

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF)	
LOUISVILLE GAS AND ELECTRIC)	
COMPANY AND KENTUCKY UTILITIES)	CASE NO. 2023-00422
COMPANY SERVICE RELATED TO)	
WINTER STORM ELLIOTT)	

POST-HEARING REPLY BRIEF OF
LOUISVILLE GAS AND ELECTRIC COMPANY
AND KENTUCKY UTILITIES COMPANY

Filed: September 20, 2024

TABLE OF CONTENTS

I. The Commission should close this investigation proceeding without issuing penalties to the Companies or any of their personnel because the record demonstrates that the Companies performed reasonably before, during, and after Winter Storm Elliott, and the Companies are adequately prepared for future periods of variable weather. 1

II. The unique nature of WSE created severe challenges for a number of large, professional, and prudent system planners and operators across the Eastern Interconnection, including the Companies. 6

III. KCA’s brief misconstrues the challenges the Companies’ gas units faced during WSE and relies on out-of-record evidence to advocate against future coal unit retirements. 9

IV. The Joint Intervenors’ brief distracts from the purposes of this proceeding by focusing largely on topics that have already been litigated or will be litigated in the future; meanwhile, its arguments relevant to the Companies’ performance during the Storm concerning public appeals and a BA-BA agreement are unsupported by the record. 12

A. The Commission should decline the Joint Intervenors’ implicit invitation to broaden this proceeding’s scope to relitigate or pre-litigate various topics that are better suited for future IRP, CPCN, and rate case proceedings. 13

B. The Commission should reject the Joint Intervenors’ speculative position that public appeals would have any empirically meaningful impact on the Companies’ ability to provide service during extreme weather events like WSE. 17

C. The Commission should ignore the Joint Intervenors’ assertion that the lack of a BA-BA agreement contributed in any way to the load shedding event and reject the Joint Intervenors’ recommendation to compel the execution of such an agreement..... 21

V. The Commission should close this proceeding with no penalties to the Companies or any of their personnel..... 24

TABLE OF ACRONYMS

AG	Attorney General	LG&E	Louisville Gas and Electric Company
BA	Balancing Authority	MC5	Mill Creek 5 NGCC Unit
CPCN	Certificate of Public Convenience and Necessity	MISO	Midcontinent Independent System Operator
CSR	Curtable Service Rider	MW	Megawatt
EEA	Energy Emergency Alert	NERC	North American Electric Reliability Corp.
EOP	Emergency Operations Procedure	NGCC	Natural Gas Combined Cycle
FERC	Federal Energy Regulatory Commission	PPA	Purchase Power Agreement
IRP	Integrated Resource Planning	RTO	Regional Transmission Organization
JI	Joint Intervenors	SC	Sierra Club
JRCA	Joint Reliability Coordination Agreement	TGT	Texas Gas Transmission
KCA	Kentucky Coal Association	TVA	Tennessee Valley Authority
KIUC	Kentucky Industrial Utility Customers	VOLL	Value of Lost Load
KU	Kentucky Utilities Company	WSE	Winter Storm Elliott

I. The Commission should close this investigation proceeding without issuing penalties to the Companies or any of their personnel because the record demonstrates that the Companies performed reasonably before, during, and after Winter Storm Elliott, and the Companies are adequately prepared for future periods of variable weather.

The Commission initiated this proceeding to investigate the practices and services of Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively, the “Companies”) with three clearly stated purposes, namely: (1) to determine the root causes and customer impacts associated with the load shedding that occurred during Winter Storm Elliott (“WSE” or the “Storm”);¹ (2) to investigate actions that the Companies have taken or plan to take subsequent to the Storm “that *meaningfully* affect the utilities’ ability to provide service during periods of variable weather and Bulk-Power System (BPS) stress”;² and (3) to determine whether civil penalties are appropriate under KRS 278.990.³

In addressing the Commission’s stated purposes, it is helpful to recall the context in which the Companies’ first-ever load shedding due to an energy emergency occurred. The record of this investigation clearly shows—consistent with the record of the Companies’ 2022 Certificate of Public Convenience and Necessity (“CPCN”) proceeding that addressed many of these same issues⁴—that WSE was a storm of enormous magnitude that caused load serving entities across the Eastern Interconnection to shed a combined load of 5,400 MW. That was the context in which the Companies had to shed load on December 23, 2022, for the first time in over 100 years of service, a record of service far superior to the Commission-accepted one loss-of-load event in ten years reliability planning standard.⁵ Peak load shedding for the Companies was 317 MW for less

¹ *Electronic Investigation of Louisville Gas and Electric Company and Kentucky Utilities Company Service Related to Winter Storm Elliott*, Case No. 2023-00422, Order at 3-4 (Ky. PSC Dec. 22, 2023).

² *Id.* at 1 (emphasis added).

³ *Id.* at 2.

⁴ *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 Retirements*, Case No. 2022-00402.

⁵ Case No. 2022-00402, Order at 80 n.291, 101-102 (Ky. PSC Nov. 6, 2023).

than half an hour, with a total load shedding duration of about four hours that affected about five percent of total customers, resulting in an average service interruption of less than an hour.⁶

Turning to the Commission’s first stated purpose for this investigation, the root cause of the load shedding event was *not* issues with the Companies’ coal units, contrary to the Joint Intervenors’ assertions regarding “proximate” causation.⁷ The Companies’ coal units did indeed encounter derates and outages, but those were within historically expected levels.⁸ In contrast, the only unprecedented generation-related event of WSE was the first-of-its-kind significant reduction of gas *pressure* (not gas *supply*) on the Texas Gas Transmission (“TGT”) pipeline that has served the Companies’ gas-fired units for decades, which resulted in a loss of gas-fired generation capacity ranging from 688 MW to 846 MW, well outside any reasonable historical expectations.⁹ That unprecedented gas pressure event—not coal unit issues, RTO membership status, BA-BA agreements, or Curtailable Service Rider (“CSR”) performance—was the root cause of the Companies’ load shedding during WSE.

Regarding the Commission’s second stated purpose, i.e., to investigate actions that the Companies have taken or plan to take subsequent to the Storm “that *meaningfully* affect the utilities’ ability to provide service during periods of variable weather and Bulk-Power System (BPS) stress,”¹⁰ the record shows that the Companies have fully addressed the root cause gas-pressure issue with TGT and have taken other measures to improve their ability to ensure

⁶ Case No. 2023-00422, Attachment to Companies’ Response to AG 1-2 at 2, 5-6 (filed Feb. 16, 2024); Case No. 2022-00402, Companies’ Response to PSC PHDR-29 (filed Sept. 15, 2023).

⁷ See Case No. 2023-00422, Joint Intervenors Brief at 5 (filed Aug. 30, 2024).

⁸ Case No. 2023-00422, Companies’ Responses to JI 2-8 and 2-9 (filed Mar. 15, 2024).

⁹ Case No. 2023-00422, Companies Brief at 12-13 (filed Aug. 9, 2024); Case No. 2023-00422, Companies’ Response to PSC 1-21(b) (filed Feb. 16, 2024); Case No. 2023-00422, Attachment to Companies’ Response to AG 1-2 at 2 (filed Feb. 16, 2024); Case No. 2023-00422, Companies’ Responses to JI 2-8 and 2-9 (filed Mar. 15, 2024); Case No. 2023-00422, Companies’ Response to KCA 2-1 (filed Mar. 15, 2024).

