated avoided fuel costs.

why, when such results have been achieved across the country, it cannot be done by the Companies.[15]

B. There is Broad Support for Expanded DSM/EE Programs.

The Companies rightly acknowledge that Joint Intervenors took issue with the Companies' DSM/EE planning process and proposed plan, [16] but Joint Intervenors were not alone in doing so. For one, Joint Intervenors' Initial Brief reflects the consensus views of *four* Kentucky-led organizations—Metropolitan Housing Coalition, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Mountain Association.[17] Collectively, these four organizations offered joint evidence and argument showing how and why the Companies should be pursuing even greater levels of energy savings than proposed, and that the Companies neglected to evaluate the impact of higher levels of energy savings to cost-effectively contribute to meeting customers' energy needs.[18]

Two, many intervenors offered positions, including critical positions, on the Companies' proposed changes and programs. "The Attorney General disagrees with the Companies' proposal to modify eligibility for the [Income Qualified Solutions] programs by raising the

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[15] Direct Testimony of Jim Grevatt on Behalf of Joint Intervenors, *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402, at 47:7–48:4 (July 14, 2023).
[16] LG&E/KU Br. at 48 ("No intervenor in the case, except for the Joint Intervenors, takes issue with the Companies' proposed DSM-EE Plan.").
[17] *See generally* Joint Motion of Metropolitan Housing Coalition, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Mountain Association for Full Intervention as Joint Intervenors at 4–11, *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402 (Jan. 19, 2023) (summarizing each organization's history, mission, and interests, *inter alia*).
[18] *See generally* JI Br., Sect. II, at 3–43.

income level to allow higher earning customers to participate";[19] and "agrees with" comments from the Association of Community Ministries "to track the income levels of participants on an annual basis and report the aggregate numbers to the Commission, to ensure that [Income Qualified Solutions] continues to serve primarily customers at lower income levels."[20] Lexington-Fayette Urban County Government and Louisville/Jefferson County Metro Government (collectively "Louisville & Lexington") support the proposed DSM/EE program expansion, and believe "offerings should be more robust[.]"[21] Louisville & Lexington also note a need for the Companies to improve "coordination and cooperation with stakeholder groups," and restate a bulleted list of recommendations made by the Joint Intervenors.[22] Walmart observes a need "to better engage commercial and industrial customers ("C&I") customers in the DSM Advisory Group process,"[23] and asks that the Companies be ordered "to take steps to better

[19] Post-Hearing Brief of the Kentucky Attorney General, *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402, at 38 (Sept. 22, 2023) ("OAG Br.").
[20] *Id.* at 39.
[21] Lexington-Fayette Urban County Government and Louisville/Jefferson County Metro Government's Post-Hearing Brief, *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402, at 8–9 (Sept. 22, 2023) ("Louisville & Lexington Br.").
[22] Louisville & Lexington Br. at 9 (citing JI's Resp. to LG&E/KU Q 1.31); *see also* JI Hearing Ex. 6, 7, and 8.
[23] Initial Brief of Walmart Inc., *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan,* Case No. 2022-00402, at 2 (Sept. 22, 2023) ("Walmart Br.").

evaluate EE/DSM programs for C&I customers."[24] And Sierra Club agrees with Joint Intervenors' proposals for maximizing DSM/EE.[25]

Three, interest in seeing the Companies maximize cost-effective energy savings extends beyond intervening parties. The Association of Community Ministries, which is no stranger to the Commission on issues with particular effects on low-income ratepayers, exemplifies stakeholders' ability to help the Companies understand customer need and the potential adverse impacts of uninformed program changes.[26] Countless other public comments have been offered in support of DSM/EE.[27]

LG&E/KU's customers are overdue for a DSM/EE planning process that is more robust, meaningful, data-driven, and collaborative, with the objective of developing a plan capable of maximizing cost-effective potential, or at least ramp to 1% savings by 2027, and sustaining that level of savings through 2030.

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[24] Walmart Br. at 17.

[25] Sierra Club's Post-Hearing Brief, *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402, at 110 (Sept. 22, 2023) ("Sierra Club Br.").

[26] Joint Intervenors' Hearing Ex. 9, Public Comment Letter from Association of Community Ministries (Aug. 17, 2023).

[27] *E.g.*, Ky. Solar Indus. Ass'n,, Inc. Written Public Comments *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402, at 4 (May 1, 2023), https://psc.ky.gov/pscscf/2022%20cases/2022-00402/Public%20Comments/20230501_Kentucky%20Solar%20Energy%20Industries%20Association%20Public%20Comments.pdf ("KYSEIA [Kentucky Solar Energy Industries Association] encourages the robust deployment of additional DSM and EE by the Companies; however, these comments do not suggest that the Companies' DSM and EE proposals are sufficient. The Companies should prioritize increasing DSM and EE programs above those described in this Application and, specifically, encourage, support, and develop distributed solar and customer-sited storage as part of the DSM portfolio. The Companies cannot be allowed to be indifferent, much less antagonistic, to the role of distributed generation and customer-sited storage. The DSM and EE proposals are properly described as barely minimal.").

