

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC 2024 JOINT INTEGRATED)
RESOURCE PLAN OF LOUISVILLE GAS) **CASE NO. 2024-00326**
AND ELECTRIC COMPANY AND)
KENTUCKY UTILITIES COMPANY)

JOINT MOTION OF
LOUISVILLE GAS AND ELECTRIC COMPANY
AND KENTUCKY UTILITIES COMPANY
TO AMEND PROCEDURAL SCHEDULE

Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively, “Companies”) respectfully move the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001 Section 5(1) to amend the procedural schedule in this proceeding by canceling the hearing currently scheduled for May 13, 2025. Such a hearing would be inconsistent with the Commission’s Integrated Resource Plan (“IRP”) regulation (807 KAR 5:058) and the Commission’s explicit rejection of such hearings in creating the IRP regulation.

Holding a hearing would also be administratively inefficient now that the Commission has scheduled an August 4, 2025 hearing in the Companies’ pending certificates of public convenience and necessity (“CPCNs”) proceeding, in which the Commission has incorporated by reference the record of this case.¹ The Companies also anticipate filing base rate applications in the first half of this year,² the hearing in which would be a more appropriate forum to address certain issues raised in this proceeding.

¹ *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates*, Case No. 2025-00045, Order at 3 (Ky. PSC Mar. 13, 2025).

² See PPL Corporation, “4th Quarter 2024 Investor Update” at 7 (Feb. 13, 2025) (“Expect to file a base rate case in KY in the first half of 2025”), available at https://filecache.investorroom.com/mr5ir_pplweb2/1187/PPL_2024_Q4_Investor_Update_Final.pdf.

Thus, it is both necessary and efficient to cancel the scheduled hearing in this proceeding.

I. THE COMMISSION SHOULD CANCEL THE SCHEDULED HEARING IN THIS PROCEEDING BECAUSE THE IRP REGULATION NEITHER PROVIDES FOR NOR PERMITS HOLDING HEARINGS IN IRP PROCEEDINGS.

The Commission should cancel the evidentiary hearing in this case because the IRP regulation, which fully prescribes the procedural elements of an IRP proceeding, does not provide for such a hearing. Kentucky's highest court has long held that administrative agencies must abide by their own regulations, which they may change only through the appropriate processes under KRS Chapter 13A.³ The Commission's IRP regulation neither requires nor permits holding hearings in an IRP proceeding; rather, it provides an exhaustive list of required and permissible procedural elements:

Section 2. Filing Schedule.

...

- (3) Upon receipt of a utility's integrated resource plan, the commission shall establish a review schedule which may include interrogatories, comments, informal conferences, and staff reports.

...

Section 11. Procedures for Review of the Integrated Resource Plan.

- (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

³ See, e.g., *Hagan v. Farris*, 807 S.W.2d 488, 490 (Ky. 1991):

An agency must be bound by the regulations it promulgates. *Shearer v. Dailey*, 312 Ky. 226, 226 S.W.2d 955 (1950). Further, the regulations adopted by an agency have the force and effect of law. *Linkous v. Darch*, 323 S.W.2d 850 (1959). An agency's interpretation of a regulation is valid, however, only if the interpretation complies with the actual language of the regulation. *Fluor Constructors, Inc. v. Occupational Safety and Health Review Commission*, 861 F.2d 936 (6th Cir.1988). KRS 13A.130 prohibits an administrative body from modifying an administrative regulation by internal policy or another form of action.

intervenors, and responses to interrogatories and comments by the utility.

- (2) The commission may convene conferences to discuss the filed plan and all other matters relative to review of the plan.
- (3) Based upon its review of a utility's plan and all related information, the commission staff shall issue a report summarizing its review and offering suggestions and recommendations to the utility for subsequent filings.⁴

Notably, unlike a number of other Commission regulations, the IRP regulation lacks a deviation clause.⁵ Thus, the Commission is bound by the procedural requirements of the IRP regulation when conducting proceedings under it, including this proceeding.

In addition to the history of the IRP regulation discussed in the following section, the Commission has as recently as 2019 recognized the unique nature of IRP proceedings and the IRP regulation's requirements—including the lack of provision for evidentiary hearings—even if it has more recently departed from them.⁶ For example, in granting the Sierra Club intervention in the Companies' 2018 IRP proceeding, the Commission stated:

IRP filings are unique because the Commission's role under 807 KAR 5:058 is limited to addressing procedural issues and not substantive issues. The specific procedures established under 807 KAR 5:058 include a procedural schedule that leads to a report prepared by Commission Staff (Staff) that is the final substantive action in an IRP. The Staff Report summarizes Staff's review of the IRP and provides recommendations and suggestions for subsequent IRP filings. The regulation does not provide for an evidentiary hearing, and the Commission does not enter findings of fact or conclusions of law.⁷

⁴ 807 KAR 5:058.