¹⁰ Case No. 2023-00422, Order at 1 (Ky. PSC Dec. 22, 2023) (emphasis added).

continuous service during extreme weather conditions and during times of Bulk Power System stress.¹¹

The record also shows that the Companies and their personnel behaved reasonably and prudently before, during, and after WSE. As set forth in the Companies' August 9, 2023 brief, the applicable continuity of service standard is not perfection.¹² Indeed, as noted above, the applicable resource planning standard *anticipates* a loss-of-load event once every ten years,¹³ not once every 100 years, which is the Companies' record. Moreover, although the cause of the service interruption that occurred during WSE was unique for the Companies, the duration of the WSE service interruption and number of customers affected compare favorably to those resulting from other severe weather events.¹⁴ Therefore, there is no reasonable basis under KRS 278.990 for imposing penalties on the Companies or any of their personnel.

All five intervening parties actively participated throughout this proceeding through two rounds of discovery and an all-day Commission hearing. Notably, only two of the five intervening parties elected to file briefs. Neither the Office of the Attorney General ("AG"), who has the statutory authority to represent all Kentucky customers before the Commission,¹⁵ nor Kentucky

¹¹ See, e.g., Case No. 2023-00422, Companies Brief at 15-18 (filed Aug. 9, 2024); Case No. 2023-00422, Companies' Responses to PSC 1-19, PSC 1-20, PSC 1-21, and PSC 1-87 (filed Feb. 16, 2024); Case No. 2023-00422, Companies' Response to JI 1-7(b) (filed Feb. 16, 2024); Case No. 2023-00422, Companies' Response to PSC PHDR-1 (filed July 8, 2024); Case No. 2022-00402, Attachment to Companies' Response to PSC 1-58(a) (filed Mar. 10, 2023); Case No. 2022-00402, Attachment to Companies' Response to PSC 2-67(b) (filed May 4, 2023); Case No. 2022-00402, Companies' Responses to PSC 4-3 and PSC 4-8(b) (filed June 9, 2023); 5/23/2024 Hearing, VR 9:37:45 a.m. – 9:38:57 a.m. (Bellar); VR 5:04:11 p.m. – 5:05:08 p.m. (Schram).

¹² Case No. 2023-00422, Companies' Brief at 4-6 (filed Aug. 9, 2024); see also 807 KAR 5:041, Section 5.

¹³ Case No. 2022-00402, Order at 80, 80 n.291 (Ky. PSC Nov. 6, 2023).

¹⁴ For context and in contrast, less than three months after WSE, a windstorm in the Companies' service territory caused 400,000 customer outages, required six days of restoration efforts, and resulted in an estimated combined distribution and transmission windstorm-related O&M and capital cost of \$83 million. In that case, the Commission approved regulatory asset treatment for the storm-related O&M expense less than three weeks after the Companies filed their application, which was an entirely appropriate response. *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for an Order Approving the Establishment of Regulatory Assets*, Case No. 2023-00093, Order at 2 (Ky. PSC Apr. 5, 2023). See also 5/23/2024 Hearing, VR 2:22:43 p.m. – 2:25:02 p.m., 4:35:03 p.m. – 4:35:51 p.m. (Bellar) (discussing WSE in comparison to the 2009 ice storm).

¹⁵ See KRS 367.150(8).

Industrial Utility Customers (“KIUC”), who represents some of the largest energy consumers in the Commonwealth, decided to file a brief. The Sierra Club (“SC”) also actively participated in the case and declined to file a brief. That these parties did not file briefs is noteworthy precisely because they did actively participate in this proceeding and chose to file briefs in the Companies’ 2022 CPCN case, which also addressed WSE at length.

Also notable is that no party to this proceeding—including the two parties who filed briefs—has asserted that the Companies or any of their personnel have acted or failed to act in a manner that would support the issuance of penalties under KRS 278.990.

The briefs filed by the Kentucky Coal Association (“KCA”) and the Joint Intervenors (Metropolitan Housing Coalition, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Mountain Association) (“Joint Intervenors”) stray from the Commission’s stated purposes by primarily focusing on issues that either have already been litigated or will be litigated in future Commission proceedings; namely, how the Companies’ supply- and demand-side portfolios should be structured, Regional Transmission Organization (“RTO”) membership, and how the Companies’ Curtailable Service Rider (“CSR”) rate mechanism might be restructured.

The Commission explicitly addressed the Companies’ current and near-term resource portfolio and RTO membership in its final order in the 2022 CPCN case, which it issued less than two months prior to the opening of this proceeding.¹⁶ Not only is it unnecessary to relitigate these issues, but the doctrine of *res judicata* clearly bars KCA and Joint Intervenors from asserting issues that were actually litigated and finally decided in a prior Commission proceeding.¹⁷

¹⁶ Case No. 2022-00402, Order at 95, (Ky. PSC Nov. 6, 2023) (declining to direct the Companies to join an RTO).

¹⁷ See *Yeoman v. Commonwealth*, 983 S.W.2d 459, 464-65 (Ky. 1998) (explaining that *res judicata* encompasses claim preclusion and issue preclusion, and the essential elements required for issue preclusion are: (1) an identity of issues, (2) a final decision or judgment on the merits, and (3) an estopped party who was given a fair opportunity to litigate the issue, and (4) the issue in the prior action was necessary to the agency’s final decision); *Williamson v. Public Service Comm’n*, 174 S.W.2d 526, 529 (Ky. 1943) (extending the doctrine of *res judicata* to administrative agencies, unless a significant change of conditions or circumstances occurs between two successive administrative hearings).

Next month, the Companies' IRP filing will provide intervenors the opportunity to review the Companies' 2024 integrated resource plan, engage in relevant discovery, and submit written comments regarding relevant topics surrounding the Companies' medium- to long-term portfolio issues.¹⁸ Future CPCN cases will similarly address resource portfolio issues. Likewise, future rate case filings will allow the Companies to address their CSR rate mechanisms. Because all of these issues fall outside the scope of this proceeding, it is unnecessary for the Commission here to address arguments related to resource portfolios, RTO membership analyses, or the CSR mechanisms.

The Joint Intervenors' brief touches on only two topics that are relevant to the scope of this proceeding: public appeals during severe weather events, and an agreement between the Companies and Midcontinent Independent System Operator ("MISO") in each party's capacity as a Balancing Authority ("BA") ("BA-BA agreement"). There is no evidence in the record to suggest that the Companies' public appeals policy or the existence of a BA-BA agreement would have had any impact, much less a *meaningful* impact, on the Companies' ability to provide service during periods of variable weather. Regarding the MISO BA-BA agreement issue, there is clear evidence in the record that having had such an agreement in place would have had no impact at all during the Companies' WSE load shedding event, during which MISO was in an energy emergency of its own and could not have exported energy to the Companies.¹⁹ Nonetheless, the Companies are addressing or have already addressed these items as a result of lessons learned during and after the Storm.

¹⁸ See 807 KAR 5:058, Section 2(2); 807 KAR 5:058, Section 11(1) ("Upon receipt of a utility's integrated resource plan, the commission shall develop a procedural schedule which allows for submission of written interrogatories to the utility by staff and intervenors, written comments by staff and intervenors, and responses to interrogatories and comments by the utility.").

¹⁹ Case No. 2023-00422, Companies' Response to PSC PHDR-5 (filed July 8, 2024); Case No. 2023-00422, Appendix A to Order at 67-68 (Ky. PSC Dec. 22, 2023).