II. FOSSIL UNIT RETIREMENTS

As discussed in Joint Intervenors' initial brief, the Commission should conditionally approve under KRS 278.264(1) all of the proposed fossil fuel generating unit retirements proposed in this proceeding, subject to the Companies also presenting an approvable combination of replacement resources through revised and updated applications for CPCNs and DSM requests sufficient to meet its burden of proof under KRS 278.020 and 278.285.[28] Regardless of the specific set of replacement resources that the Commission ultimately approves, the evidence in this case is clear that the proposed fossil fuel generating unit retirements should be approved.[29] Parties opposing the retirements are only able to offer flawed arguments, based on sunk cost fallacy and speculative and unsupported claims that coal-fired generating units might somehow still have benefits to ratepayers even though the evidence is clear that they are no longer cost-competitive and will only become less so over time. The Commission should look past these speculative and unsupported claims and conditionally approve the proposed retirements based on the record evidence.

A. Arguments That Retirement of Uneconomic Coal Units Will Harm Ratepayers are Based on Sunk Cost Fallacy.

The Kentucky Coal Association's ("KCA") suggestion to retain uneconomic coal units explicitly depends on a sunk cost fallacy[30] and should be rejected by the Commission as senseless and inconsistent with the plain language of KRS 278.264(2)(b). The requirement to

[28] JI Br. at 58–59.
[29] *Id.* at 61–73.
[30] KCA's Initial Brief, *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402, at 12 (Sept. 22, 2023) ("KCA Br.") ("At a minimum, the net incremental costs include stranded or sunk costs associated with early retirements of the coal plants.").

show that a "retirement will not harm [the utility's] ratepayers by causing the utility to incur any net incremental costs to be recovered from ratepayers that could be avoided by continuing to operate . . . in compliance with applicable law" has been satisfied with analysis of present value revenue requirement comparisons across portfolios.[31]

Sunk cost fallacy is a continued commitment to a behavior or endeavor merely because prior resources have been invested. Sunk costs cannot be avoided;[32] sunk costs are recoverable regardless of whether the units continue to operate or not.

As explained in detail in Joint Intervenors' initial brief, the Companies have demonstrated that due to the investments needed to meet current and reasonably anticipated environmental compliance requirements, the going forward costs of operating Mill Creek Units 1 and 2, Brown Unit 3, and Ghent 2, as well as Haefling Units 1 and 2 and Paddy's Run Unit 12, are not part of a lowest reasonable cost plan.[33] Retiring these units *avoids* net incremental costs that would otherwise harm customers. Although KCA's members might prefer that the Companies continue making investments into coal-fired units, the record evidence shows that customers will be better off with these units retiring now, at the end of their economic lives.

B. Coal-Fired Generating Units Will Likely Face Additional Environmental Compliance Costs in the Coming Years.

Coal-fired generating units such as those proposed for retirement in this case will likely face additional environmental requirements in the coming years beyond those that the Companies have already factored into their analysis.[34] In its initial brief, Sierra Club provides

[31] LG&E/KU Br. at 37; Sierra Club Br. at 28; JI Br. at 54.
[32] *Contra* KRS 278.264(2)(b) (requiring that retirement will not cause net incremental costs that could be avoided by continued operation).
[33] *See* JI Br., Sec. IV(B), at 61–73.
[34] JI Br. at 64–65.

additional detail on these environmental requirements.[35] And Louisville & Lexington note that Louisville will have challenges meeting current and anticipated National Ambient Air Quality Standards if the Companies' proposed fossil fuel retirements are not approved, particularly the Mill Creek units that are top emitters of pollutants contributing to non-attainment in the Louisville area.[36] In fact, the Companies themselves concede that their coal units are likely to face additional environmental requirements in the coming years.[37]

The primary driver of the proposed generating unit retirements in this case is EPA's Good Neighbor Plan.[38] Although parties have made much of the fact that the U.S. Court of Appeals for the Sixth Circuit has stayed the Good Neighbor Plan's applicability in Kentucky,[39] the Companies have explained why that litigation is unlikely to change the ultimate outcome that either the Good Neighbor Plan or a similar EPA rule would require substantial emissions reductions from the Companies' coal-fired generating units.[40] In addition, legal challenges to the merits of the Good Neighbor Plan are pending in the U.S. Court of Appeals for the D.C.

[35] Sierra Club Br. at 34–70.
[36] Louisville & Lexington Br. at 3–6.
[37] *See, e.g.*, Rebuttal Testimony of Lonnie E. Bellar, *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402, at 16 (Aug. 9, 2023) ("Bellar Rebuttal"); [Witness Imber], Aug. 25, 2023 HVT at 12:53:30–15:18:52, 15:35:00–15:37:10.
[38] U.S. EPA, *Federal "Good Neighbor Plan" for the 2015 Ozone National Ambient Air Quality Standards*, 88 Fed. Reg. 36654 (Jun. 5, 2023).
[39] *See, e.g.*, OAG Br. at 8.
[40] *See, e.g.*, Rebuttal Testimony of Philip A. Imber, In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan, Case No. 2022-00402, at 8–14 (Aug. 9, 2023); Witness Imber, Aug. 25, 2023 HVT at 12:53:30–13:40:50.

