COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC 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

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

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Dated: September 5, 2025

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Come the Joint Intervenors Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Coalition, and Mountain Association ("Joint Intervenors"), and in accordance with the August 11, 2025 Order of the Kentucky Public Service Commission ("Commission") establishing an opportunity to file a post-hearing brief in support of their post-hearing position on or before September 5, 2025, herewith file for the Commission's consideration, their joint position regarding the issues raised by the Louisville Gas and Electric Company and Kentucky Utilities Company ("LG&E/KU" or "the Companies") in their *Electronic Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates* ("CPCN Application").

Pursuant to the Commission's instructions from the bench and the August 11, 2025 Order, Joint Intervenors specifically respond to the Commission's request for briefing on need and wasteful duplication for Mill Creek 6;[1] the justiciability of the Mill Creek 2 and 6 Adjustment Clause proposals in the settlement stipulation; and LG&E/KU's existing authority (or lack thereof) to delay or extend Mill Creek 2's ("MC2") retirement until Mill Creek 6's ("MC6") in-service date. Those questions are addressed in Sections II, III, and IV, respectively.

[1] The Commission's Order further directed the Companies to brief the need and absence of wasteful duplication for Brown 12 and the Ghent 2 SCR, but discussion by Joint Intervenors here will focus on Mill Creek 6.

I. INTRODUCTION

LG&E/KU request permission to construct a total of 1,690 MW of new gas and storage generation capacity at an optimistic estimate of nearly $3.5 billion in additional costs to their ratepayers. This fixation on building new generation, not for existing customers, but to serve new data centers that may or may not choose to locate within the utilities' territory ignores fundamental principles of need, affordability, and reasonableness that underpin prudent utility planning. While the General Assembly has said that it is of "paramount importance" to attract data center customers to the Commonwealth, Kentucky's rich economy and continued growth—including every one of the Companies' residential, commercial, and industrial customers—depends on continued affordability. It would be a mistake to risk Kentucky's historic ability to "punch above [its] weight class"[2] in economic development in a variety of industries by betting the house on a single, low-probability and high-stakes venture.

As LG&E/KU themselves put forth, uncertainty in the current regulatory and economic landscape highlights the importance for a "no-regrets" approach to resource planning that can adequately meet the needs of a wide range of load, fuel price, and environmental regulatory scenarios. Yet the Companies' application is one with a potential for enormous regret—betting big on data center load that is too hypothetical, too risky, and too shortsighted. The Companies concede that no planning process, no matter how sophisticated or refined, can provide perfect, infallible foresight into future conditions.[3] As such, the Commission should reject the Companies' invitation to go all-in on speculative data center load growth, and instead take a

[2] August 6, 2025 HVT at 10:22 am.
[3] Louisville Gas and Electric Company and Kentucky Utilities Company's Post-Hearing Comments, *Electronic 2024 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2024-00326 at 3 (June 16, 2025).

more reasoned approach that relies on actual, demonstrable, and verifiable need prior to approval of new resources.

II. THE COMMISSION SHOULD DENY THE CPCN APPLICATION FOR THE MILL CREEK 6 NGCC.

The Companies' evidence in support of the Mill Creek 6 natural gas combined cycle ("NGCC") unit is insufficient, and the Commission should deny the requested CPCN. The Companies have not presented clear and satisfactory evidence that MC6 is needed, that constructing three NGCCs (Mill Creek 5 ("MC5"), Brown 12, and MC6) would not result in wasteful duplication, or that another combined cycle gas plant is a necessary part of a least-cost, reliable portfolio going forward. The record's insufficiency results from the Companies' inflation of their load forecast through highly speculative projected data center load growth; the Companies' failure to adjust their load forecast to account for cost-effective demand-side management potential; the Companies' underestimation of the costs and risks associated with Mill Creek 6; and the Companies' refusal to consider all reasonable alternatives.

A. Legal Standard for Certificates of Public Convenience and Necessity

A certificate of public convenience and necessity ("CPCN") must be obtained from the Commission prior to the construction or acquisition of any facility seeking to be used in providing utility service to the public.[4]

To obtain the requested certificates for new gas resources, the Companies must demonstrate a "need" for such facilities and show an "absence of wasteful duplication" resulting

[4] KRS 278.020(1)(b) (Upon filing of an application for a certificate, the Commission may issue the certificate, refuse to issue, or issue in part and refuse in part).

from each resource addition.[5] In other words, a determination of public convenience and necessity requires both "a finding of the need for a new service system or facility from the standpoint of service requirements, and an absence of wasteful duplication resulting from the construction of a new system or facility."[6]

As the party seeking Commission approval in this proceeding, the Companies bear the burden of proof by clear and satisfactory evidence that both need and an absence of wasteful duplication has been sufficiently established.[7]

1. Need for New Capacity and/or Energy

A CPCN requires the utility to show "a demand and need for the service sought to be rendered."[8] To establish "need," a utility must: "first [make] a showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed and operated" and second, show that "the inadequacy . . . [is] due either to a substantial deficiency of service facilities,

[5] Final Order, *In the Matter of: Electronic Application of East Kentucky Power Cooperative Inc. for a (1) CPCN for the Construction of Transmission Facilities in Madison County, Kentucky; and (2) Declaratory Order Confirming that a CPCN Is Not Required for Certain Facilities*, Case No. 2022-00314, at 7 (Feb. 23, 2023); 807 KAR 5:001 Section 15(2) (specifies what a utility must submit with its application for a CPCN, which, among other things, includes "[t]he facts relied upon to show that the proposed construction or extension is or will be required by public convenience or necessity," "[t]he manner in detail in which the applicant proposes to finance the proposed construction or extension," and "[a]n estimated annual cost of operation after the proposed facilities are placed into service."); *see also Ky. Utils. Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885, 890 (Ky. 1952) (determination of public convenience and necessity requires both "a finding of the need for a new service system or facility from the standpoint of service requirements, and an absence of wasteful duplication resulting from the construction of the new system or facility").

[6] *Ky. Utils. Co. v. Pub. Serv. Comm'n*, 252 S.W.2d at 890.

[7] Order, *In the Matter of: Electronic Application of Kentucky Utilities Company for a CPCN for the Construction of Transmission Facilities in Hardin County, Kentucky*, Case No. 2022-00066, at 23 (July 28, 2022) ("The Commission's consideration . . . in CPCN proceedings generally[] is limited to its review of the evidence provided to determine whether a utility met its burden of proof that, after finding the presence of need, a proposal does not result in wasteful duplication.").

[8] KRS 278.020(5).

beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service."[9]

2. An Absence of Wasteful Duplication

The requirement to avoid wasteful duplication discourages "an excess of capacity over need, an excessive investment in relation to productivity or efficiency, or an unnecessary multiplicity of physical properties,"[10] such as rights of way, poles, and wires. This requirement necessarily goes beyond showing a need.

The Commission has explained that to demonstrate that a proposed facility does not result in wasteful duplication, "the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed."[11] The Commission has made clear that "[t]he fundamental principle of reasonable least-cost alternative is embedded in such an analysis."[12]

B. The Companies Have Not Met Their Burden of Establishing a Need for the Nearly $2.8 Billion in Gas Combined Cycle Projects Proposed in this Proceeding.