Therefore, the Commission should issue a final order finding that (1) the Companies and their personnel acted reasonably during an unprecedented severe weather event, (2) the Companies have taken and are taking prudent actions in response to that event, and (3) no penalties are appropriate under KRS 278.990. The Commission should also decline the KCA’s and Joint Intervenors’ invitations to relitigate or pre-litigate any IRP, CPCN, or rate case issues. It should further decline to impose any new mandates concerning public appeals or a MISO BA-BA agreement because the Companies have demonstrated that they have already addressed or are actively addressing both items.

II. The unique nature of WSE created severe challenges for a number of large, professional, and prudent system planners and operators across the Eastern Interconnection, including the Companies.

WSE placed the entire Eastern Interconnection under enormous strain due to generation—not transmission—issues. Both the KCA’s and Joint Intervenors’ briefs cite to the portion of the video transcript of the evidentiary hearing in which then-Vice Chair Hatton described WSE as a “perfect storm”:

It sounds like this storm event was almost a perfect storm. A ton of things had to go wrong in order to get into the situation that so many utilities found themselves in – a number of things in rapid succession – and a lot of them were outside the Companies’ control.²⁰

Though KCA and Joint Intervenors misattribute this quotation as a statement made by the Companies,²¹ the Companies agree with the apt description. The Storm was an enormous, unprecedented weather event. But contrary to the Joint Intervenors’ focus on transmission and RTO membership as somehow being solutions for what occurred during WSE, the NERC/FERC

²⁰ 5/23/2024 Hearing, VR 2:17:11 p.m. – 2:17:27 p.m. (V.C. Hatton).

²¹ Case No. 2023-00422, Kentucky Coal Association Brief at 3 (filed Aug. 30, 2024); Case No. 2023-00422, Joint Intervenors Brief at 3 (filed Aug. 30, 2024).

report accurately characterized the primary difficulty as an unusual *generation capacity* shortage that resulted in 5,400 MW of firm load shedding across the Eastern Interconnection, of which only 317 MW were attributable to the Companies' system.²² For the Companies specifically, an unprecedented, first-of-its-kind gas pressure problem on a TGT pipeline resulted in an energy emergency that led to the load shedding event on December 23, 2022.²³

Nothing about the events of WSE suggests the Companies or any of their personnel acted imprudently or unreasonably. Five other load-serving entities (Tennessee Valley Authority, Duke Energy Progress, Duke Energy Carolinas, Dominion Energy South Carolina, and Santee Cooper) had to shed firm load.²⁴ Several others had to issue energy emergency alerts ("EEA") and had "significant unplanned generating unit outages, derates, or failures to start within their footprints," including PJM, MISO, ISO-New England, Southwest Power Pool, and Southern Company.²⁵ PJM stated it was close to load shedding during the Storm.²⁶ Load-serving entities experienced large derates and outages across all fuel types:²⁷

²² FERC, NERC, & Regional Entity Staff, Inquiry into Bulk-Power System Operations During December 2022 Winter Storm Elliott at 6 (Oct. 2023) ("The quantity of firm load shed during Winter Storm Elliott was not as large as in the Winter Storm Uri event, but it is especially disconcerting that it happened in the Eastern Interconnection which normally has ample generation and transmission ties to other grid operators that allow them to import and export power. And yet, for reasons described more fully in Section IV of the Report, electric grid operators were faced with a generation capacity shortage that resulted in 5,400 MW of firm load shed.") [hereinafter "NERC/FERC Oct. 2023 Report"].

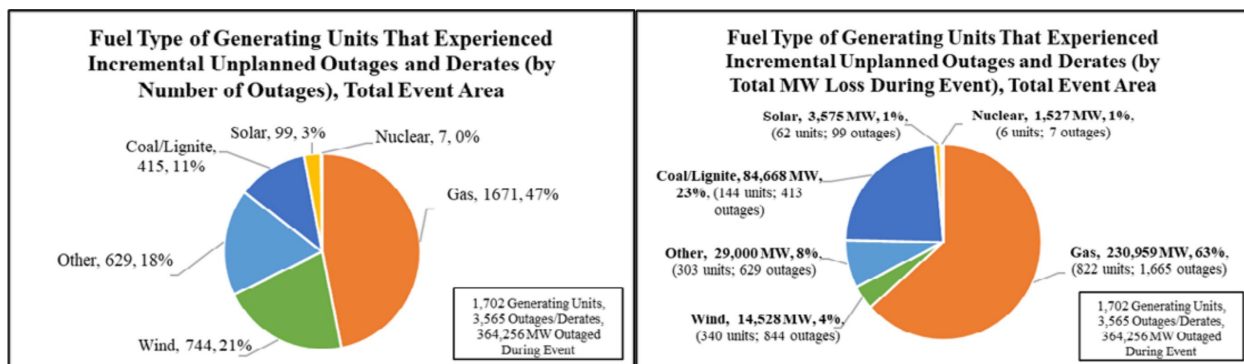
²³ See Case No. 2023-00422, Companies' Responses to AG 1-6 and AG 1-7 (filed Feb. 16 2024); Case No. 2023-00422, Companies' Response to JI 1-4 (filed Feb. 16, 2024); Case No. 2023-00422, Companies' Response to JI 2-9(a) (filed Mar. 15, 2024).

²⁴ NERC/FERC Oct. 2023 Report at 7-8.

²⁵ *Id.*

²⁶ *Id.* at 11.

²⁷ *Id.* at 17, 158 (Appendix C).



NERC/FERC Oct. 2023 Report, Appendix C

If the load shedding or generation issues had been limited to the Companies, there would be more ground for concern regarding the Companies’ resource portfolio and severe-weather readiness. But the reality is that a number of large, professional, and prudent system planners and operators across the Eastern Interconnection either had to shed load or came close to it during WSE, including PJM. Thus, there is nothing about this historically unprecedented load shedding event for the Companies that suggests they or their personnel acted imprudently or unreasonably leading up to or during WSE.

Following the Storm, the Companies and TGT have taken reasonable and prudent steps to guard against a reoccurrence of curtailments under similar and reasonably foreseeable circumstances.²⁸ The other issues KCA and the Joint Intervenors have raised do not detract in any way from the fundamental prudence of the Companies’ actions before, during, and after WSE.

²⁸ See Case No. 2023-00422, Companies Post-Hearing Brief at 16-18 (filed Aug. 9, 2024).

III. KCA’s brief misconstrues the challenges the Companies’ gas units faced during WSE and relies on out-of-record evidence to advocate against future coal unit retirements.

KCA’s brief predictably defends the effectiveness of the Companies’ coal-fired units, which did perform within historically reasonable parameters during the Storm, and questions the reliability of natural gas combined cycle (“NGCC”) units, including the Mill Creek 5 (“MC5”) unit approved by the Commission in the 2022 CPCN proceeding less than a year ago in a case replete with WSE-related evidence.²⁹ Then, contravening Commission regulations, the KCA brief discusses and cites to a number of sources that are not in the record of or germane to this proceeding—out-of-record information about the Companies’ potential future load growth and PJM capacity auction results.³⁰ These discussions digress significantly from the Commission’s express purposes in opening this proceeding, and the record cuts repeatedly against KCA’s assertions.

In attacking the Companies’ gas-fired generation, KCA asserts that the “addition of pressurization at the gas-fired stations alone is not sufficient to ensure the events of WSE do not occur in the future,”³¹ yet pressurization was *exactly* the problem during the Storm.³² Gas supply

²⁹ Case No. 2022-00402, Order at 178 (Ky. PSC Nov. 6, 2023).