Circuit—not the Sixth Circuit—and that court recently denied requests to stay the Good Neighbor Plan pending the outcome of that litigation.[41]

The evidence in this case is overwhelming that coal-fired generating units will be required to meet increasingly stringent environmental requirements in the coming years. Not only does the record of this case clearly support the proposed retirements based on the Companies' incorporation of current environmental compliance cost estimates into their analysis,[42] but also the Commission should consider the likelihood that additional requirements in the near term will only tip that balance even further in favor of retirement.[43]

C. Ghent Unit 2 is Uneconomic and Keeping It Online Would Be Wasteful Duplication.

The Commission should reject Kentucky Industrial Utility Customers ("KIUC")'s argument to deny the retirement of the uneconomic Ghent Unit 2 based on the risky proposition that the Companies' ratepayers should speculate on selling its excess power off-system as if it were a merchant unit.[44] As Joint Intervenors discussed in their initial brief, the Companies' modeling in this case demonstrates that Ghent Unit 2 is economic to retire without any incremental replacement resources.[45] The Companies found that retirement of Ghent Unit 2

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[41] *Utah by & through Cox v. Env't Prot. Agency*, No. 23-1157, 2023 WL 6285159, at *1 (D.C. Cir. Sept. 25, 2023).
[42] *See* JI Br. at 63–73.
[43] *Id.*
[44] *See* Initial Brief of Kentucky Industrial Utility Customers, Inc., *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402, at 11–15 (Sept. 22, 2023) ("KIUC Br.").
[45] JI Br. at 70–71; *see also* Direct Testimony of John D. Wilson on Behalf of Joint Intervenors, *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402, at 31 (July 14, 2023) ("John D. Wilson Direct");

results in net costs savings vis-à-vis its continued operation with a Selective Catalytic Reduction ("SCR") system in every scenario, and in only one of the scenarios (High Gas/Low CTG) a slight preference ($7 million difference on a Net Present Value of Revenue Requirement ("NPVRR") basis) for continued operation of Ghent Unit 2 during non-ozone season without a SCR.[46] Even KIUC witness Kollen, in arguing that Ghent Unit 2 should be retained by the Companies, was forced to concede that the Companies' modeling showed that retaining Ghent Unit 2 would have a NPVRR penalty of between $71 and $77 million in scenarios where a SCR is added and a penalty of between $117 and $218 million in scenarios where the unit runs only in non-ozone season with no SCR.[47]

Moreover, it is also important to remember that the numbers in the Companies' analyses do not factor in likely future additional compliance costs, such as the tens of millions of dollars of additional compliance investments that would be required at the Ghent plant if EPA finalizes its proposed supplemental Effluent Limitations Guidelines ("ELG") rule or the substantial additional compliance investments that would be required if EPA finalizes proposed greenhouse gas regulations requiring carbon capture and sequestration or natural gas co-firing at the Ghent plant.[48] These additional environmental compliance requirements, which the Companies'

Case No. 2023-00122, *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Approval of Seven Fossil Fuel-Fired Generating Unit Retirements* Direct Testimony of Stuart A. Wilson, Ex. SB4-1 at 20 tbl.8, (Ky. PSC May 10, 2023) ("Retirement Assessment").

[46] *Id.*

[47] Direct Testimony of Lane Kollen on Behalf of Kentucky Industrial Utility Customers, Inc., I*n re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402, at 11–13 (July 14, 2023).

[48] Aug. 25, 2023 HVT at 12:53:30–15:18:52, 15:35:00–15:37:10.

witness Bellar agrees are likely in the coming years,[49] will only make Ghent Unit 2 even less cost-competitive with replacement resources. Retaining Ghent Unit 2 under the circumstances established in the record of this case would be wasteful duplication, as Joint Intervenors detailed in their initial brief.[50]

In response to this clear evidence that Ghent Unit 2 is not a least-cost option for customers, KIUC offers a back-of-the-envelope calculation in its brief that purports to show that Ghent Unit 2 would nevertheless make up for those increased costs to customers by profitably selling excess power off-system.[51] This calculation, however, is based on cherrypicked forecast data: average on-peak estimated energy prices in PJM West between 2025 and 2027; estimated fuels costs for coal generation in 2030; and estimated future costs for variable O&M.[52] KIUC's average on-peak estimated energy prices apparently reflect the average across three entire years, and thus are not tailored to the seven non-ozone season months in which they are proposing that Ghent Unit 2 should continue operating.[53] KIUC's calculation is also incomplete because it omits any transmission or other costs that the Companies would incur to sell excess power from the Ghent plant into PJM (let alone any consideration of whether there is available transmission capacity).[54] Nor does KIUC mention that, under the Companies' current rate structure, ratepayers are only credited with 75% of the revenue from off-system sales, with the Companies

[49] *See* Bellar Rebuttal at 16:6–9 ("[E]ven if the Companies could comply with the GNP by operating Ghent 2 in just certain months, there may be other EPA requirements that could drive a retirement decision for Ghent 2 based on EPA's semi-annual regulatory agenda.").
[50] JI Br. at 71–73.
[51] KIUC Br. at 14.
[52] *Id.*
[53] *Id.*
[54] *See id.* (omitting any discussion of any transmission or other costs of delivery into PJM, or consideration of available transmission capacity).

able to retain the other 25% for their shareholders.[55] KIUC also omits any acknowledgement of additional environmental compliance costs that are likely in the coming years, such as ELG costs.[56] For all of these reasons, the back-of-the-envelope calculation presented by KIUC in its brief falls far short of a robust, integrated analysis of potential off-system sales revenue that would justify a plan that even KIUC's witness concedes is a higher-cost option for ratepayers. Therefore, KIUC's proposal to require the Companies to retain Ghent Unit 2 should be rejected by the Commission.