⁵ See, e.g., 807 KAR 5:001 Sec. 22; 807 KAR 5:120 Sec. 4.

⁶ See, e.g., *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2018-00348, Order (Ky. PSC July 20, 2020) (scheduling an IRP hearing but providing no legal rationale for it).

⁷ Case No. 2018-00348, Order at 5 (Ky. PSC Sept. 19, 2019) (emphases added).

Thus, because the IRP regulation neither permits hearings of any kind nor provides discretion to deviate from its prescribed procedural elements, the Commission should cancel the scheduled hearing and remove it from the procedural schedule.

II. THE COMMISSION EXPLICITLY AND INTENTIONALLY REMOVED HEARINGS FROM ITS DRAFT IRP REGULATION AFTER AN ALMOST FOUR-YEAR RULE-MAKING PROCESS.

The history of the IRP regulation's development and promulgation is abundantly clear that the Commission considered at length and then explicitly rejected holding hearings of any kind in IRP proceedings. The Commission developed the IRP regulation over a period of almost four years with extensive input from utilities, customer representatives, and the Attorney General, as well as the assistance of a Commission-retained consultant.⁸ Importantly, over the course of almost four years, the Commission pivoted from an initial draft regulation and plan for additional regulatory revisions, which would have required formal evidentiary hearings and Commission approval of IRPs, to a final regulation that was intentionally and explicitly devoid of both hearings and Commission approvals or Orders of any kind.

Two and a half years into its deliberative process, the Commission issued an Order setting out what was then its plan for developing "a detailed and formal reporting, review, and approval process regarding the development of electric utility forecasts and resource plans as well as the implementation of the plans."⁹ To achieve its ultimate goal, the Commission proposed to draft and implement its IRP regulation in three phases, the first of which would involve "(1) general information reporting requirements ... and (2) review procedures which include formal conferences, limited hearings, and reports of the Commission's findings."¹⁰ The Commission

⁸ See *An Inquiry into Kentucky's Present and Future Electric Needs and the Alternatives for Meeting those Needs*, Admin. Case No. 308, Order at 1-2 (Ky. PSC Apr. 28, 1989); Admin. Case No. 308, Order at 1 (Ky. PSC Aug. 8, 1990).

⁹ Admin. Case No. 308, Order at 2 (Ky. PSC Apr. 28, 1989).

¹⁰ *Id.* at 3.

promulgated a draft regulation attached to the order to implement the first phase, which explicitly included hearings:

Section 2. General Procedures for the Filing and Distribution of the Plan.

...

- (4) Upon receipt of a utility's integrated resource plan, the commission shall establish a schedule of informal conferences *and hearings* to review that plan.

...

Section 11. Procedures for Review of the Integrated Resource Plan.

- (1) Subsequent to the filing of a company's integrated resource plan, the commission shall schedule one or more informal conferences to review the filed plan with the company, commission staff, and other interested parties. The purpose of the conference(s) are ... to develop a procedural schedule which allows parties to have reasonable discovery and to *file testimony prior to a hearing*
- (2) *A hearing shall be conducted* within 150 days of the filing of the integrated resource plan. *At the hearing*, the company shall present its integrated resource plan. Any areas of disagreement identified during the informal conference(s) discussed above shall also be addressed *in this hearing*.
- (3) After hearing and based upon its review, the commission shall issue a report summarizing its review and offering suggestions and recommendations to the company for subsequent filings.¹¹

The Commission stated it would continue to revise the IRP regulation over several years in two additional phases.¹² In the second phase, the Commission would “develop formal procedures for a detailed evaluation leading to approval or disapproval of each electric utility’s load forecasts and resource plans. These procedures may involve evidentiary hearings and Commission Orders.”¹³

¹¹ *Id.* at Appx. A pgs. 2 and 18-19 (emphases added).

¹² *Id.* at 3-5.

¹³ *Id.* at 4.

The third and final phase would “establish[] formal relationships between a utility’s approved resource plan and applications for a certificate of public convenience and necessity and for rate changes,” which “may be characterized by ... formalized criteria for Commission approval of the plan ... and the requirement that any application of a certificate of public convenience and necessity or a rate change be consistent with a utility’s most recently approved plan.”¹⁴ In sum, the Commission’s first proposed approach to IRP regulation would indeed have required a formal evidentiary record, hearings, and Commission Orders approving essentially binding resource plans for utilities.