³⁰ See 807 KAR 5:001, Section 11(4) (“Unless so ordered by the commission, the commission shall not receive in evidence or consider as a part of the record a book, paper, or other document for consideration in connection with the proceeding after the close of the testimony.”); see also *Application of Kentucky Power Company for (1) A Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power Company of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company’s Efforts to Meet Federal Clean Air Act and Related Requirements; and (5) All Other Required Approvals and Relief*, Case No. 2012-00578, Order (Ky. PSC Nov. 26, 2013) (granting motion to strike testimony filed after the conclusion of the formal evidentiary hearing); *Application of Jessamine-South Elkhorn Water District for a Certificate of Public Convenience and Necessity to Construct and Finance a Waterworks Improvements Project Pursuant to KRS 278.020 and KRS 278.300*, Case No. 2012-00470 (Ky. PSC Apr. 30, 2013) (granting motion to strike portions of post-hearing brief that discuss out-of-record materials).

³¹ Case No. 2023-00422, KCA Brief at 4 (filed Aug. 30, 2024).

³² Case No. 2023-00422, Companies Brief at 9-10, 13 (filed Aug. 9, 2024); Case No. 2023-00422, Companies’ Responses to AG 1-6, AG 1-7, and AG 1-8(e) (filed Feb. 16, 2024); Case No. 2023-00422, Companies’ Responses to KCA 1-4 and KCA 1-7 (filed Feb. 16, 2024).

was not an issue for the Companies during WSE; gas *pressure* was.³³ The Companies would not have had to shed load if the unprecedented issue with TGT’s gas pressure had not occurred,³⁴ and the Companies have since implemented improvements so that their systems can operate at pressure levels like those experienced during WSE.³⁵

Contrary to KCA’s claims that the Companies are disregarding the Commission’s directive on dual fuel capability for MC5, the Companies are following entirely the Commission’s order in the 2022 CPCN proceeding to include such capability “for no more than the most recent received quote for the costs of the entire facility,” i.e., “at no incremental cost (in excess of the most recent bid).”³⁶ The record reflects that the Companies continue to meaningfully evaluate the potential costs and benefits of additional fuel alternatives for supporting system reliability, and the current contract for MC5 does not preclude the addition of fuel-oil capability in the future if it can be included at no incremental cost.³⁷

KCA speculates that adding dual fuel to MC5 would “likely” require “new permits . . . to be obtained with these new dual fuel parameters raising unknown results.”³⁸ There is no evidence in the record to support this assertion. Regardless, the issue falls beyond the bounds of this proceeding and is appropriately addressed in future IRP and CPCN proceedings, not here.

³³ See Case No. 2023-00422, Companies’ Responses to KCA 1-4 and KCA 1-7 (filed Feb. 16, 2024); Case No. 2023-00422, Companies’ Response to AG 1-8(e) at 2 (filed Feb. 16, 2024).

³⁴ See Case No. 2023-00422, Companies Brief at 13 (filed Aug. 9, 2024); Case No. 2023-00422, KCA Brief at 4 (filed Aug. 30, 2024); Case No. 2023-00422, Companies’ Response to AG 1-16 (filed Feb. 16, 2024); Case No. 2023-00422, Companies’ Response to KCA 1-5 (filed Feb. 16, 2024).

³⁵ See Case No. 2023-00422, Companies Brief at 16 (filed Aug. 9, 2024); Case No. 2023-00422, Companies’ Response to PSC 1-87 (filed Feb. 16, 2024); 5/23/2024 Hearing, VR 9:37:45 a.m. – 9:38:15 a.m. (Bellar); VR 5:04:20 p.m. – 5:05:08 p.m. (Schram).

³⁶ Case No. 2022-00402, Order at 105 (Ky. PSC Nov. 6, 2023).

³⁷ See Case No. 2023-00422, Companies’ Response to PSC 1-20 (filed Feb. 16, 2024); Companies’ Response to JI 2-10 (filed Mar. 15, 2024); Companies’ Response to PSC PHDR-1 (filed July 8, 2024).

³⁸ See Case No. 2023-00422, KCA Brief at 6 (filed Aug. 30, 2024).

Finally, KCA’s brief advocates against retiring Mill Creek Units 1 and 2 by improperly citing to out-of-record information to address issues that are entirely beyond the purposes of this proceeding.³⁹ First, the *future* retirements of Mill Creek Units 1 and 2 have nothing to do with load shedding that occurred almost two years ago, and therefore can have no bearing on the Commission’s first purpose of identifying the root cause of the load shedding. Second, KCA’s arguments, in addition to improperly attempting to introduce evidence into the record after the record is closed, have no bearing on the Commission’s second stated purpose, namely investigating the Companies’ actions taken or planned to be taken since WSE that meaningfully affect their ability to serve customers during variable weather and times of bulk-power system stress.

Notably, KCA first asserts that an August 2024 Investor Update from the Companies’ parent corporation regarding possible future data center load growth raises “significant future questions” about reliability and the need for additional generation resources.⁴⁰ Then, to suggest that the Companies should not retire additional coal-fired units, KCA goes on to cite recent U.S. Supreme Court decisions regarding the Good Neighbor Rule and the *Chevron* doctrine, and recent PJM capacity market results.⁴¹ In other words, KCA improperly cites out-of-record items to speculate about possible future load and the economics of possible future generating resources, *not* actions the Companies have taken or plan to take affecting their ability to serve customers during variable weather and times of bulk-power system stress. Thus, to the extent these issues were not fully litigated in the 2022 CPCN case and are therefore *res judicata* (KCA was a party to that case), discussions on coal unit retirements and future NGCC units are appropriately addressed in future IRP and CPCN proceedings, not here.

³⁹ See *supra* note 30.

⁴⁰ Case No. 2023-00422, KCA Brief at 6-8 (filed Aug. 30, 2024).

⁴¹ *Id.* at 9-10.

IV. The Joint Intervenors’ brief distracts from the purposes of this proceeding by focusing largely on topics that have already been litigated or will be litigated in the future; meanwhile, its arguments relevant to the Companies’ performance during the Storm concerning public appeals and a BA-BA agreement are unsupported by the record.

The Joint Intervenors’ brief opens with a contradiction. It first asserts that “[t]his investigation ... has never been about perfection,” but then it launches into a rhetorical assault on the Companies precisely because their performance during WSE was “evidently imperfect”: “Perfection sailed when the Companies found themselves in the position of firm load shedding, cutting power to 54,637 Kentuckians just before Christmas.”⁴² This ignores the reality that the Commission’s own regulations anticipate service interruptions.⁴³ Moreover, this Commission, NERC, and the industry as a whole have accepted one day in ten years loss-of-load expectation as a reasonable planning standard,⁴⁴ meaning that load shedding, though regrettable, is at some point *expected* as a planning matter and is even demanded by NERC under certain conditions;⁴⁵ it is not “perfection sailing.” The Companies’ actual performance is far superior to that standard: in over 100 years of providing electric and natural gas utility service to customers across the Commonwealth, the Companies have implemented about four hours of load curtailments due to an energy shortfall, which impacted about five percent of customers and with an average curtailment duration of less than an hour.⁴⁶ To suggest that this record of service, which exceeds planning expectations more than 50 fold, in any way falls short of “provid[ing] adequate, efficient,

⁴² Case No. 2023-00422, Joint Intervenors Brief at 1 (filed Aug. 30, 2024).

⁴³ 807 KAR 5:041, Section 5(1). Similar regulations contemplating the reality of service interruptions exist for other types of regulated utilities. See 807 KAR 5:022, Section 2(2) (gas utilities); 807 KAR 5:066, Section 4(1) (water utilities); and 807 KAR 5:071, Section 6(1) (sewage utilities).