KIUC's suggestion that the Companies may also be able to profitably sell power from Ghent Unit 2 to Kentucky Power Company ("Kentucky Power"), because Kentucky Power is capacity short and seeking PPAs for new resources,[57] is equally flawed. First and foremost, KIUC fails to mention that Ghent Unit 2 *is not even eligible to participate* in the Request for Proposals ("RFP") for thermal resources that Kentucky Power issued on September 22, 2023.[58] Rather, Kentucky Power's RFP is limited to thermal resources that are *already* interconnected

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[55] *See* Louisville Gas & Elec. Co., *Tariff P.S.C. Electric No. 13, Orig. Sheet 88 (Off-System Sales Adjustment Clause)* (effective July, 1, 2021), *available at* https://psc.ky.gov/tariffs/Electric/Louisville%20Gas%20and%20Electric%20Company/Tariff.pdf (last visited Oct. 3, 2023); *Kentucky Utils. Co., Tariff P.S.C. No. 20, Orig. Sheet No. 88 (Off-System Sales Adjustment Clause)* (effective July, 1, 2021), *available at* https://psc.ky.gov/tariffs/Electric/Kentucky%20Utilities%20Company/Tariff.pdf (last visited Oct. 3, 2023).

[56] *See* Aug. 25, 2023 HVT at 13:49:00–14:04:14, 15:35:00–15:37:10 (Companies' Witness Imber referring to proposed supplemental ELG requirements as a "doozy" that would likely require tens of millions of dollars of additional investments at each of the Companies' existing coal units for new wastewater treatment equipment).

[57] KIUC Br. at 15.

[58] Am. Elec. Power Serv. Corp. as agent for Kentucky Power Co., *Request for Proposals: Power Purchase Agreements (PPAs) from Qualified Bidders for New and Existing Thermal Energy Resources* (Sept. 22, 2023), *available at* https://www.kentuckypower.com/lib/docs/business/b2b/rfp/ky/KPCO_2023_Thermal_RFP.pdf (last visited Oct. 2, 2023).

with PJM,[59] which the Ghent plant is not. Any bidder of such thermal resources "must have a completed PJM System Impact Study which remains active in the PJM Queue,"[60] which the Companies have not done. The RFP also requires that a bidder is responsible for all transmission costs associated with delivery of power into PJM,[61] for which (as noted above) KIUC has not provided an estimate (nor does there appear to be one from the Companies in the record of this case).

Based on the terms of Kentucky Power's RFP, there is no indication that Kentucky Power would even be interested in purchasing power from Ghent Unit 2. And even if they were, KIUC has not presented any evidence to support its contention that Kentucky Power doing so could be a "win-win" for customers of both utilities. Rather, it appears at least as likely that one set of customers could lose out in any such transaction, i.e., that even if such a deal *might* benefit Kentucky Power's customers, it would not also benefit LG&E-KU's customers, whose costs would likely go up as a result of the Companies retaining Ghent Unit 2 when the evidence demonstrates that it is a lower-cost option to retire it under virtually every scenario modeled.

For all of the above reasons, and those stated in Joint Intervenors' initial brief, the Commission should conditionally approve the retirement of Ghent Unit 2 under KRS 278.264 subject to the Companies submitting sufficient CPCN requests for replacement resources. It is for good reason that in considering retirement of a unit, speculative benefits such as possible future off-system sales, and unnecessary maintenance of redundant reserve in excess of that deemed necessary, are insufficient justifications. Imposition of additional costs in excess of

[59] *Id.* at Sec. 3.10.1.
[60] *Id.* at Sec. 3.10.1.1.
[61] *Id.* at Sec. 3.10.1.5.

LG&E and KU ratepayer benefits, based on the speculative proposal advanced by KIUC that Ghent Unit 2 may be of value to some other utility's ratepayers, is inappropriate.

At most, the Commission should, as part of conditionally approving the retirement of Ghent Unit 2, suggest the Companies consider selling the unit, rather than attempt to run the unit as excess capacity.[62] If the Companies were to offer Ghent Unit 2 for sale and receive a favorable price for it, that would benefit ratepayers; on the other hand, if no one were willing to purchase it at a favorable price, this would only further confirm that the unit is not economic and should be retired.[63]

D. The Companies' Definitions of Dispatchability, Reliability, and Resiliency are Reasonable, Based on Accepted Industry Practice, and Consistent with Statutory Language.