As noted in the Legal Standard section above, a critical statutory threshold in any CPCN proceeding is whether the applicant has demonstrated that there is "a demand and need for the

[9] *Iola Cap. v. Pub. Serv. Comm'n of Kentucky*, 659 S.W.3d 563, 571 (Ky. Ct. App. 2022), review denied (Feb. 8, 2023) (quoting *Ky. Utils. Co. v. Pub. Serv. Comm'n of Kentucky*, 252 S.W.2d at 890).
[10] *Ky. Utils. Co. v. Pub. Serv. Comm'n*, 390 S.W.2d 168, 173 (Ky. 1965).
[11] Case No. 2022-00314, Final Order at 8, *supra* note 5; *see also* Order, *In the Matter of: Electronic Application of East Kentucky Power Cooperative, Inc. for a Certificates of Public Convenience and Necessity and Site Compatibility Certificates for the Construction of a 96 MW (Nominal) Solar Facility in Marion County, Kentucky, and a 40 MW (Nominal) Solar Facility in Fayette County, Kentucky and Approval of Certain Assumptions of Evidences of Indebtedness Related to the Solar Facilities and Other Relief*, Case No. 2024-00129, at 3 (Dec. 26, 2024).
[12] Final Order, *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, at 11 (Nov. 6, 2023).

service sought to be rendered."[13] As the Kentucky Court of Appeals has explained, requiring such a showing before a CPCN can be granted is "important" because the utility "can charge their customers more based upon the cost to construct" whatever project may be approved.[14] As such, an important purpose of the CPCN process it to enable the Commission to "seek[] to limit unneeded expansion."[15]

As discussed in the following pages, the Companies have fallen far short of establishing that there is a demand and need for both of the gas plant CPCNs that it has requested in this proceeding. The Companies acknowledge that their baseline load forecast shows essentially flat load for the entire forecast period. It is only with the added assumption of 1,750 MW of data center load by 2032 that the Companies have turned that flat forecast into one of "unprecedented" near-and-medium term growth in peak demand and annual energy requirements. Yet the record is undisputed that no prospective data center customer has entered an electric service agreement with the Companies, and there is only a single 402 MW project that is, under the Companies own analytical framework, considered to have a "high probability" of coming online. In lieu of high probability proposals, the Companies rely on an economic development queue process filled with lower probability prospects and that lacks even the basic standards needed to separate out speculative proposals, and a calculation of the "expected value" of load from that queue that is opaque and ignores critical signs that prospective load is speculative. Such uncertain prospects cannot reasonably be considered a sufficient basis to

[13] KRS 278.020(5).
[14] *Iola Cap. v. Pub. Serv. Comm'n of Kentucky*, 659 S.W.3d 563, 571 (Ky. Ct. App. 2022).
[15] *Id*.

conclude that the Companies are entitled to both of the requested gas plant CPCNs, which would come at a combined capital price tag of nearly $2.8 billion.

Given that capital investments generate the type of increased returns that are a primary objective of any investor-owned utility, it is perhaps not surprising that the Companies would see the largely speculative queue of data center projects as an opening to seek to spend billions of dollars on new generation resources. But the Commission, of course, has a different statutory mandate and objective—namely, to ensure that the utilities are acting in the best interests of their captive ratepayers who would almost certainly be on the hook for the return of and on the capital costs of the proposed gas plant projects even if the prospective data centers do not end up coming online. Consistent with that objective and the evidence in the record, the Commission should find that the Companies have not made a well-supported and reasonable demonstration of need and, therefore, are not entitled to both of the requested gas plant CPCNs.

1. The Companies' 2025 CPCN Load Forecast Reflects an Assumption that 1,750 MW of Data Center Load Will Come Online by 2032.

In their Application, the Companies provided a 2025 CPCN Load Forecast that projects an "unprecedented" level of growth in peak demand and annual energy requirements between 2025 and 2032.[16] In particular, the Companies' forecast shows summer peak demand increasing from 6,230 MW in 2025 to 8,034 MW in 2032, and a similar increase in winter peak demand over that time period.[17] With regards to annual energy use, the Companies forecast a more than 15,000 GWh increase from 32,808 GWh in 2025 to 48,129 GWh in 2032.[18] It is the load growth

[16] Direct Testimony of Tim A. Jones, Senior Manager, Sales Analysis and Forecasting on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company, Case No. 2025-00045, at 4, 11 (Feb. 28, 2025) [hereinafter "Jones Direct"]
[17] Jones Direct Testimony at 3.
[18] *Id*.

over that 2025-2032 time period, which the Companies refer to as the "near-to-medium term,"[19] upon which the Companies base their claim of need for the nearly $2.8 billion in gas plants proposed in this proceeding.

The 2025 CPCN Load Forecast is based on two sets of data. First, the Companies used and extended through 2054 the Mid-load forecast from their 2024 IRP, excluding economic development load.[20] That forecast is based on historical data and load shapes, econometric modeling, and forecasts of exogenous factors, as detailed in Exhibit TAJ-1 to Companies witness Jones' testimony.[21] To that Mid-load forecast, the Companies then added assumed levels of economic development load by 2032, including 1,750 MW of data center load, 120 MW of BOSK Phase Two load, and 39.4 MW of other assumed economic development load.[22] The 1,750 MW of data center load reflected the level assumed in the 2024 IRP High load forecast.[23] Had the Companies instead utilized the economic development load assumed in the 2024 IRP Mid-load forecast, it would have added only 1,050 MW of data center load growth by 2032.[24]

The unprecedented levels of near-to-medium term load growth shown in the 2025 CPCN Load Forecast are entirely due to the assumed data center and other economic development load that was added to the forecast. Companies witness Jones acknowledges as much, stating that "economic development load exclusively drives an unprecedented amount of load growth (for

[19] *Id*. at 10-11.
[20] *Id.* at 8.
[21] *Id.* at 6-7 and Ex. TAJ-1.
[22] Jones Direct at 8, 20-21.
[23] *Id*. at 8.
[24] *Id*. The 820 MW difference in data center load between the high and mid economic development load forecasts from the 2024 IRP is sufficient by itself to render one of the gas combined cycle plants proposed in this proceeding unneeded.

the Companies' service territories) in the near-to-medium term."[25] In fact, as illustrated in Figures 4 and 5 of witness Jones' Direct Testimony, the forecast without data center and other economic development load is that the Companies would have flat to slightly declining peak demands and annual energy requirements both in the near-to-medium term and through the entire forecast period.[26] As such, the threshold question of need in this proceeding turns primarily on whether the 1,750 MW of assumed data center load that the Companies added to the 2025 CPCN Load Forecast is reasonable and justified on this record. As discussed in the following subsections, the answer to that question is plainly "no."

2. The Companies Have Not Substantiated Their Assumption of 1,750 MW of Data Center Load Growth.

At various times during this proceeding, the Companies have offered three justifications for their assumption of 1,750 MW of data center load by 2032 in the 2025 CPCN Load Forecast. First, the Companies contend that they have more than 6,000 MW of potential data center load and 2,000 MW of other load in their economic development queue, and that 1,750 MW is a reasonable estimate of how much of that load will likely materialize.[27] Second, the Companies have pointed to the announcement of the 402 MW Camp Ground Road and 600 MW Oldham County data center projects as justification for utilizing a higher data center load forecast in the 2025 CPCN Load Forecast than in the 2024 IRP.[28] Third, the Companies highlight national

[25] *Id*. at 11.
[26] *Id*. at 11 and Fig. 4, at 13 and Fig. 5.
[27] Jones Direct at 16,17; Direct Testimony of John Bevington, Senior Director, Business and Economic Development, on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company, Case No. 2025-00045, at 5 (Feb. 28, 2025).
[28] Response of Kentucky Utilities Company and Louisville Gas and Electric Company to Commission Staff's Initial Request for Information Dated March 27, 2025, Case No. 2025-00045, Question 1(b) (Apr. 17, 2025) [hereinafter "LG/E-KU Resp. to PSC 1-1(b)"].

projections of data center load growth and the tax subsidies and other efforts that Kentucky is making to encourage some of that potential load to locate in the state.[29]

None of these proffered justifications provide a basis for concluding that the 1,750 MW assumption reflects anything more than speculation that cannot support a finding of need for both of the 645 MW NGCC plants proposed here.

a. The Companies' Economic Development Queue and Resulting Expected Value Calculation Lack the Analytical Rigor and Standards Necessary to Justify the 1,750 MW Data Center Load Assumption.