But after further review and deliberation, the Commission significantly changed course in its Order promulgating the final IRP regulation over a year later.¹⁵ The final regulation explicitly rejected and removed from the draft regulation all hearings and non-procedural Commission action, opting instead for informal proceedings and Staff review of a utility’s IRP:

The regulation issued today replaces the draft regulation’s requirement for a hearing on each utility’s resource plan with a provision allowing for informal conferences between the utility, Staff, and intervenors. At these conferences, all aspects of the utility’s filings will be discussed. The Commission believes an informal proceeding, where parties may exchange information and ideas in a less adversarial manner, may better serve the interests of the parties and the resource planning process.

Consistent with the elimination of hearings in the regulation, the evaluation criteria by which the plans will be judged have also been eliminated. Evaluation criteria are an important and appropriate part of an integrated resource plan if there is a provision for the approval or disapproval of utility plans. ... However, without an approval process, there is little need for evaluation criteria. ...

The draft regulation ... contained provisions for a Commission-issued report assessing the reasonableness of each utility’s plan. *Consistent with the elimination of hearings and the evaluation criteria, the regulation issued today provides that the Staff, not the*

¹⁴ *Id.* at 4-5.

¹⁵ Admin. Case No. 308, Order (Ky. PSC Aug. 8, 1990).

Commission, issue a report summarizing a utility's filing and the results of the review process. ...

Finally, consistent with the more informal nature of the proceedings, there will be no requirement that the record developed in the resource planning process be incorporated into rate or certificate proceedings.¹⁶

Since the Commission adopted its IRP regulation almost 35 years ago, the only substantive revisions occurred in 1995, which shifted the IRP from a biennial to a triennial process, revised certain informational filing and filing timing requirements, and removed a provision requiring the Commission to direct Staff or a consultant to prepare a statewide resource report.¹⁷ In other words, the only substantive revisions to the Commission's IRP regulation made the IRP review process *less* frequent and administratively burdensome, not more so. Importantly, the revisions did not provide for holding hearings or issuing non-procedural Commission Orders in IRP cases.

It is also noteworthy that the statutory authority the Commission cited for its draft IRP regulation, which contained multiple hearing provisions, differs from the statutory authority for the final IRP regulation. The Commission's draft IRP regulation cited as its authority "KRS 278.040(3), 278.310," the former of which grants the Commission authority to adopt regulations "in keeping with KRS Chapter 13A," and the latter of which concerns "hearings and investigations before the commission."¹⁸ The current regulation cites "KRS 278.040(3), 278.230(3)," the latter of which concerns utilities' obligation to file requested information with the Commission.¹⁹ Importantly, the reference to KRS 278.310 is absent, which is appropriate because hearings are not authorized by the IRP regulation.

¹⁶ *An Inquiry into Kentucky's Present and Future Electric Needs and the Alternatives for Meeting those Needs*, Admin. Case No. 308, Order at 13-14 (Ky. PSC Aug. 8, 1990) (emphases added).

¹⁷ See 21 Ky. R. 2799 (May 1, 1995), available at https://apps.legislature.ky.gov/law/kar/register/21KyR_1994-95/11_May.pdf; 22 Ky. R. 287 (Aug. 1, 1995), available at https://apps.legislature.ky.gov/law/kar/register/22KyR_1995-96/02_Aug.pdf.

¹⁸ Admin. Case No. 308, Order at Appx. A pg. 1 (Ky. PSC Apr. 28, 1989).

¹⁹ 807 KAR 5:058, Statutory Authority.

In sum, the history of the IRP regulation shows the omission of hearings from the list of permissible IRP procedural elements was neither an inadvertent oversight nor based on an assumption that hearings would occur in IRP proceedings a matter of course or necessity; rather, the history of the IRP regulation shows the Commission carefully considered the matter over several years and then intentionally and explicitly rejected holding any hearings in IRP proceedings.

III. RECENT DEPARTURES FROM THE IRP REGULATION'S PROHIBITION ON HEARINGS DO NOT CREATE A LEGAL BASIS TO HOLD ANY FURTHER IRP HEARINGS.