1. *Dispatchable means capable of following dispatch instructions when the resource is available.*

KCA advances a definition of "dispatchable" that does not comport with the term's technical meaning, is practically unworkable, and renders portions of the statute superfluous. The Commission should reject KCA's strained reading of the statute and follow definitions of "dispatchable" offered by technical experts in this proceeding. LG&E/KU's offered definition of "dispatchable" fits that bill, as does the definition offered by witness John D. Wilson.[64]

Technical experts generally recognize "dispatchable" to mean "capable of following dispatch instructions between economic minimum and economic maximum when (i) the generating unit is physically capable of producing electricity and (ii) the unit's power source is

[62] JI Br. at 72–73.
[63] *See id.* (citing John D. Wilson Direct at 29).
[64] John D. Wilson Direct at 6.

available."[65] This definition is reasonable, and in line with utility industry standards. PJM Interconnection defines dispatchable as "generation that can follow dispatch instructions between economic minimum and economic maximum."[66] The Midcontinent Independent System Operator ("MISO") includes renewable resources such as wind and solar in the realm of dispatchable resources, and explicitly requires certain wind and solar generators to register as dispatchable, due to the difficulty in controlling these resources' output prior to this requirement being implemented—one which has been approved by the Federal Energy Regulatory Commission.[67]

Breaking from technical use of the term, the KCA argues that the "common meaning" of dispatchable excludes renewable and DSM resources because these resources are not always "available for use on demand."[68] According to KCA, solar, wind, and DSM resources are not "dispatchable" because they cannot be turned on all of the time.[69] This approach is practically unworkable and misses the well-established fact that no resource is available at all times.[70]

In addition to being practically unworkable, KCA's approach to statutory interpretation is unsound. First, because dispatchable is a technical term, it should be interpreted according to its technical meaning, as generally understood within the utility industry.[71] Second, the term should

[65] LGE/KU Br. at 32.
[66] PJM, *PJM Glossary*, https://www.pjm.com/Glossary.aspx (last visited Oct. 4, 2023).
[67] *See Midcontinent Independent System Operator, Inc.*, 171 FERC ¶ 61,203 (June 9, 2020), ferc.gov/sites/default/files/2020-06/ER20-595-000_1.pdf.
[68] KCA Br. at 4.
[69] *Id.* at 5.
[70] *See, e.g.*, Sierra Club Br. at 70–81 (documenting Companies' outages and derates of coal-fired generating units during cold weather events); Witness Bellar Aug. 22, 2023 HVT 14:16:10–15:15:32; AG DR1 LGE KU Attach to Q131 – Attach 1, Winter Storm Elliot Events in the LG&E and KU Balancing Authority Area, December 23-24, 2022.
[71] KRS 446.080(4); *Maupin v. Tankersley*, 540 S.W.3d 357, 359 (Ky. 2018).

not be defined in a manner that renders "dispatchable" surplusage, but that is precisely what KCA's proposal would do. Under KCA's definition, with renewable and demand response resources excluded, "dispatchable"[72] is simply "new electric generating capacity,"[73] and KRS 278.264(2)(a)(1) adds nothing.

KCA further argues that DSM resources are not dispatchable, conflating the requirement for "new electric generating capacity" with the definition of "dispatchable," stating that DSM "does not generate power."[74] However, this does not comport with the simple industry-accepted definition that dispatchable means "capable of following dispatch instructions."

The Commission should reject the additional constraint that KCA attempts to interject into the definition of "dispatchable" and accept a definition more in line with industry standards, such as that advanced by the Companies and witness John D. Wilson.[75]

2. *The reliability and resilience requirements of KRS 278.264(2)(a)(2) are distinct from the dispatchability requirement of KRS 278.264(2)(a)(1).*

KCA additionally argues that "non-dispatchable and non-generating capacity… fails to satisfy the reliability and resiliency requirements" of KRS 278.264(2)(a)(2),[76] further adding confusion to the issue by conflating two separate requirements of the law.

While KRS 278.263(2)(a) does require "new generating capacity" that is (1) dispatchable, (2) "[m]aintains or improves the reliability and resilience of the electric transmission grid;" *and* (3) maintains a minimum reserve capacity, these are three distinct

[72] KRS 278.264(2)(a)(1) ("The utility will replace the retired electric generating unit with new electric generating capacity that: 1. Is dispatchable . . .").
[73] KRS 278.264(2)(a).
[74] KCA Br. at 6.
[75] JI Br. at 49–50.
[76] KCA Br. at 7.

requirements. The plain meaning of this statutory language allows for multiple types of resources to contribute to reliability and resilience, including new generating capacity that is freed up by DSM and EE measures. Nor does the statute require one-to-one replacement of retired units, but instead allows for consideration of a utility's system as a whole. The clear intent of the statutory requirement is to maintain or increase the reliability and resilience of the electric transmission grid; excluding resources from consideration that would have the effect of increasing reliability and resilience is contrary to that intent.

Setting aside the definitions of "dispatchable," or "generating capacity,"[77] KRS 278.262 does offer clear definitions of "[r]eliability" as "having adequate electric generation capacity to safely deliver electric energy in the quantity, with the quality, and at a time that the utility customers demand;"[78] and "[r]esilience" as "having the ability to quickly and effectively respond to and recover from events that compromise grid reliability."[79] The definitions of reliability and resilience are clearly inter-related. However, nowhere in either definition did the Legislature limit consideration of reliability or resilience only to dispatchable resources, nor would any such limitation make practical sense given the role that multiple resources play across a utility's system to ensure reliability and resilience. Accordingly, the Commission should reject KCA's interpretation of KRS 278.264(2)(a)2 as arbitrary and contrary to the statute's plain meaning.