The Companies' first defense of its 1,750 MW data center load assumption is to claim that it is "a fraction" of the more than 6,000 MW of data center load within its economic development queue.[30] According to the Companies, they arrived at that "fraction" by carrying out an "expected value calculation" in which they weighted each of the data center projects in the queue by project size and probability that the project would come online.[31] That calculation identified a "mid-probability expected value" of 1,905 MW of prospective data center load coming to fruition,[32] which is higher than the 1,750 MW assumed in the 2025 CPCN Load Forecast. In the Companies' telling, that ipso facto makes the 1,750 MW assumption reasonable.

While the Companies' approach has the trappings of an orderly analysis, closer inspection of the queue and the expected value calculation shows both to be lacking in the analytical rigor

[29] Jones Direct at 17-20.
[30] *Id.* at 46.
[31] LG/E-KU Resp. to PSC 2-14(a). Response of Kentucky Utilities Company and Louisville Gas and Electric Company to Commission Staff's Second Request for Information Dated April, 2025, Case No. 2025-00045, Question 1(b) (May 16, 2025) [hereinafter "LG/E-KU Resp. to PSC 2-14"]
[32] *Id*., *citing* Attach. 16-AG-KIUC_DR1_LGE_KU_Attach_to_Q35(a)(b)(f), Mid-Probability tab, Column B.

and standards needed to separate out the types of speculative projects that the data center industry is currently rife with from projects with a high likelihood of coming online. Without the ability to separate the wheat from the chaff, it would be imprudent to gamble $2.8 billion in capital investments on NGCCs on the hopes that all of this unprecedented level of load growth will materialize.

Before detailing the inadequacies in the Companies' analysis, provided next is a brief description of the queue, how the Companies categorize the projects in the queue, and the expected value calculation.

b. Description of the Queue, Project Development Stages, and Expected Value Probabilities.

The Companies' queue is set forth in a spreadsheet that lists each potential economic development project, referred to in the spreadsheet as "opportunities," with which the Companies have interacted. For each such project, the spreadsheet lists a project type (i.e., data center, other economic development, types of customer expansion, or new customer), an "Opportunity ID" number, a peak electric demand, the date the opportunity was added, and the "Sales Phase." A March 31, 2025 version of the queue was produced in this proceeding as an attachment to the Companies' response to AG-KIUC 1-33(a), and updated versions of the queue dated June 12, July 14, and August 13 have been produced in response to PSC 2-17(g). When referring to different versions of the queue, we will do so by the month (i.e. June version, July version, etc.).

The "Sales Phase" column in the queue refers to which of five economic development project stages the Companies consider each potential project to be in. As described by the Companies in response to PSC 1-18(c), those five stages are identified and briefly described as:

- Inquiry – "a request for high-level information, may involve a few meetings, and is generally in the early stages of evaluation" – in discovery and at hearing, the Companies acknowledged that even an initial phone call was sufficient to get a prospective project added to the queue as an Inquiry.[33]

- Suspect – "a likelihood of, or evidence of, continued follow up"

- Prospect – "very regular exchange of information, more detailed evaluation of a site and site characteristics that likely include detailed evaluation of infrastructure capabilities and capacities, costs of doing business, in-person site visits, and incentive negotiation"

- Imminent – "a high probability for the project to announce and locate in the Companies' service territory"

- Announced – "projects have made a formal public decision to locate in the Companies' service territory and have signed a contract for electric service"

In order to carry out the expected value calculation, the Companies assigned to each stage a percentage probability that each project within that stage would end up coming online. Under the Mid Probability scenario that led to the 1,905 MW expected value referenced above, the Companies assigned a 10% probability to the Inquiry stage, 20% to Suspect, 50% to Prospect, 80% to Imminent, and 100% to Announced.[34] So, for example, a potential 500 MW data center project in the Suspect stage was assumed to have an expected value of 100 MW (500 MW x 20%) in the Companies' analysis.

[33] Response of Kentucky Utilities Company and Louisville Gas and Electric Company to Commission Staff's Fifth Request for Information Dated June 30, 2025, Case No. 2025-00045, Question 5(d) (July 15, 2025); August 6, 2025 HVT at 9:22:18 AM to 9:22:47 AM.
[34] Testimony of Elizabeth A. Stanton, PHD, on Behalf of Joint Intervenors Kentuckians for the Commonwealth, Kentucky Solar Energy Society Metropolitan Housing Coalition, and Mountain Association, at 24, Tbl. 2 (June 16, 2025) [hereinafter "Stanton Direct"].

c. The Companies' queue does not provide a reliable basis for separating out speculative data center load from prospective projects that have a high likelihood of coming to fruition in LG&E/KU's service territory.

As detailed in the testimony of a number of witnesses in this proceeding, a major challenge in determining what amount of prospective data center load a utility should plan for is that the market is currently flooded with speculation. As Sierra Club witness Fisher explained:

> In the last two years, the world of data centers has quickly attracted a wealth of prospectors and speculators hoping to cash in on the enormous sums going into technology companies. Its [*sic*] important to note that while there is extraordinary investment capital flowing towards data centers, there is very little clarity – even within technology companies – about the ultimate scale of demand for the services that are being developed.[35]

Such speculation is seen both in the almost daily deluge of land deals and real estate announcements related to data centers,[36] and the severe mismatch between the national projections of the amount of data center capacity that can and is likely to come online versus the much larger amounts of possible data center projects showing up in utility economic development pipelines throughout the country.[37] This is in part because data center developers evaluate multiple potential states and utilities to locate a project in, a fact that the Companies acknowledged in discovery.[38]

In response, many utilities have established firm and objective requirements that prospective data centers must meet before being included in their load forecasts. After reviewing

[35] Direct Testimony of Jeremy I. Fisher on Behalf of Sierra Club, Case No. 2025-00045, at 9 (June 16, 2025).
[36] *Id.* at 9-11.
[37] *Id.* at 6-7, 11-12.
[38] Response of Kentucky Utilities Company and Louisville Gas and Electric Company to Joint Intervenors Kentuckians for the Commonwealth, Kentucky Solar Energy Society Metropolitan Housing Coalition, and Mountain Association's Initial Requests for Information Dated March 28, 2025, Case No. 2025-00045, Question 5(f), (h) (Apr. 17, 2025) [hereinafter "LG/E-KU Resp. to JI 1-5(f), (h)"].

the practices of a number of utilities that have significant experience with data center load, Sierra Club witness Hotaling noted that:

> While each utility has some differences in the threshold requirements, the common denominator between them is that some level of a signed agreement and financial commitment has been made by the prospective customer before those customers are included in the load forecast.[39]

Some such thresholds identified in witness Hotaling's testimony include signed construction authorization letters, engineering agreements with financial deposits, and agreements to execute an electric service agreement within a fixed time period after generation facilities are in place.[40] Joint Intervenor witness Dr. Stanton similarly identified a list of signed agreements, financial commitments, and disclosures relevant to whether a prospective data center should be factored into a utility's load forecast.[41]

By contrast, the Companies have not put in place such threshold requirements for determining whether to include potential data center projects in its 2025 CPCN Load Forecast. Every data center project in the Companies' queue is reflected in the expected value calculation used to support the 1,750 MW data center load assumption. In addition, there is little in the way of meaningful and objective standards for including and advancing potential projects in the queue. The problem begins at the very outset as there is no barrier to entry to the queue; all a prospective data center developer has to do to get added to the queue is to call the Companies and ask for high level information about what it takes to locate a project in their service