⁴⁴ Case No. 2022-00402, Order at 80, 80 n.291 (Ky. PSC Nov. 6, 2023).

⁴⁵ See, e.g., NERC Reliability Standards EOP-011-1 and TPL-001-5.1. NERC Reliability Standards EOP-011-1 and TPL-001-5.1 are the standards that were in place during the time of the Storm.

⁴⁶ See Case No. 2023-00422, Companies’ Response to AG 1-25 (filed Feb. 16, 2024).

and reasonable service,” is to ignore the “adequate, efficient, and reasonable service” standard and demand perfection, which is both unattainable and prohibitively costly.

To be clear, the Companies do not mean to downplay the load shedding event resulting from WSE. But in the face of unprecedented challenges induced by the lack of gas pressure, the Companies’ personnel responded prudently to minimize impacts on customers and restore power swiftly amid ongoing extreme weather, and to mitigate operating emergencies in a manner that prevented even greater risk to the reliability of the Eastern Interconnection in accordance with NERC emergency preparedness and operations requirements.⁴⁷ After the Storm, the Companies critically examined their systems—from infrastructure to generation operations, employee safety, and customer service—to look for ways to improve and increase system resiliency for future severe weather events.⁴⁸ Based on these reflections, the Companies implemented improvements that were economical and productive to reduce the likelihood that another gas pressure issue would occur in the future.⁴⁹ Contrary to the Joint Intervenors’ assertions, the Companies responded reasonably before, during, and after WSE, and they have taken the lessons of the Storm seriously.

A. The Commission should decline the Joint Intervenors’ implicit invitation to broaden this proceeding’s scope to relitigate or pre-litigate various topics that are better suited for future IRP, CPCN, and rate case proceedings.

Like KCA, the Joint Intervenors’ brief discusses at length several topics that are beyond the scope of this proceeding, have previously been litigated, or are clearly appropriately addressed in future filings. Topics concerning future resource planning, fuel diversity, RTO membership,

⁴⁷ See Case No. 2023-00422, Companies’ Response to PSC 1-69 (filed Feb. 16, 2024); Case No. 2023-00422, Companies’ Response to AG 1-25 (filed Feb. 16, 2024); 5/23/2024 Hearing, VR 9:36:26 a.m. – 9:37:26 a.m. (Bellar); NERC Reliability Standard EOP-011-1, available at <https://www.nerc.com/pa/Stand/Reliability%20Standards/EOP-011-1.pdf>.

⁴⁸ See Case No. 2023-00422, Attachment to Companies’ Response to PSC 2-12 (filed Mar. 15, 2024); Case No. 2022-00402, Attachments 1 and 2 to Companies’ Response to PSC PHDR-13 (filed Sept. 15, 2023).

⁴⁹ See, e.g., Case No. 2023-00422, Companies’ Response to PSC 1-25 (filed Feb. 16, 2024); Case No. 2023-00422, Companies’ Responses to PSC 2-6, PSC 2-8, PSC 2-11, PSC 2-13 and PSC 2-15 (filed Mar. 15, 2024).

transmission issues, and the Companies' CSR rate mechanisms do not fit within the Commission's stated purposes for this investigative proceeding.

The Joint Intervenors' assertion that "LG&E-KU should fully account for reliability benefits and performance of resources in its upcoming IRP," and their discussion about possible supply- and demand-side resources are appropriate to the Companies' upcoming IRP and possible future CPCN cases, not this proceeding.⁵⁰ Yet, the Joint Intervenors imply that this proceeding is the appropriate venue for the Commission to evaluate the adequacy of the Companies' resource portfolio, despite the fact that the Commission exhaustively examined this exact issue less than one year ago in the 2022 CPCN proceeding.⁵¹ The Joint Intervenors flatly misstate the record by asserting that the Companies have been "reluctant to acknowledge" the challenges their coal units faced.⁵² The Joint Intervenors' recitation of the precise timeline of the Companies' coal unit issues is proof positive that the Companies have indeed been forthright and forthcoming about those issues.⁵³

But that does not change the indisputable fact that whereas the coal unit derates and outages the Companies faced during WSE were within the contemplated range of such outages, the TGT gas pressure problem was entirely unprecedented.⁵⁴ It was the sole unexpected, first-of-its-kind event for the Companies during WSE. It was and is therefore reasonable to cite it as the root cause of the load shedding event. The precise timing of certain coal unit issues is irrelevant, contra the

⁵⁰ Case No. 2023-00422, Joint Intervenors Brief at 12 (filed Aug. 30, 2024).

⁵¹ The 2022 CPCN proceeding resulted in a 181-page final order, multiple rounds of discovery requests from nine intervenors, six days of live witness testimony, and "hundreds of thousands of pages of documents" filed into the evidentiary record. *See* Case No. 2022-00402, Order at 4 (Ky. PSC Nov. 6, 2023). It could not have been a more thorough evaluation of the Companies' resource portfolio.

⁵² Case No. 2023-00422, Joint Intervenors Brief at 2-3 (filed Aug. 30, 2024).

⁵³ Case No. 2023-00422, Joint Intervenors Brief at 3-5 (filed Aug. 30, 2024); *see also* Case No. 2023-00422, KCA Brief at 4-5 (filed Aug. 30, 2024) (reciting a number of the Companies' coal units' derates and outages during WSE).

⁵⁴ Case No. 2023-00422, Companies Brief at 12-13 (filed Aug. 9, 2024); Case No. 2023-00422, Companies' Response to PSC 1-21(b) (filed Feb. 16, 2024); Case No. 2023-00422, Companies' Responses to JI 2-8 and 2-9 (filed Mar. 15, 2024).

Joint Intervenors’ “proximate cause” argument.⁵⁵ It is the magnitude and probability of derates and outages that made the gas pressure loss and resulting unit derates the root cause, not the precise timing.

The Joint Intervenors’ assertion that “LG&E-KU’s lack of RTO membership meant weathering the storm alone” is both factually inaccurate and a canard. During WSE, the Companies both sold power to and bought power from MISO, PJM, and TVA.⁵⁶ Thus, there is no sense in which the Companies “weather[ed] the storm alone.”

Moreover, there is no evidence in the record of this case (including the 2022 CPCN case record incorporated by reference) to support any assertion that the Companies would have been better off during WSE as PJM members. Rather, PJM itself stated it was close to load shedding during WSE,⁵⁷ and PJM’s manual load dump procedures exist precisely to shed load in stressed areas of the footprint when circumstances require it.⁵⁸

The Joint Intervenors’ discussion on RTO membership is an attempt to relitigate an issue from the 2022 CPCN case, one that the Commission explicitly and forcefully addressed in its final order issued November 6, 2023. Indeed, in a comprehensive, 181-page order that mentioned WSE no less than ten times,⁵⁹ the Commission plainly stated, “Furthermore, the Commission declines to direct LG&E/KU to join an RTO in this matter.”⁶⁰ The Commission went on to emphasize the importance of having “steel in the ground” or purchase power agreements (“PPAs”) to ensure reliable energy supply, not a regular reliance on energy markets.⁶¹ Notably, the AG clearly stated

⁵⁵ Case No. 2023-00422, Joint Intervenors Brief at 5 (filed Aug. 30, 2024).

⁵⁶ Case No. 2023-00422, Companies Brief at 11 (filed Aug. 9, 2024); Case No. 2022-00402, Companies’ Response to SC 1-19(b) at 3-4 (filed Mar. 10, 2023).