[77] Notably, KCA does not advance a proposed definition or interpretation for "generating capacity," only summarily stating that "a significant portion of the Companies' proposed new electric capacity is non-dispatchable or non-generating." *Id.* This essentially leaves to the Commission to guess what "new electric capacity" KCA *does* believe is "generating." Joint Intervenors therefore continue to urge the Commission to adopt the common-sense definition of "assets capable of injecting electric energy into utility distribution and transmission grids." JI Br. at 46.
[78] KRS 278.262(2).
[79] KRS 278.262(3).

E. Evidence in this Case Shows that Approval of the Proposed Generating Unit Retirements Will Not Adversely Affect Reliability.

It is clear in evaluating the undisputed evidence presented in this case that the proposed retirement of the electric generating units "[m]aintains or improves the reliability and resilience of the electric transmission grid."[80] Indeed, even KCA concedes as much with regard to the portfolio as a whole.[81]

Rather than attempting to dispute the Companies' reliability analysis, the Office of the Attorney General ("OAG") argues that there is a national "Looming Reliability Crisis,"[82] and that therefore the Companies should be required to keep units online, perhaps as part of some speculative deal to sell power off-system.[83] However, much of the support the OAG cites regarding the "looming reliability crisis" actually bolsters the need for renewable resources being built, and reflects that the predicted national decline in reliability is in fact due to such resources not being completed, or being stuck in interconnection queues.[84]

The single local event cited by the OAG relating to the Companies' reliability further supports the reliability of increased diversity of generating resources. During Winter Storm

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[80] KRS 278.264(2)(a)2.
[81] KCA Br. at 8 ("[T]he LOLE would total 0.45, which provides for an LOLE equal to the LOLE of the currently operating fossil-fuel fired plants sought to be retired.").
[82] OAG Br. at 15–23.
[83] *Id.* at 30–33.
[84] *See*, *e.g.*, *id.* at 18 ("the historical rate of completion for renewable projects has been approximately 5%. The projections in this study indicate that the current pace of new entry would be insufficient to keep up with expected retirements and demand growth by 2030.") (quoting PJM, *Energy Transition in PJM: Resource Retirements, Replacements & Risks*, at 1–2, 5 (Feb. 24, 2023)); *id.* at 19–20 ("There are a lot of watts in the queue that are some combination of solar, wind, battery resource, and we hope they get built because we need the watts. But as we sit here today, they're not getting built." (quoting from U.S. Senate Committee on Energy & Natural Resources, Testimony of Manu Asthana, President and CEO, PJM Interconnection, before the Kentucky General Assembly Interim Joint Committee on Natural Resources and Energy (Aug. 3, 2023), HVT at https://www.youtube.com/watch?v=Bja3IDPFPMs (last visited Oct. 4, 2023) at 1:36:35–1:36:51).

Elliott, the unpredicted drop in capacity was due to unforeseen outages in fossil fuel-fired generation, both gas and coal.[85] In fact, renewable resources performed as expected,[86] whereas coal-fired generating capacity had struggles similar to gas, based on cold weather-related outages.[87]

F. The Companies' CPCN Request Does Not Depend on Federal Incentives for Renewable Generation.

It is clear from the record that the decision to retire the fossil fuel-fired units at issue here is not the result of federal financial incentives. Yet, KCA also attempts to interject additional requirements into the plain text of the statute by somehow divining that the legislature's motivation stems from "incentives for renewable generation being provided by the federal government send[ing] the wrong pricing signals to the energy market."[88] However, KRS 278.264(2)(c) states only that "[t]he decision to retire the fossil fuel-fired electric generating unit is not the result of any financial incentives or benefits offered by any federal agency." The plain text of this provision is focused on the *decision to retire*, which is distinct from selection of replacement resource(s).

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[85] *See* Response of Kentucky Utilities Company and Louisville Gas and Electric Company to the Attorney General's Initial Request for Information, Question 13(l) (Mar. 10, 2023) ("LGE & KU Response to AG Initial Q13(l)"), Attachment 1; Sierra Club Br. at 70–76; Witness Bellar Aug. 22, 2023 HVT 14:16:10–15:15:32.

[86] PJM, *Winter Storm Elliott Frequently Asked Questions*, at 6 (updated Apr. 12, 2023), https://www.pjm.com/-/media/markets-ops/winter-storm-elliott/faq-winter-storm-elliott.ashx ("PJM Winter Storm Report").

[87] *See* LGE & KU Response to AG Initial Q13(l), Attachment 1 at 3–5; *see also PJM Winter Storm Report* at 6 ("About 63% of all outages were natural gas, 28% coal, 4% oil, 2% nuclear, 1% hydro, and about 1% other.").

[88] KCA Br. at 16–17. While KCA's argument here purports to be based on "plain language", elsewhere KCA relies on statements of individual legislators to parse legislative intent. KCA Br. at 7. KCA's reliance on parol evidence is improper and should be disregarded by the Commission. *Bd. of Trustees of Jud. Form Retirement System v. Atty. Gen. of the Commonwealth*, 132 S.W.3d 770, 786–87 (Ky. 2003) ("It is a basic principle of statutory construction that legislative intent may not be garnered from parol evidence, especially parol evidence furnished by a member of the legislature").