[39] Direct Testimony of Chelsea Hotaling on Behalf of Sierra Club, Case No. 2025-00045, at 22 (June 16, 2025) [hereinafter "Hotaling Direct"].
[40] *Id.* at 21.
[41] Stanton Direct at 47-48 and Tbl. 7.

territory.[42] Once the project is in the queue, it can advance through the economic development stages, which as noted above and summarized in the Companies response to PSC 1-18(c) are defined almost entirely on the basis of the frequency of communication and exchange of information with the Companies' economic development staff without any objective criteria to determine what stage the project should be in "frequency" or supporting documentation for regulatory review of such determination.[43] With the exception of the final "Announced" stage, none of the stages require any written contracts or financial commitments. While a Transmission Service Request ("TSR") or EPC contract can be a relevant factor in deciding what stage a data center project is in, witness Bevington acknowledged at hearing that they are not required.[44] Nor do the Companies have any written documentation of decisions to assign or advance a project to a particular economic development stage.[45]

In the Companies' 2024 IRP proceeding, Commission Staff noted that "[b]ecause no data center requiring the type of load that LG&E/KU envisions in this IRP has located in its territory, all of LG&E/KU's assumptions were necessarily speculative."[46] The Companies respond that "speculative" means "based on a guess and not on information," and they have demonstrated that their projections are derived from actual conversations with data center developers and publicly

[42] August 6, 2025 HVT at 9:22 AM.
[43] August 6, 2025 HVT at 9:19:30 to 9:20:30 AM.
[44] August 6, 2025 HVT at 9:17 AM; *see also* Response of Kentucky Utilities Company and Louisville Gas and Electric Company to the Attorney General and Kentucky Industrial Utilities' Customers' Supplemental Request for Information Dated May 1, 2025, Case No. 2025-00045, Question 20(d) (May 16, 2025) [hereinafter "LG/E-KU Resp. to AG-KIUC 2-20(d)"].
[45] LG/E-KU Resp. to AG-KIUC 2-20(b),(c).
[46] Staff's Report at 52. Order, *In the Matter of: Electronic 2024 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2024-00326 at 52 (July 31, 2025).

available information concerning data centers.[47] Yet, despite these conversations with developers, the Companies' forecast remains speculative in the absence of relevant information,[48] and as witness Hotaling has detailed, there are many categories of information that are directly relevant to the level of uncertainty around a prospective data center proposal that the Companies do not collect.[49]

In rebuttal, witness Bevington simply rejects the speculation concerns, flatly claiming that "Data Center Load is Not Speculative."[50] In support, Mr. Bevington states that he is talking and working with data center developers and end-users "every day," and notes that the Companies continue to field new data center inquiries. But nothing about these discussions and inquiries contradicts the strong evidence of speculation in the industry; in fact, in a speculative boom lots of proposals and conversations are exactly what one would expect to see. The important question is whether in such a scenario, one can parse out the speculative projects from the ones with a strong likelihood of actually coming to fruition.

A review of the Companies' queue provides strong evidence that they cannot. Despite all of the interests, inquiries, conversations, and proposals over the past more than a year, the reality is that there continues to be no data center load in the Announced stage, and only the 402 MW

[47] Joint Comments of Louisville Gas and Electric Company and Kentucky Utilities Company Regarding Commission Staff's Report, *In the Matter of: Electronic 2024 Integrated Resource Plan of Louisville Gas and Electric and Kentucky Utilities Company*, Case No. 2024-00326 at 10 (Aug. 22, 2025).
[48] See, *e.g.*, August 6, 2025 HVT at 10:24:00-10:28:00 AM (Witness Bevington explains that additional information from inquiring parties, e.g. about how many other utilities they've made inquiries to, isn't something the Companies would request in order to avoid creating barriers that would discourage potential customers from moving forward).
[49] Hotaling Direct at 26-27.
[50] Rebuttal Testimony of John Bevington, Senior Director, Business and Economic Development on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company, Case No. 2025-00045, at 2 (July 18, 2025).

Camp Ground Road proposal in the Imminent stage. In other words, while the Companies may have interacted with a number of potential data center developers, only a single proposal has, by the Companies' own staging, a "high probability . . . to announce and locate in the Companies' service territory." The rest of the queue is made up of potential projects for which the Companies have had as little as an initial request for high-level information (Inquiry), only evidence or likelihood of continued follow up (Suspect), or at most very regular exchange of information and more detailed evaluation of a site (Prospect).

The high level of uncertainty in the queue is also shown by the number of data center projects that were added to the queue but have since become inactive. In response to a post-hearing data request, the Companies provided a version of the economic development queue that included such inactive projects, which are identified as either "Lost" or "Stopped."[51] In total, at least 9 data center projects have become inactive, totaling more than 2.8 GW of prospective load.[52] Many of these projects were fairly recent additions to the queue, with three projects involving 1.2 GW of prospective load having opportunity start dates in 2025, and an additional four projects totaling more than 1.1 GW of prospective load having opportunity start dates in September or November 2024.[53] Nor were most of these now inactive projects simply fleeting inquiries. Instead, six of the now inactive data center projects, with a combined load over 2 GW,

[51] Response of Kentucky Utilities Company and Louisville Gas and Electric Company to Joint Intervenors Kentuckians for the Commonwealth, Kentucky Solar Energy Society Metropolitan Housing Coalition, and Mountain Association's Post Hearing Requests for Information Dated August 13, 2025, Case No. 2025-00045, Question 1 (Aug. 22, 2025)[hereinafter "LG/E-KU Resp. to JI PH-1"], Attach. "03-JI_DRPH_LGE_KU_Attach_to_Q1(a-e)_Project_Tracking_Filed_08.22.25_REDACTED"
[52] *See id*. at lines 9, 12, 14, 19, 23, 26, 35, 40, and 51.
[53] *Id*. at lines 9, 12, 14, 19, 26, 40, and 51.

were listed as in the Prospect or Suspect stage in the June version of the queue.[54] Such results further illustrate the high level of uncertainty in the Companies' economic development queue, and how it is an insufficient and unreasonable basis for concluding that 1,750 MW of data center load growth should be included in the 2025 CPCN Load Forecast.

d. The probability percentages used in the expected value calculation are unexplained and ignore the extra uncertainty faced by colocator facilities.

As explained above, the Companies contend that the 1,750 MW assumption is supported by a calculation of the expected value of the load in the queue. That calculation was based on a probability weighting in which the Companies assumed that each project within a particular stage had a certain percentage chance of coming to fruition. Despite repeated requests, however, the Companies steadfastly refused to provide any explanation of the basis for such percentages. As Joint Intervenor witness Dr. Stanton detailed:[55]

> When asked in discovery to explain how the probability percentages were determined and to "provide any analysis or other document supporting such percentages,"[56] the Companies simply pointed to another response,[57] itself referring to other responses, none of which indicate any explanation of *how* the percentages were developed.[58] Instead, those responses only repeat the percentages, and state

[54] *Compare id.* at lines 9, 12, 14, 23, 35, and 40 (identifying projects 3655, 3645, 4094, 2868, 3326, and 3775 as Stopped or Lost), *with* LG&E/KU's Supp. Resp. to PSC 2-17(g), attach. "03-PSC_DR2_LGE_KU_Attach_to_Q17(g)_-_Updated_KIUC_DR1-33(a)_-_Project_Tracking_06.12.25_REDACTED.xlsx" at lines 58, 60, 99, 33, 45, and 74 (identifying the same projects as Prospect or Suspect).
[55] Stanton Direct at 26-27.
[56] Response of Kentucky Utilities Company and Louisville Gas and Electric Company to Joint Intervenors Kentuckians for the Commonwealth, Kentucky Solar Energy Society Metropolitan Housing Coalition, and Mountain Association's Supplemental Requests for Information Dated May 2, 2025, Case No. 2025-00045, Question 10(c) (May 16, 2025)
[57] Response of Kentucky Utilities Company and Louisville Gas and Electric Company to Sierra Club's Second Request for Information Dated May 2, 2025, Case No. 2025-00045, Question 9 (May 16, 2025).
[58] Response of Kentucky Utilities Company and Louisville Gas and Electric Company to the Attorney General and Kentucky Industrial Utilities' Customers' Initial Request for Information Dated March 28,

> that "probability ranges were developed based upon each project's assigned stage." In response to a follow up request in the third round of discovery, the Companies offered only that: "The probabilities assigned to each stage were determined by and agreed upon by the economic development team and its collective experience."[59]

When Staff asked the Companies yet again to explain the basis for the weightings and probabilities, the Companies again simply pointed to other earlier discovery responses that did not address the basis for the probability percentages.[60] In short, despite repeated requests, there is no explanation, much less analytical support, in the record of the basis for the Companies' decision to, for example, assign a 50%, rather than a 30% or 60% probability, to prospective projects in the Prospect stage. As such, on this record the expected value calculation and the probabilities upon which it is based are arbitrary and incapable of supporting reasoned decision-making by the Companies or the Commission.