⁵⁷ NERC/FERC Oct. 2023 Report at 11.

⁵⁸ See 8/24/2023 Hearing, VR 4:41:10 p.m. – 4:42:02 p.m. (Schram).

⁵⁹ Case No. 2022-00402, Order at 33-35, 38, 51-52, 59, 104 (Ky. PSC Nov. 6, 2023).

⁶⁰ Case No. 2022-00402, Order at 95 (Ky. PSC Nov. 6, 2023).

⁶¹ *Id.* at 95, 177.

that he opposed RTO membership for the Companies in the 2022 CPCN case because annual studies have “consistently shown that RTO membership is not beneficial to customers at this time.”⁶² Nonetheless, the Companies will continue to conduct their RTO membership analyses consistent with the Commission’s direction, which has included addressing reliability issues.

The Joint Intervenors attempt to conflate RTO membership with transmission. But the Commission’s final order in the CPCN case directed the Companies “to study the value and opportunities that transmission (regional and interregional) and imports provide in their next IRP,” not to enhance or revise their RTO study approach.⁶³

The Joint Intervenors’ critiques about the lack of a transmission witness at the evidentiary hearing in this proceeding⁶⁴ are easily rebutted: as the Companies have repeatedly stated, the WSE load shedding event was not a transmission problem; it was a generation problem.⁶⁵ For the Companies in particular, it was a historically unprecedented gas pressure problem.⁶⁶ As noted above, the NERC-FERC report states the WSE problems stemmed from lack of generation capacity, not transmission adequacy.⁶⁷

The Joint Intervenors’ brief asserts that the Companies should evaluate their CSR rate mechanisms in their upcoming IRP proceeding in light of the role that CSR customers played during WSE.⁶⁸ The Companies penalized non-compliant CSR customers according to the terms

⁶² *Id.* at 24. Nothing in the course of this proceeding indicates that the AG’s position on the issue has changed. For context, the Companies’ RTO study in the CPCN record showed net present value costs of PJM membership in 2022 dollars ranging from over \$400 million to almost \$1.2 billion. *See* Case No. 2022-00402, Attachment 1 to Companies’ Response to SC 2-26(b) at 6 (filed May 4, 2023). Thus, even if being PJM members could have avoided the Companies’ historically unprecedented four-hour load shedding event that affected about five percent of customers for an average of less than an hour, it would have come at tremendous cost.

⁶³ Case No. 2022-00402, Order at 95 (Ky. PSC Nov. 6, 2023).

⁶⁴ Case No. 2023-00422, Joint Intervenors Brief at 15-16 (filed Aug. 30, 2024).

⁶⁵ Case No. 2023-00422, Companies’ Response to JI 1-19(f) at 3 (filed Feb. 16, 2024); Case No. 2023-00422, Companies’ Response to JI 2-5(e) (filed Mar. 15, 2024); 5/23/2024 Hearing, VR 7:13:10 p.m. – 7:13:49 p.m. (Schram).

⁶⁶ Case No. 2023-00422, Companies Brief at 7 (filed Aug. 9, 2024); Case No. 2023-00422, Companies’ Response to KCA 2-1 (filed Mar. 15, 2024); Case No. 2023-00422, Companies’ Response to PSC 1-21(b) at 2 (filed Feb. 16, 2024).

⁶⁷ NERC/FERC Oct. 2023 Report at 6.

⁶⁸ Case No. 2023-00422, Joint Intervenors Brief at 21-23 (filed Aug. 30, 2024).

of their tariffs following WSE; there is nothing more the Companies could have done to compel compliance or penalize non-compliance.⁶⁹ The Companies cannot control their CSR customers' actions, and revising the CSR rate mechanisms is an issue for the Companies' next rate cases, not this proceeding or the upcoming IRP proceeding.

The Companies reconsider their entire tariff books before filing each rate case, and they will do so again in any future rate cases, including CSR provisions. Notably, the Joint Intervenors were parties to the Companies' recent rate cases and did not voice any concerns about the CSR mechanisms during those proceedings.⁷⁰ As with RTO membership, the CSR program is not cost-free, and the value of lost load ("VOLL") is not the only relevant measure for CSR.⁷¹ Contrary to the Joint Intervenors' proposal to change the CSR non-compliance penalty to simply match the VOLL,⁷² the Companies recognize that any changes to the CSR mechanisms must account for the cost of obtaining reliability benefits relative to other means of obtaining those benefits, not just in comparison to VOLL.

B. The Commission should reject the Joint Intervenors' speculative position that public appeals would have any empirically meaningful impact on the Companies' ability to provide service during extreme weather events like WSE.

There is no evidence in the record to support any assertion that public appeals for voluntary energy reduction would have had a material beneficial effect on the load shedding event that

⁶⁹ See Case No. 2023-00422, Companies' Response to PSC 2-6 (filed Mar. 15, 2024).

⁷⁰ *Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Case No. 2020-00349, Order (Ky. PSC Dec. 30, 2020) (granting full intervenor status to Joint Intervenors); *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Case No. 2020-00350, Order (Ky. PSC Dec. 30, 2020) (granting full intervenor status to Joint Intervenors).

⁷¹ See Case No. 2023-00422, Joint Intervenors Brief at 22 (filed Aug. 30, 2024).

⁷² *Id.*

occurred during WSE. The Joint Intervenors' supposition that public appeals would have had any beneficial effect is pure speculation. Indeed, it is "backed by zero empirical evidence."⁷³ The record in this case suggests public appeals might even be *counterproductive* if they are not carefully timed and directed.⁷⁴

The Joint Intervenors' contention that the Companies "have sought to dismiss the importance and value of public appeals"⁷⁵ belies the record. At the evidentiary hearing, the Companies' witness Lonnie Bellar discussed the Companies' historic public appeal strategy for severe weather events, to provide energy efficiency tips to customers to reduce impacts to customer bills through thoughtful energy consumption practices, and to preserve the integrity of the system during high energy usage events.⁷⁶ In terms of direct public appeals asking customers to reduce energy consumption in energy emergency events, Mr. Bellar testified about the importance of timing an effective public appeal.⁷⁷ With a general knowledge of customer behavior, Mr. Bellar spoke about the possibility of customers experiencing fatigue if a utility does not use prudent judgment based on the circumstances of an event before issuing public appeals for usage reduction.⁷⁸ Mr. Bellar also explained that after WSE occurred, the Companies undertook critical discussions regarding when and how future public appeals can be effectively made under similar circumstances.⁷⁹ The Companies took what they learned from their first ever curtailment event, and formalized a policy for direct public appeals during similar energy emergencies.⁸⁰ The

⁷³ Case No. 2023-00422, Joint Intervenors Brief at 10 (filed Aug. 30, 2024).

⁷⁴ Case No. 2023-00422, Companies Brief at 14 (filed Aug. 9, 2024); *see* 5/23/2024 Hearing, VR 2:43:15 p.m. – 2:46:38 p.m., 2:52:50 p.m. – 2:53:18 p.m., 4:33:39 p.m. – 4:35:02 p.m. (Bellar).

⁷⁵ Case No. 2023-00422, Joint Intervenors Brief at 21 (filed Aug. 30, 2024).

⁷⁶ 5/23/2024 Hearing, VR 11:26:10 a.m. – 11:34:46 a.m. (Bellar).

⁷⁷ *See* 5/23/2024 Hearing, VR 2:43:15 p.m. – 2:46:38 p.m., 2:52:50 p.m. – 2:53:18 p.m., 4:33:39 p.m. – 4:35:02 p.m. (Bellar).