As demonstrated above, the Commission's IRP regulation neither requires nor permits hearings, and there is no other valid legal authority to support holding a hearing in this proceeding. The Commission, like all administrative agencies, is bound to follow its own regulations, which have the force of law.²⁰ That notwithstanding, the Commission has indeed held IRP hearings in recent years. But those deviations from the IRP regulation's prescribed procedures are historically anomalous; to the best of the Companies knowledge, the Commission held no such hearings for the first 30 years of the IRP regulation's history.²¹ Regardless, these recent departures from the requirements of the IRP regulation did not and cannot change the law; as Kentucky's Supreme Court has stated, "An agency's interpretation of a regulation is valid ... only if the interpretation complies with the actual language of the regulation. ... KRS 13A.130 prohibits an administrative

²⁰ See, e.g., *Hagan v. Farris*, 807 S.W.2d 488, 490 (Ky. 1991):

An agency must be bound by the regulations it promulgates. *Shearer v. Dailey*, 312 Ky. 226, 226 S.W.2d 955 (1950). Further, the regulations adopted by an agency have the force and effect of law. *Linkous v. Darch*, 323 S.W.2d 850 (1959). An agency's interpretation of a regulation is valid, however, only if the interpretation complies with the actual language of the regulation. *Fluor Constructors, Inc. v. Occupational Safety and Health Review Commission*, 861 F.2d 936 (6th Cir.1988). KRS 13A.130 prohibits an administrative body from modifying an administrative regulation by internal policy or another form of action.

²¹ To the Companies' knowledge, the first IRP hearing occurred in the Companies' 2018 IRP proceeding on Sept. 15, 2020. See Case No. 2018-00348, Order at 2 (Ky. PSC July 20, 2020).

body from modifying an administrative regulation by internal policy or another form of action.”²² Thus, if the Commission desires to hold hearings in future IRP proceedings, it may amend the IRP regulation in accordance with KRS Chapter 13A to allow for such hearings. But the current IRP regulation does not permit such hearings, and the Commission should therefore cancel the currently scheduled hearing and remove it from the procedural schedule.

IV. A HEARING IN THIS PROCEEDING WOULD BE ADMINISTRATIVELY INEFFICIENT AND DUPLICATIVE OF THE HEARING SCHEDULED IN THE COMPANIES’ PENDING CPCN PROCEEDING AND THE HEARING IN THE COMPANIES’ ANTICIPATED BASE RATE CASE FILING.

Finally, as noted in the Companies’ Responsive Comments being filed contemporaneously with this Motion, much of the content of the intervenors’ comments falls outside the scope of an IRP proceeding and would be better addressed in CPCN or rate case proceedings. The Companies have already filed a CPCN application, and the Commission has scheduled an August 4, 2025 hearing in that proceeding and incorporated by reference the record of this proceeding into the record of that proceeding.²³ All of the intervenors in this proceeding are seeking intervention in that proceeding. The Commission has already granted intervention to the Attorney General in that proceeding,²⁴ and the Companies have not opposed²⁴ any intervention request filed in that case. Moreover, the Companies expect to file base rate cases in the first half of this year, in which there will be a hearing.²⁵ The parties to this proceeding may seek to intervene in those proceedings, as well, and may participate in those proceedings and the CPCN proceeding either as full intervenors if approved by the Commission or as public commenters. In short, there will be ample opportunity

²² *Hagan v. Farris*, 807 S.W.2d 488, 490 (Ky. 1991).

²³ Case No. 2025-00045, Order at 2-3 (Ky. PSC Mar. 13, 2025).

²⁴ Case No. 2025-00045, Order (Ky. PSC Mar. 7, 2025).

²⁵ See PPL Corporation, “4th Quarter 2024 Investor Update” at 7 (Feb. 13, 2025) (“Expect to file a base rate case in KY in the first half of 2025”), available at https://filecache.investorroom.com/mr5ir_pplweb2/1187/PPL_2024_Q4_Investor_Update_Final.pdf.

to address the issues raised in this proceeding—indeed, the very record of this proceeding—in the pending CPCN case hearing and the anticipated rate case hearing. Therefore, in addition to there being no legal authority for the Commission to hold a hearing in this proceeding, there is also no need to do so, and there are administrative efficiencies to be gained by not doing so.

WHEREFORE, Louisville Gas and Electric Company and Kentucky Utilities Company respectfully ask the Commission to amend the procedural schedule in this proceeding by canceling and removing from the procedural schedule the hearing currently scheduled for May 13, 2025.

Dated: March 28, 2025

Respectfully submitted,



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CERTIFICATE OF SERVICE

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 March 28, 2025; 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*