The record, however, does show that the Companies have ignored the additional uncertainty that colocator facilities face, despite the fact that at least most of the load in the queue is for colocator facilities, rather than hyperscalers.[61] Colocators face additional uncertainty because, unlike hyperscalers such as Microsoft, Google, or Meta that build facilities for their own data center activities, colocators are essentially real estate developers who are looking to lease space to data center operating companies.[62] Yet the Companies did not factor

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2025, Case No. 2025-00045, Question 33(a) (Apr. 17, 2025) [hereinafter "LG/E-KU Resp. to AG-KIUC 1-33(a)"] and LG/E-KU Resp. to PSC 2-17(g).

[59] Response of Kentucky Utilities Company and Louisville Gas and Electric Company to Sierra Club's Third Request for Information Dated May 27, 2025, Case No. 2025-00045, Question 17 (June 6, 2025).

[60] Response of Kentucky Utilities Company and Louisville Gas and Electric Company to Commission Staff's Fourth Request for Information Dated June 10, 2025, Case No. 2025-00045, Question 1 (June 27, 2025) [hereinafter "LG/E-KU Resp. to PSC 4-1"], referencing LG/E-KU Resps. to AG-KIUC 2-20 and SC 3-17.

[61] Stanton Direct at 17.

[62] *Id.*; Hotaling Direct at 29-30.

type of data center into its probabilities weighting. In rebuttal, witness Jones contends that it "is not obvious" that colocation projects are more uncertain, citing in support two press releases announcing reports showing low vacancy rates for colocator facilities.[63] At hearing, however, Mr. Jones acknowledged that the press releases and the reports they announced were from real estate developers with direct pecuniary interests in building colocation facilities, that the vacancy rates were only for top data center markets of which Kentucky was not included, and that he had only vague recollection of the contents of the underlying reports cited in the news releases that did not include observing the inconsistencies in reported numbers or the modest 55 MW of vacancy uptake necessary to make the list of top markets.[64] Regardless, it would strain credulity to suggest that the colocators' need to find and maintain tenants to lease space does not add an extra level of uncertainty as compared to facilities being built by the hyperscaler that will use it.

e. The Companies' post-hearing updates to the economic development queue do not suggest a need for both of the proposed NGCCs.

We anticipate that the Companies will highlight in their post-hearing brief updates and responses to data requests that they submitted after the hearing that purport to show that the "pipeline of opportunities [ ] remains extremely strong."[65] In particular, the Companies provided an August version of the queue spreadsheet that includes 6.7 GW of prospective data center

[63] Rebuttal Testimony of Tim A. Jones, Senior Manager, Sales Analysis and Forecasting on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company, Case No. 2025-00045, at 7-8 and n.23 (July 18, 2025).
[64] August 6, 2025 HVT at 2:35:30 PM to 2:42:30 PM.
[65] Response of Kentucky Utilities Company and Louisville Gas and Electric Company to the Attorney General and Kentucky Industrial Utilities' Customers Post Hearing Data Requests Dated August 13 2025, Case No. 2025-00045, Question 3 (Aug. 22, 2025) [hereinafter "LG/E-KU Resp. to AG-KIUC PH-3"].

projects, and 1.9 GW of other economic development projects.[66] In a separate document, the Companies purport to show that the expected value of data center load has increased by almost 700 MW, and remains above 550 MW for non-data center load.[67]

Given the almost entire lack of any meaningful threshold requirements for projects to enter the queue, it is not surprising that the total prospective load in the queue would remain high. It is also, however, not that meaningful unless and until the Companies adopt needed requirements and practices to enable them to distinguish between speculation and projects with a high likelihood of coming online, and ensure that their probability weighting is transparent and accounts for a full range of uncertainties. In addition, the August version of the queue once again affirms that there is still no data center project at the Announced stage, only the single 402 MW Camp Ground Road project in the Imminent stage and nearly a third (2.18 GW) of the 6.7 GW of prospective data center load is at the low probability Inquiry and Suspect stages.[68] Those are not the types of results upon which a prudent business would gamble billions of dollars of capital investments.

[66] LG/E-KU Supp. Resp. to PSC 2-17, Attach. "03-PSC_DR2_LGE_KU_Attach_to_Q17(g)_-_Updated_KIUC_DR1-33(a)_-_Project_Tracking_Filed_08.13.25_REDACTED".
[67] LG/E-KU Resp. to AG-KIUC PH-3, Attach. "03-AG-KIUC_DRPH_LGE_KU_Attach_to_Q3_-_Expected_Value_Calculation_REDACTED".
[68] More than 40% of the 6.7 GW of prospective data center load is appearing in the spreadsheet for the first time in the August 2025 version of the spreadsheet that was disclosed after 3pm on the day that post-hearing data requests were due. This includes six prospective projects, with a total load of nearly 1.8 GW, with opportunity start dates after July 10, 2025, and a single project (#3603) that went from 300 MW in the July 2025 version of the spreadsheet to 1.4 GW in the August 2025 version. The parties, Staff, and the Commission have had no opportunity to ask discovery or cross examine witnesses about any of this substantial amount of purported load, rendering it procedurally and substantively inadequate to support a finding of need in this proceeding.

Finally, it is important to note that more than 40% of the 6.7 GW of prospective data center load is appearing in the spreadsheet for the first time in the August 2025 version of the spreadsheet that was disclosed after 3pm on the day that post-hearing data requests were due. This includes six prospective projects, with a total load of nearly 1.8 GW, with opportunity start dates after July 10, 2025, and a single project (#3603) that went from 300 MW in the July 2025 version of the spreadsheet to 1.4 GW in the August 2025 version. The parties, Staff, and the Commission have had no opportunity to ask discovery or cross examine witnesses about any of this substantial amount of purported load, rendering it procedurally and substantively inadequate to support a finding of need in this proceeding.

f. The Camp Ground Road and Oldham County Data Center Announcements Do Not Justify the 1,750 MW Data Center Load Growth Assumption in the 2025 CPCN Load Forecast

The second data center load forecast justification offered by the Companies is the public announcement of approximately 1,000 MW of data center load from the proposed Oldham County (600 MW) and Camp Ground Road (402 MW) projects. The Companies contended that "[t]hese announcements have added more certainty to a significant portion of the economic development load forecast," thereby helping to demonstrate the reasonableness of using the 1,750 MW data center load assumption.[69] In a later discovery response, the Companies further asserted that the 1,750 MW assumption was reasonable because it meant that only two more average sized data centers would need to be added if the Oldham County and Camp Ground Road projects came to fruition.[70]

[69] LG/E-KU Resp. to PSC 1-1(b).
[70] LG/E-KU Resp. to PSC 2-14(a).