⁷⁸ 5/23/2024 Hearing, VR 2:45:37 p.m. – 2:45:53 p.m. (Bellar).

⁷⁹ 5/23/2024 Hearing, VR 11:34:18 a.m. – 11:34:46 a.m., 2:46:11 p.m. – 2:46:38 p.m. (Bellar).

⁸⁰ *See* Case No. 2023-00422, Attachment to Companies' Response to PSC PHDR-4 (filed July 8, 2024).

Companies’ nuanced and thoughtful approach to issuing customer requests to voluntarily reduce usage—which considers both the benefits and the potential consequences based on the circumstances of an energy emergency event—does not diminish the importance or value of public appeals.

The Joint Intervenors misstate the record concerning a “decision to belatedly send out a broad public appeal to all of their customers – on social media, their website, and over media engagement, to the tune of 249 stories with an estimated reach of 109 million people.”⁸¹ To be clear, those figures were derived from a third-party media analysis report and indicate that the Companies responded to media requests after the Storm that resulted in 249 stories in December 2022 related to power outages from WSE, and those stories reached approximately 109 million potential readers, listeners, or viewers of various local, national, and global media outlets.⁸² Leading up to and during WSE, the Companies utilized customer newsletters, back of bill envelopes, and social media channels to help customers understand the importance of conserving energy.⁸³ And once the Companies realized that load shedding would be necessary (approximately forty minutes before the load shedding began), they issued direct public appeals as quickly as feasibly possible, requesting that customers voluntarily reduce usage.⁸⁴

Contrary to the Joint Intervenors’ assertions, the Companies had no reason to make public appeals for voluntary load reduction “days” before December 23, 2022.⁸⁵ The Companies entered the operating day on December 23 with historically ample resources to meet projected demand.⁸⁶

⁸¹ Case No. 2023-00422, Joint Intervenors Brief at 10 (filed Aug. 30, 2024).

⁸² Case No. 2023-00422, Companies’ Response to PSC 1-62; Attachment 2 to Companies’ Response to PSC 1-62 (filed Feb. 16, 2024).

⁸³ Case No. 2023-00422, Companies’ Response to PSC 1-11(a) (filed Feb. 16, 2024).

⁸⁴ Case No. 2023-00422, Companies Brief at 14 (filed Aug. 9, 2024); Case No. 2023-00422, Companies’ Response to PSC 1-63 (filed Feb. 16, 2024); 5/23/2024 Hearing, VR 11:31:15 a.m. – 11:32:22 a.m. (Bellar).

⁸⁵ See Case No. 2023-00422, Joint Intervenors Brief at 8 (filed Aug. 30, 2024).

⁸⁶ See Case No. 2022-00402, Attachment 1 to Companies’ Response to AG 1-13(l) at 1 (filed Mar. 10, 2023).

Therefore, there was no reason to ask customers to reduce usage days in advance or even that morning. The Companies—with over a century of experience providing reliable utility service to Kentuckians, including during extreme cold weather events—had no reason to anticipate the unprecedented and anomalous gas pressure reduction.⁸⁷ Moreover, if the Companies ask customers to reduce usage every time severe weather is forecast, there is a risk that customers will not heed those requests when needed.

Two things are simultaneously true: The Companies believe that direct public appeals regarding energy consumption can be a valuable tool during energy emergency events under the right circumstances *and* the unique circumstances presented by WSE meant that the Companies could not issue effective public appeals prior to the start of the load shedding event. The Companies have created and filed in this proceeding their new policy for making such appeals in the future to increase the likelihood that such appeals can occur sooner in extreme weather events.⁸⁸ The Companies' new procedures provide detailed processes for public communications concerning energy emergency events from the time extreme weather is forecasted through the conclusion of any future load shedding events. The policy addresses direct communications with residential customers, business customers and CSR customers, and public communications through social media, news media, and the Companies' website.

In sum, notwithstanding the lack of empirical evidence that earlier public appeals for voluntary usage reduction would have meaningfully impacted the Companies' system during the load shedding event, the Companies implemented their learnings from WSE to formalize and streamline the public appeals process for use in future variable weather events.

⁸⁷ Case No. 2023-00422, Companies' Response to KCA 2-1 (filed Mar. 15, 2024); Case No. 2023-00422, Companies' Response to PSC 1-21(b) at 2 (filed Feb. 16, 2024).

⁸⁸ See Case No. 2023-00422, Attachment to Companies' Response to PSC PHDR-4 (filed July 8, 2024).

C. The Commission should ignore the Joint Intervenors’ assertion that the lack of a BA-BA agreement contributed in any way to the load shedding event and reject the Joint Intervenors’ recommendation to compel the execution of such an agreement.

In attacking the Companies for not having a BA-BA agreement with MISO, the Joint Intervenors flatly misstate the record when they assert that “it is not clear what prevented energy purchases from MISO *during the load shed event*[.]”⁸⁹ To the contrary, the record is entirely clear on this issue and has been at least since FERC and NERC issued the WSE report that the Commission attached to its Order opening this proceeding, because that report states that MISO was having its own energy emergency during the Companies’ load shedding, which necessarily meant MISO had no energy it could sell to the Companies.⁹⁰ MISO declared EEA-1 status at 5:30 p.m., almost thirty minutes prior to onset of the Companies’ load shedding.⁹¹ Under NERC Reliability Standard, EOP-011-1, to be in EEA-1 a BA must have curtailed all non-firm exports of the kind that might have helped the Companies, i.e., *MISO could not have sold energy to the Companies while in EEA status irrespective of any BA-BA agreement.*⁹² At 6:00 p.m., just as the Companies’ load shedding was beginning, MISO declared EEA-2 status and began to implement its own load management measures.⁹³ MISO remained in this emergency status until 9:00 p.m. Thus, the entire time the Companies engaged in load shedding due to energy insufficiency,⁹⁴ *MISO was unable to sell energy to the Companies because of its own energy emergency, again*

⁸⁹ Case No. 2023-00422, Joint Intervenors Brief at 17 (filed Aug. 30, 2024) (emphasis added).

⁹⁰ NERC/FERC Oct. 2023 Report at 59, 67.

⁹¹ NERC/FERC Oct. 2023 Report at 67.

⁹² NERC EOP-011-1 Emergency Operations at 11, available at <https://www.nerc.com/pa/Stand/Reliability%20Standards/EOP-011-1.pdf>.

⁹³ NERC/FERC Oct. 2023 Report at 64, 67.

⁹⁴ Energy insufficiency caused load shedding from approximately 5:59 p.m. to 8:45 p.m. However, while implementing rotational load shed, a small portion of affected customers remained disconnected after 8:45 p.m. as a result of the need to dispatch field personnel to manually close breakers at a few substations where power circuit breakers could not be closed back under supervisory control from the Companies’ Transmission Control Center. Case No. 2023-00422, Companies’ Response to AG 1-25 (filed Feb. 16, 2024).

irrespective of any BA-BA agreement or lack thereof. Only after the Companies’ load shedding due to energy insufficiency ended—when MISO’s own energy emergency ended—was MISO able to offer energy exports to the Companies.⁹⁵ Thus, MISO’s own energy emergency, not the presence or lack of a BA-BA agreement between the Companies and MISO, caused MISO to be unable to sell energy to the Companies during the load shedding event.⁹⁶

It is also important to recall the context in which the question of having a BA-BA agreement with MISO arose as a possible issue to address following WSE, which did not state or imply that such an agreement might have had any effect on the load shedding event. Rather, the question of having a BA-BA agreement with MISO arose in a single line item in a four-page attachment the Companies provided in response to a first-round Commission Staff data request.⁹⁷ That attachment, an “After Action Review” document, was the result of the Companies’ internal review of the events of December 23, 2022. The items included in the document do not necessarily pertain to the load shedding event, and the sole reference to a BA-BA agreement in that document originated from an informal communication that took place *after* the load shedding had concluded between a MISO operator and the Companies’ generation dispatch and trading group.⁹⁸ Thus, the record is again clear that a BA-BA agreement could not have affected the Companies’ load shedding during WSE.