Specific to unit retirement decisions, LG&E/KU are not aware of "any such financial incentives or benefits for retiring fossil fuel fired electric generating units."[89] To the extent tax credits for renewable resources being constructed *do* exist, they are entirely to the benefit of customers, rather than the Companies.[90] Contrary to KCA's interpretation of the statute that appears to require excluding federal incentives from the net incremental costs analysis required by KRS 278.264(2)(b), the requirement of KRS 278.264(2)(c) is a distinct requirement, and the fact that such incentives are to the benefit of customers rather than the Company shows that the decision made by the Company to retire is *not* the result of those incentives. To exclude them from the calculus required by KRS 278.264(2)(b) also ignores the expressed intent of the General Assembly that *is* in the plain text of the statute, to "not harm the utility's ratepayers."[91]

III. THE COMPANIES HAVE NOT SUFFICIENTLY DEMONSTRATED AN "ABSENCE OF WASTEFUL DUPLICATION."

A. The Companies Bear the Burden of Proof for Their CPCN Application. Other Parties Are Not Required to Model Alternative Portfolios That the Companies Failed to Evaluate.

The Companies contend that Joint Intervenors failed to adequately model their recommendations.[92] But it is not the burden of Joint Intervenors, nor any intervenor, to conduct a robust analysis of all reasonable alternatives or re-do the 2022 Resource Assessment. As the Companies know well, modeling is a resource-intensive endeavor, especially in a case as

[89] Case No. 2023-00122, *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Approval of Seven Fossil Fuel-Fired Generating Unit Retirements*, Direct Testimony of Lonnie E. Bellar Chief Operating Officer Kentucky Utilities Company and Louisville Gas and Electric Company at 22:5–6 (Ky. PSC May 10, 2023).
[90] *Id.* at 22:1–12.
[91] As pointed out in Joint Intervenor's initial brief, to interpret the requirement otherwise would not only be absurd, it would be unconstitutional. JI Br. at 55 n.194.
[92] LG&E/KU Br. at 18.

voluminous and complex as the matter at hand. To suggest that any intervenor, or even the Commission, should bear the resource and evidentiary burden of evaluating alternative portfolios that the Companies failed to consider adequately or at all is absurd. The Companies, as represented by the six full-time employees in their modeling group alone, dozens of full-time employees behind the record evidence, plus third-party consultants and analysts, are both better equipped to conduct their own analyses and bear the solitary burden to establish that their preferred portfolio is indeed the most reasonable, least-cost option. The Companies alone are responsible for modeling the cost and reliability of all reasonable alternatives.[93]

Nonetheless, in the limited time available, Joint Intervenors *did* model two alternative portfolios to demonstrate that further review of alternative portfolios is needed, including additional variations on the portfolios that Joint Intervenors identified. For example, as the modeling done by Joint Intervenors' witness Anna Sommer demonstrates, a portfolio with increased renewable resources plus only one new NGCC portfolio results in an NPVRR difference in the capital cost sensitivity of only $81,887,968 and a LOLE of 0.91, and is thus a potentially cost-effective alternative that should be further evaluated.[94] The Companies

[93] Case No. 2005-00142, *Joint Application of LG&E-KU for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky*, Final Order at 9 and 11 (Ky. PSC Sept. 8, 2005) (finding that LG&E-KU did not adequately study a sufficiently wide array of alternative routes for a proposed transmission line and inviting the Companies to reapply for a CPCN to construct needed transmission facilities after a more thorough review of all reasonable alternatives); Case No. 2022-00314, *Application of EKPC for a CPCN for the Construction of Transmission Facilities in Madison County, Kentucky, and Declaratory Order Confirming that a CPCN is not Required for Certain Facilities*, Final Order at 8 (Ky. PSC Feb. 23, 2023) ("To demonstrate that a proposed facility does not result in wasteful duplication, the Commission has held that the *applicant* must demonstrate that a thorough review of all reasonable alternatives has been performed") (emphasis added).

[94] Direct Testimony (Corrected) of Anna Sommer on Behalf of Joint Intervenors, *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side*

mischaracterize the purpose of Ms. Sommer's alternative portfolios by saying they are not intended as "viable" alternatives.[95] While Joint Intervenors do not recommend any specific portfolio, Ms. Sommer's modeling shows that the Companies have not adequately evaluated multiple viable replacement resource portfolio options. The Companies' unwillingness to concede that alternative approaches are viable is especially troubling within the context of the lack of options that the Companies fully assessed in their modeling. As Ms. Sommer explains, in their 2022 Resource Assessment,[96] the Companies essentially selected their preferred two-NGCC portfolio at an early step in their modeling process and never adequately compare any significantly different plan on the basis of cost and reliability.[97]

Although the Companies asserted that they did model the totality of the Joint Intervenors' proposals;[98] that is inaccurate. First, while Joint Intervenors agree that the Companies' hasty dismissal of RTO/ISO membership failed to recognize the economic and reliability benefits of joining PJM,[99] Joint Intervenors do not dispute that new generation resources are needed to replace retiring capacity. Recommending denial of inadequately supported CPCN applications is

Management Plan, Case No. 2022-00402, at 28–36 (July 14, 2023) ("Sommer Direct"); *see also* Aug. 28, 2023 HVT 13:08:00–13:09:30 (confirming that one NGCC "absolutely" could provide sufficient energy to meet the Companies' projected 2028 energy shortfall).

[95] LG&E/KU Br. at 18.