These project announcements do not support the load forecast or a finding of need here for two reasons. First, during the course of this proceeding, the Oldham County project has been withdrawn after facing local opposition and challenges gaining necessary zoning approval.[71] As recently as the June 2025 queue spreadsheet, the project was listed as a 700 MW Prospect but is now entirely removed from the queue. If anything, Oldham County is a prime example of the uncertainty and lack of reliability reflected in the Companies' economic development queue, and why that queue and the expected value calculation growing out of it do not justify the 1,750 MW data center load assumption included in the 2025 CPCN Load Forecast. Second, while the Camp Ground Road project continues to be at the Imminent stage and, therefore, appears likely to move forward, it is largely irrelevant to whether additional capacity is needed because the Companies could serve the project in its 402 MW form without any of the resources proposed in this proceeding.[72]

g. National Data Center Load Growth Forecasts Do Not Justify the 1,750 MW Data Center Load Growth Assumption in the 2025 CPCN Load Forecast

Finally, the Companies attempt to bolster their 1,750 MW data center load growth assumption by noting that it is "just a fraction" of the national data center load growth projected in a number of reports cited in witness Jones' direct and rebuttal testimony.[73] Mr. Jones also notes that tech companies are "publicly stat[ing] their intentions to continue making enormous and increasing investments in data centers in the U.S."[74] Finally, witness Bevington highlights the tax incentives and other efforts taken by the state government to attract data centers to

[71] LG/E-KU Resp. to PSC 5-11.
[72] August 4, 2025 HVT at 1:42:00 to 1:43:10 PM.
[73] Jones Direct at 17-18; Jones Rebuttal at 4-6.
[74] Jones Direct at 18-20.

Kentucky, and identifies the proposed Camp Ground Road project and numerous other potential projects in the Companies' economic development queue as evidence that those efforts are working.[75]

A closer look at some of the sources cited by witnesses Jones and Bevington suggest that their arguments are overly optimistic. For one thing, none of the cited national reports identify Kentucky as a likely target for significant data center load growth. In fact, the website from the real estate firm CBRE that Mr. Jones links to[76] itself links to CBRE's listing of "Top North America Data Center Markets," which includes 8 "Primary Markets" and 10 "Secondary Markets," none of which include Kentucky.[77] Similarly, while witness Jones notes that 1,750 MW is less than 1.25% of the 143 GW growth of national data center load projected by Deloitte, it is 2.5% of the 70 GW of incremental data center load in the S&P Global Markets forecast and 3.5% of the 52 GW forecast recently adopted by the U.S. Department of Energy, both cited by Jones.[78] Regardless of the specific percentage, while not impossible, it seems unreasonable to expect that a single utility in a state that currently has no significant data center load would end up with between 1.25% and 3.5% of the projected national data center load growth. Finally, while it does appear that the state tax incentives have generated some interest from data center developers, 36 states have similar tax incentives for data centers, so it is doubtful that they would significantly change the current situation of such load being more likely to locate in areas where there is already significant data center presence.[79]

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[75] Bevington Direct at 6-8.
[76] Jones Rebuttal at 5 n.15.
[77] CBRE, Market Profiles: Data Center Trends (Feb. 26, 2025), https://www.cbre.com/insights/local-response/north-america-data-center-trends-h2-2024-market-profiles.
[78] See Jones Rebuttal at 3-4.
[79] Stanton Direct at 14-16.

Ultimately, these comparisons to national forecasts are a red herring. What matters in this CPCN proceeding is whether the Companies can demonstrate that there are a sufficient number of data center projects proposed in the LG&E/KU service territories with a high likelihood to actually come online to justify approving billions of dollars of capital spending to serve an assumed 1,750 MW of data center load growth. As detailed above, on this record the answer to that question is plainly no.

C. The Companies' Load Forecast Understates, and the Companies Did Not Reasonably Evaluate, Actual Cost-Effective Demand-Side Management Potential, a Least-Cost and Genuinely No-Regrets Resource.

In Case No. 2022-00402, Joint Intervenors lamented that demand management and energy savings as strategies to defer or reduce capital projects were an afterthought.[80] Here, the Companies call demand-side management ("DSM") a "distraction."[81] Consistent with that view, the Companies' 2025 Load Forecast understates reasonable potential, the Companies have not adequately re-evaluated DSM potential, and the claimed need for the many proposed supply-side additions is artificially bloated.

Some portion of the claimed need today reflects indifference in delivering least-cost services, which indifference is demonstrated in zero-dollar values for significant components of DSM cost-effectiveness tests, the Companies' reliance on an already-approved DSM Plan,

[80] Case No. 2022-00402, Initial Brief of Joint Intervenors Metropolitan Housing Coalition, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Mountain Association, at 34 (Sept. 22, 2023). Per the Commission's March 13, 2025, May 29, 2025, and August 11, 2025 Orders, the records of Case No. 2022-00402, Case No. 2023-00123, and Case No. 2024-00326 are incorporated by reference.
[81] Rebuttal Testimony of Lana Isaacson, Manager, Energy Efficiency Programs on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company, Case No. 2025-00045, at 10 (July 18, 2025) [hereinafter "Isaacson Rebuttal"].

despite rapid growth and increasing avoided cost values, and the Companies' superficial engagement with intervenors and stakeholders.

1. Energy Efficiency and Demand Savings in the 2025 CPCN

Briefly, the 2025 CPCN Load Forecast relies on the same assumptions as in the 2024 IRP[82] Mid load forecast. Specifically, the mid forecasts of the IRP and CPCN both assumed, by 2032:

- 150 MW of distributed generation;
- 230 MW of summer peak demand reduction participation;
- 171 MW of winter peak demand reduction participation; and
- 1,500 GWh of annual energy reductions, in unknown part, from
  - behavioral, technological, and physical efficiency gains having nothing to do with utility programs,
  - participation in utility-sponsored DSM programs (as approved, and continuing beyond 2030),
  - conservation voltage reduction and other AMI-related efficiencies, and
  - distributed generation.[83]

In comments on the 2024 IRP, Staff's Report noted that though DSM/EE alone cannot meet gigawatts of growth alone, DSM/EE programs "continue to represent meaningful opportunities for ratepayers to control their energy costs and LG&E/KU must not lose sight of how important those programs may be to eligible customers."[84] Staff continued, "those [DSM/EE] programs

[82] 2024 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company, *In the Matter of: Electronic 2024 Joint Integrated Resource Plan of Kentucky Utilities Company and Louisville Gas and Electric Company*, Case 2024-00326 (Oct. 18, 2024) [hereinafter "2024 IRP"].
[83] Jones Direct at 8 and n.8; August 6, 2025 HVT at 1:56:00–1:57:45.
[84] Case No. 2024-00326, Commission Staff's Report on the 2024 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company, at 53 (July 31, 2025).

also represent real capacity headroom that must be properly accounted for in order to ensure that LG&E/KU has an accurate picture of its capacity and energy needs moving forward."[85]

The Companies' 2024-2030 DSM Plan committed to increase the 7-year cumulative MW savings from DSM programs by 2030 from 112 MW to 170 MW, and more than double demand response savings available in 2030 from 86 MW to 207 MW for an incremental $30 million DSM spend.[86] At the time, witness Jim Grevatt observed unreasonable aspects of the Companies' cost-effectiveness screening, and recommended that the Companies implement cost-effective measures and programs at a scale capable of delivering roughly twice the proposed targets. Witnesses further expressed concern that, if a 7-year DSM Plan were approved, the Companies would not have adequate incentives to promptly and credibly reassess cost-effectiveness in light of rapid industry and financial changes.

2. The 2025 CPCN Load Forecast, Like the Companies' DSM Planning Generally, Understates Energy and Demand Savings Potential.