Indeed, precisely because MISO had no energy available to aid the Companies during their load shedding event, the Joint Intervenors’ accusation that the Companies’ witnesses “passed this [BA-BA agreement] issue like a hot potato” rings hollow.⁹⁹ It stands to reason that an issue with

⁹⁵ NERC/FERC Oct. 2023 Report at 67; Case No. 2023-00422, Companies’ Response to PSC PHDR-5 (filed July 8, 2024).

⁹⁶ *But see* Case No. 2023-00422, Joint Intervenors Brief at 17 (filed Aug. 30, 2024) (“[A]t the close of this investigation, it is not clear what prevented energy purchases from MISO during the load shed event[.]”).

⁹⁷ *See* Case No. 2023-00422, Attachment to Companies’ Response to PSC 1-85 at 2 (filed Feb. 16, 2024).

⁹⁸ Case No. 2023-00422, Companies’ Response to PSC PHDR-5(a) (filed July 8, 2024).

⁹⁹ Case No. 2023-00422, Joint Intervenors Brief at 18 (filed Aug. 30, 2024) (emphasis added).

no possible effect at all on the load shedding event would not be a top-of-mind subject, though the Companies made clear in responses to data requests and at hearing that they both sold energy to and bought energy from MISO during WSE.¹⁰⁰ Moreover, the Companies' responses to post-hearing data requests were also clear that by the time MISO had come out of its own energy emergency and had energy available to sell to the Companies, the Companies "had already arranged for adequate purchases from outside of MISO at the time and did not proceed with attempting to purchase emergency energy."¹⁰¹ Thus, contrary to the Joint Intervenors' assertions, the Companies' witnesses' preparation and testimony regarding this issue at hearing was entirely reasonable.

Equally empty is the Joint Intervenors' assertion that the Companies' conduct concerning a BA-BA agreement with MISO has been "dilatatory, inadequate, and unreasonable."¹⁰² The record shows the contrary, namely that the Companies began engaging with MISO *prior* to WSE about "a Joint Reliability Coordination Agreement ('JRCA') similar to what LG&E/KU was developing with PJM Interconnection, LLC ('PJM'), which includes provisions addressing coordination of operations during emergency events."¹⁰³ The record further shows the challenges the Companies have faced in working with MISO to obtain a reasonable coordination agreement, which would include BA-BA emergency energy provisions.¹⁰⁴ Also, the Companies have clearly stated their

¹⁰⁰ See Case No. 2023-00422, Attachment to Companies' Response to PSC 1-36 (filed Feb. 16, 2024); 5/23/2024 Hearing, VR 3:00:40 p.m. – 3:01:10 p.m. (Bellar); 4:50:29 p.m. – 4:50:44 p.m. (Schram); 7:06:14 p.m. – 7:06:30 p.m. (Schram).

¹⁰¹ Case No. 2023-00422, Companies' Response to PSC PHDR-5(a) (filed July 8, 2024).

¹⁰² Case No. 2023-00422, Joint Intervenors Brief at 20 (filed Aug. 30, 2024) (emphasis added).

¹⁰³ Case No. 2023-00422, Companies' Response to PSC PHDR-5(b) (filed July 8, 2024).

¹⁰⁴ Case No. 2023-00422, Companies' Response to PSC PHDR-5(b) and (c) (filed July 8, 2024). For example, after reaching out to MISO in early February 2023 to discuss a potential BA-BA agreement, MISO was unable to provide a draft agreement for the Companies' review until August 2023. When the Companies finally received the draft agreement, they discovered that the agreement contained no benefits over existing agreements, because it did not appear to permit emergency energy purchases without demonstrated available transfer capability.

intention to continue working with MISO on this issue to achieve a beneficial arrangement,¹⁰⁵ but they cannot compel MISO to enter into an agreement. Therefore, contrary to the Joint Intervenors' rhetoric, there is no sense in which the Companies have been "dilatatory, inadequate, and unreasonable" in this matter.

In sum, there is clear evidence in the record that having had a BA-BA agreement in place between the Companies and MISO would have had no impact at all on the WSE load shedding event. That notwithstanding, the Companies continue to work toward developing an agreement with MISO that includes provisions addressing coordination of transmission and BA operations during emergency events.¹⁰⁶ But the Companies cannot compel MISO to enter into an agreement, much less one that includes the Companies' preferred terms and scope or that conforms to any particular timeline.¹⁰⁷ The Commission should therefore reject the Joint Intervenors' recommendation to impose a 90-day timeline on such an agreement.

V. The Commission should close this proceeding with no penalties to the Companies or any of their personnel.

Winter Storm Elliott was an enormous, challenging storm. The unprecedented gas pressure reduction that occurred on December 23 was the root cause of the Companies' first-ever load shedding due to an energy emergency. Despite facing a number of simultaneous operational challenges, the Companies performed reasonably and prudently at every step before, during, and after the Storm. The extensive case record makes it clear that the Companies have taken the lessons learned from WSE seriously, and the Companies have implemented thoughtful improvements so

¹⁰⁵ *Id.*

¹⁰⁶ Case No. 2023-00422, Companies' Response to PSC PHDR-5(b)-(d) at 3-4 (filed July 8, 2024).

¹⁰⁷ See Case No. 2023-00422, Joint Intervenors Brief at 20 (filed Aug. 30, 2024).

that their system is prepared to continue providing reliable service to customers in any weather condition.

The Commission should close this investigation without issuing penalties to the Companies or any of their personnel, which would be consistent with all intervenors' lack of a request for such penalties and the clear record of this investigation. The Commission should also decline the KCA's and Joint Intervenors' invitations to relitigate or pre-litigate any IRP, CPCN, or rate case issues, and it should further decline to impose any new requirements concerning public appeals or a MISO BA-BA agreement, both of which the Companies have demonstrated they have adequately addressed or are adequately addressing.

Dated: September 20, 2024

Respectfully submitted,



Kendrick R. Riggs
Stoll Keenon Ogden PLLC
400 West Market Street, Suite 2700
Louisville, Kentucky 40202
Telephone: (502) 333-6000
Fax: (502) 627-8722
kendrick.riggs@skofirm.com

Lindsey W. Ingram III
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507
Telephone: (859) 231-3000
Fax: (859) 253-1093
l.ingram@skofirm.com

Allyson K. Sturgeon
Vice President and Deputy General Counsel
Sara V. Judd
Senior Counsel
PPL Services Corporation
220 West Main Street
Louisville, Kentucky 40202
Telephone: (502) 627-2088
Fax: (502) 627-3367
ASturgeon@pplweb.com
SVJudd@pplweb.com

*Counsel for Kentucky Utilities Company and
Louisville Gas and Electric Company*

CERTIFICATE OF COMPLIANCE

In accordance with the Commission's Order of July 22, 2021 in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), this is to certify that the electronic filing has been transmitted to the Commission on September 20, 2024; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.



*Counsel for Louisville Gas and Electric Company
and Kentucky Utilities Company*