[96] The 2022 Resource Assessment (Corrected) is Attach. 2, Ex. SAW-1 to LGE/KU's Response to Joint Intervenor Supplemental Question 60(a), 2022 Resource Assessment (May 2023 Update). Throughout this brief, references to Ex. SAW-1 are intended to refer to the Companies' May 2023 Update version unless stated otherwise.

[97] Sommer Direct at 5–6.

[98] LG&E/KU Br. at 18.

[99] *See, e.g.*, Witness Levitt, Aug. 29, 2023 HVT at 10:37:00–10:39:15 (offering recommendation that PJM membership would offer net benefits, "especially in the context of the capacity [need], sort of a one-time opportunity to take advantage of capacity savings, because once you build an asset that costs a billion dollars you cannot unbuild it, that cost becomes sunk, so now is the time to take advantage of those capacity savings").

not the equivalent of recommending no new resources. Second, as discussed in detail in Joint Intervenors' initial brief in Section II, Joint Intervenors recommend that the Companies reconsider the potential of distributed resources and expanded DSM/EE programs to cost-effectively contribute to reliably meet customer needs. Third, the inadequacy of the Companies evidence in this proceeding does not preclude the Companies from presenting an approvable combination of replacement resources through revised and updated applications for CPCNs and DSM requests sufficient to meet its burden of proof.

Put simply, Joint Intervenors' position is that the Companies' preferred portfolio is not adequately supported by the record.

B. Ratepayers Should Not Bear All of the Risk of the CPCN Where the Companies Have Not Demonstrated Their Preferred Portfolio is Least-Cost.

As detailed in Joint Intervenors' opening brief, the Companies have failed to account for the full costs or risks associated with the construction of the NGCCs.[100] Yet the Companies are eager to move forward, citing increasing costs as a perverse incentive to rush committing ratepayer funds to an inadequately supported proposal. While acknowledging this uncertainty in costs, the Companies continue to reiterate that "[t]he core principles of affordability, reliability, and safety drive [their] fundamental business decisions" to propound the belief that the two proposed NGCC units represent the lowest reasonable cost option.[101] But, when asked whether the Company was prepared to commit to any percentage of risk sharing for unanticipated costs,

[100] JI Br., Section VI(D)–(E).
[101] Rebuttal Testimony of John R. Crockett III, *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402, at 2:21–22 (Aug. 9, 2023) ("Crockett Rebuttal"); Crockett, Aug. 22, 2023 HVT 11:04:10; Crockett Rebuttal at 3:11–13.

the response was "not at this point."[102] Rather, the Companies are content to leave ratepayers on the hook for an undetermined amount and leave the Commission in the position of evaluating the cost to ratepayers without full knowledge of the final bill. The Companies' proposal cannot credibly be put forth as least-cost when they do not know what the final costs will be.

Further, as confirmed by EPC contractor bids and as observed by Ms. Sommer, the Companies' modeling significantly understated the likely capital cost of the preferred NGCCs and it is likely that the NGCC's will continue to experience increases in cost.[103] The Companies have not adequately estimated costs for the proposed NGCCs, with the only certainty being that costs will continue to increase.[104]

As a result, it would be patently improper for ratepayers to bear any additional cost increases of the proposed NGCCs, if approved. The risk of increasing costs should not fall entirely on ratepayers while the Companies are exposed to no real risk. If the requested CPCN is approved, the Commission should require the Companies to take responsibility for covering any additional cost increases, using shareholder dollars.

Moreover, while KRS 278.264 *does not* constrain the Companies from implementing any particular portfolio of demand or supply-side resources, it *does* place an overall cost cap against which replacement capacity that is dispatchable, reliable, and resilient is to be measured.[105] For that reason, [106] the Companies should not be permitted to seek recovery for additional costs from

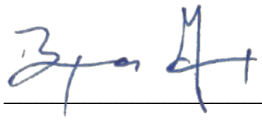
[102] Witness Crockett, Aug. 22, 2023 HVT at 11:07:23.
[103] Sommer Direct at 21–24.
[104] JI Br., Section VI(D)–(E).
[105] *See* JI Br., Section III(B).

ratepayers. Instead, the Commission should cap recoverable costs at the amount of the winning EPC bid.

IV. CONCLUSION

Joint Intervenors, comprised of four organizations led by Kentuckians, many of whom reside within the Companies' service area, believe principles of affordability and cost-effectiveness must remain at the forefront of this decision. For that reason, Joint Intervenors participated in this proceeding with the aim of ensuring that there has been a full and fair evaluation of all potentially cost-effective resources and have shared recommendations to improve the Companies' planning efforts. To that end, Joint Intervenors provided specific recommendations that the Companies can apply to diligently explore all potentially cost-effective options to meet future customer needs. Joint Intervenors stand by the recommendations made in the testimony of Andy McDonald, Anna Sommer, John D. Wilson, and Jim Grevatt, and appreciate the Commission's thoughtful engagement and consideration of Intervenors' submissions.

Respectfully submitted,



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CERTIFICATE OF SERVICE

In accordance with the Commission's July 22, 2021 Order in Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID*-19, this is to certify that the electronic filing was submitted to the Commission on October 4, 2023; that the documents in this electronic filing are a true representations of the materials prepared for the filing; and that the Commission has not excused any party from electronic filing procedures for this case at this time.

Byron Gary