The Companies 2025 CPCN Load Forecast overstates need by understating the achievable, cost-effective energy and demand savings. This results in part from nearly a decade spent calculating cost-effectiveness on the erroneous assumption that there are no avoided cost benefits from deferring or reducing generation capacity, transmission, or distribution projects. That avoided cost methodology continues into program planning, where the Companies assume no avoided transmission or distribution benefits. This approach chronically understates the value of DSM and bloats the claimed need for relatively expensive supply-side capital projects.

[85] *Id.*
[86] 2022-00402, Testimony of Jim Grevatt (Revised), at 11 (Aug. 29, 2023) [hereinafter "Grevatt Direct"].

As detailed in the testimonies of Messrs. Grevatt[87] and Eiden,[88] since at least 2016, the Companies erroneously assumed $0 in possible generation, transmission, or distribution deferral benefits when calculating demand-side management potential and cost-effectiveness, with limited exceptions. Stated from the perspective most important to PPL investors (forecasted capital plans and return on those plans),[89] the Companies' capital plan to spend on generation, transmission, or distribution cannot be avoided—not by supporting reduced energy waste, increased energy efficiency, and increased demand flexibility, or otherwise. This indifference has persisted for so long that the claimed need cannot support the requested certificates.[90]

Long-standing, peer-reviewed, and widely-accepted knowledge and practice,[91] dictate that DSM potential and cost-effectiveness should be aggressively pursued in order to defer,

[87] Jim Grevatt's energy efficiency experiences date back 34 years, to 1991, when he worked for Vermont's Low-Income Weatherization Assistance Program and Vermont Gas Systems' demand-side management programs. *Id.* at 2; Ex. JG-1. Mr. Grevatt later served as Vermont Gas Systems' Manager of Energy Services, where he managed the residential and commercial energy efficiency portfolios. Grevatt Direct, Ex. JG-1. Before turning to his current role at Energy Futures Group, Mr. Grevatt served as the Director of Residential Energy Services at Efficiency Vermont and the District of Columbia Sustainable Energy Utility. Grevatt Direct at 2.

[88] Before joining Current Energy Group as a Senior Manager of Distribution System Planning and Distributed Energy Resource Integration, Mr. Eiden worked at Portland General Electric where he led company-wide distributed energy resource forecasting, managed multiple R&D projects, and represented PG&E in regulatory proceedings, among other responsibilities. Before that, Mr. Eiden oversaw cost-effectiveness reporting for Energy Trust of Oregon's $200 million energy efficiency portfolio and evaluated utility efficiency offerings as a program analyst at The Cadmus Group. Mr. Eiden's experience and résumé is detailed further in direct testimony. (Revised) Testimony of Andy Eiden on Behalf of Joint Intervenors Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Association, and Mountain Association, Case 2025-00045 (Aug.1, 2025) [hereinafter "Eiden Direct"].

[89] *See* August 4, 2025 HVT at 1:26:30–1:27.30pm (Bellar); Joint Intervenors' Hearing Ex. 1, *PPL Corporation 2nd Quarter 2025 Investor Update* (July 2025).

[90] *Iola Cap. v. Pub. Serv. Comm'n of Kentucky*, 659 S.W.3d 563, 571 (Ky. Ct. App. 2022), review denied (Feb. 8, 2023) (quoting *Ky. Utils. Co. v. Pub. Serv. Comm'n of Ky*., 252 S.W.2d at 890) (A CPCN applicant must show that need does not arise from "indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.").

[91] Eiden Direct at 18-20.

delay, or avoid higher costs to generation, transmission, and distribution needs.[92] The reality that system capital and ordinary costs can be avoided by reducing system throughput has been long and widely known among state and federal regulators, utilities, energy policy wonks, and energy analysts.[93] Those avoided costs—across energy, capacity, transmission, and distribution—have value that reasonable analyses of the prescribed cost-effectiveness tests include.[94] The Companies, on the other hand, assign $0 values to each of these avoided cost categories.

The Companies' inability to identify transmission and distribution deferral value compares poorly to peers. For example, a study prepared for the Pennsylvania Public Utility Commission calculated avoided transmission and distribution ("T&D") value for PPL Electric of $153.54/kW-yr starting in 2026, and escalating to $185.82/kW-yr by 2035. The unrebutted examples of regulated utilities' avoided T&D values, include PG&E's ability to identify $283.39/kW-yr to $650.53/kW-yr for specific infrastructure deferral opportunities in its 2023

[92] *E.g.*, Order, *In the Matter of Application of Meade County Rural Electric Cooperative Corporation to Adjust Electric Rates*, Case No. 2010-00222, at 15–16 (Feb. 17, 2011) ("The Commission believes that conservation, energy efficiency and DSM, generally, will become more important and cost-effective as there will likely be more constraints placed upon utilities whose main source of supply is coal-based generation . . . . [T]he Commission believes that it is appropriate to strongly encourage Meade, and all other electric energy providers, to make greater effort to offer cost-effective DSM and other energy efficiency programs").
[93] *E.g.*, Eiden Direct at 18-20.
[94] Cal. Pub. Utils. Comm'n, *California Standard Practice Manual: Economic Analysis of Demand-Side Programs and Projects* (Oct. 2001) [hereinafter "California Manual"] and the National Energy Screening Project, *National Standard Practice Manual* (Aug. 2020), [hereinafter "NSPM"] include avoided cost benefits of capacity, transmission, and distribution costs.

Distribution System Plan;[95] and California utilities' locational net benefits analysis method identified a range $0-500/kW-yr of avoided T&D value.[96]

The Companies' inability to identify T&D deferral value further disappoints when considered against the scale of past and ongoing T&D capital investment. PPL anticipates the return of and on $3,450,000,000 through Kentucky segment T&D projects in 2028,[97] in addition to the Companies' EOY 2024 total transmission plant net book value of roughly $1.7 billion and total distribution plant net book value of over $3.3 billion.[98]

In the same vein, the Companies' DSM planning historically used $0.00 avoided capacity values,[99] including in their 2016/2017 Potential studies; but by 2022, the Companies claimed a significant capacity need had arisen and sought (among other things) 645 MW combined cycle gas units that reflected an avoided capacity value of $136.20/kW-year.[100] Now, three years later, the claimed capacity need has ballooned, gas unit costs substantially increased, and real supply chain constraints extended project timelines. Each of those factors individually, and in combined effect, should increase avoided capacity values; but the Companies hold at $0.00. That is unreasonable indifference toward significant least-cost energy and demand potential.

As a result, some portion of the claimed need today is due to at least a decade of indifference to acknowledging the actual avoided and deferral capital cost benefits of DSM

[95] Eiden at 18, n.24 (citing Demand Side Analytics, *Avoided Cost of Transmission and Distribution Capacity Study*, at 65 (July 2024), https://www.puc.pa.gov/pcdocs/1842599.pdf).
[96] Eiden Direct at 18 (citing n.26, Natalie Mims Frick et al., *Locational Value of Distributed Energy Resources*, Lawrence Berkeley Nat'l Lab'y, at 38 (Feb. 2021)), https://eta-publications.lbl.gov/sites/default/files/lbnl_locational_value_der_2021_02_08.pdf.
[97] Joint Intervenors' Hearing Ex. 1, *PPL 2nd Quarter Update* at 26.
[98] LG/E-KU Resp. to JI PH 11(a)-(b).
[99] For non-dispatchable DSM/EE measures.
[100] Eiden Direct at 23; Case No. 2022-00402, Grevatt Direct at 26 (citing LG&E/KU Response to JI First Supplemental Question 28(b) in Case No. 2022-00402).

resources and cannot support a certificate of need. To address the persistent under-valuing of avoided energy and demand, Mr. Eiden recommends that the Commission require the Companies to:

1. Modernize their DSM-EE and Dispatchable DSM cost-effectiveness methods by:
    a. Developing a T&D avoided cost value for incorporation into future DSM-EE cost-effectiveness analyses.
    b. Conducting a study of non-energy benefits ("NEBs") including value of resilience, health and safety, and environmental benefits.
2. Update their methodology for incorporating DSM-EE into any future Integrated Resource Plan ("IRP") and related resource planning workflows by:
    a. Developing a methodology to integrate measure-specific load shapes into resource planning;
    b. Evaluating existing methodologies for attributing peak demand impacts to DSM-EE measures, especially for temperature-dependent measures like heating ventilation, and air conditioning ("HVAC") and water heating;
    c. Model DSM-EE as a selectable resource in the IRP framework, as opposed to a reduction in the load forecast[101];
3. Recalculate the portfolio capacity need based on an updated assessment of dispatchable DSM's contributions to resource adequacy using a more appropriate new proxy capacity resource (not a simple-cycle CT);
4. Improve their efforts at characterizing the most efficient energy savings opportunities in the market by:
    a. Instituting a process for refreshing measure characterization and efficiency assumptions on a rolling basis, and at minimum, for each new potential study conducted for an IRP.
    b. Developing a formal emerging technology evaluation and planning framework, in collaboration with stakeholders, and filing for approval with the Commission during its next DSM-EE plan update or before the next IRP, whichever comes first.[102]

These adjustments are necessary to ensure the Companies' need is more accurately stated.

[101] Mr. Eiden's Direct Testimony further proposes a possible method of modeling DSM-EE as a selectable resource. Eiden Direct at 6.
[102] Pages 5-9 of Eiden Direct provide Mr. Eiden's recommendations in full, including recommendations related to distributed energy resources.

3. The Companies' Superficial Engagement with Stakeholders Further Reflects Indifference to Reducing Energy Waste and Customer Need Through DSM, Including DERs.

Finally, the Companies' lack of engagement with its DSM Advisory Group over the last year, as well as the Companies' attempted rebuttal of Mr. Eiden's testimony, further reflect indifference to proactively pursuing more of the cost-effective achievable potential. Contrary to certain claims on rebuttal, the Companies have not actively solicited input and ideas from the DSM Advisory Group.[103] Following the Companies' 2022 IRP, and over the six months preceding the Companies' last CPCN application, the Companies convened the DSM Advisory Group five times. This time around, the Companies left the DSM Advisory Group dormant for over a year despite requests from DSM Advisory Group participants to convene further meetings.

When asked over a year ago to schedule the expected August 2024 DSM Advisory Group meeting, the Companies took three days to say that there were no further meetings planned.[104] Metropolitan Housing Coalition quickly responded to clarify and ask again:

> We were under the impression we would be meeting in August or at least in the fall. Can we go ahead and get that scheduled? The advisory group is looking forward to further discussing the DSM programs in depth.[105]

The Companies did not respond further to Metropolitan Housing Coalition and did not convene a DSM Advisory Group meeting. Further, it appears the Companies' DSM Team did not communicate anything related to MHC's request to the DSM Advisory Group or solicit the broader group to gauge interest in scheduling the group's next meeting.

[103] Isaacson Rebuttal at 5.
[104] Full email thread produced as a single pdf file in the Company's Attachment to Response to JI-PH Question No. 10(a).
[105] Attachment at 2, to LG/E-KU Resp. to JI-PH 10(a).

The Companies' indifference toward demand-side resources is further reflected in rebuttal testimony casting proposals to support deep energy retrofits of multifamily homes as a "new idea,"[106] which should first have been raised elsewhere,[107] and as a mere "distraction" from the Company's proposed capital investments.[108] The reasons demand-side management is categorically not a distraction when need and the absence of wasteful duplication are at issue have been set out above in Section II.C.2 and below in Section II.D.4, with responses here to the former three aspects of these rebuttal points.

First, in a very real sense, there is nothing new about pursuing deep energy retrofits of multifamily properties. With claims of "continuously monitor[ing]" a wide range of resources,[109] it would be surprising if the Companies were rethinking multifamily deep energy retrofits for the first time only upon reading Mr. Eiden's testimony.

Second, even if a recommendation were raised for the first time in this proceeding, that is an entirely appropriate thing to do. It would be absurd to use DSM Advisory Group participation as a means to gatekeep or undermine relevant evidence in subsequent regulatory proceedings.[110] Particularly so here, where the record shows that the DSM Advisory Group processes, such as they are, did not provide reasonable or adequate opportunities for meaningful stakeholder input.[111]

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[106] Isaacson Rebuttal at 5.
[107] *Id.* at 6.
[108] *Id.* Rebuttal at 5.
[109] *Id.* Rebuttal at 5.
[110] *E.g.*, *id.* at 5-6 (inaccurately labeling deep energy retrofits of multifamily properties as a "new idea" which the Company is "disappointed" to see raised in a regulatory proceeding rather than first in the DSM-EE Advisory Group).
[111] *Contra id.* at 5 (opining that "processes currently in place already provide opportunities for meaningful stakeholder input").

Further, the Companies' suggestions that one-on-one emails, phone calls, meetings, or form submissions offer a meaningful substitute for convening a DSM Advisory Group meeting or submitting evidence in a regulated proceeding reflects a misunderstanding of and indifference to the value of informal stakeholder collaboration. The DSM Advisory Group includes a broad range of stakeholders with interests different from those of Metropolitan Housing Coalition, KFTC, Mountain Association, and Kentucky Solar Energy Society. Only when the Companies convene a DSM Advisory Group meeting do all those diverse interests come together in a collaborative setting to exchange information and perspectives. When the Companies refuse to convene those collaborative meetings, stakeholders lose the opportunity to balance and learn from other participants, as do the Companies themselves.

Moreover, if a DSM Advisory Group participant engages in one-on-one advocacy outside of group meetings through emails, phones, or exclusive meetings, the Companies have no practice of documenting or reporting those activities for the benefit of other DSM Advisory Group participants or as part of regulatory filings. With that, feedback through these backchannels excludes other stakeholders (possibly with competing views) and does so without any transparency or accountability. That is not a serious alternative to convening DSM Advisory Group meetings.

In a third reflection of superficial engagement with serious expert testimony on better targeting deep multifamily retrofits, the Companies' rebuttal treats the recommendation as somehow being in competition with the existing WeCare program.[112] There is, in fact, no reason to make a zero sum game out of effective weatherization program design and reasonable budgets

[112] Isaacson Rebuttal at 5-6.

necessary to serve all customers. Taking that position suggests a certain intransigence against improving and expanding the Companies' existing services, but the Companies didn't stop there.

The Companies' rebuttal next unfaithfully rehashed its arbitrary and unsupported proposal to increase the eligibility threshold for WeCare in Case No. 2022-00402.[113] That issue was resolved in Case No. 2022-00402 and is a red herring. Opposition to a factually unsupported eligibility-threshold change opposed by direct services providers and discouraged by policy experts is not the same thing as resisting improved efforts to support deep weatherization of multifamily homes.

Finally, without belaboring each clarification provided in the final pages of the Companies' rebuttal,[114] the Companies focus on immaterial differences and fail to actually engage with the real substance of Mr. Eiden's observations and recommendations. For example, the Companies dismiss the suggestion of coordinating management of multiple DSM measures into a Virtual Power Plan as a matter of definitions and semantics. That dismissal is especially capricious given that Mr. Eiden's testimony explained that VPPs can be defined differently, and the point is not to meet a definition, but to coordinate management of DERs.

In the end, none of the points offered on rebuttal provide an explanation of why greater savings are not attainable through improved and expanded programs, based on a credible assessment of DSM resource potential in light of claimed changes in need. Instead, the rebuttal continues to reflect a superficial, passive, and dismissive approach to identifying and pursuing least-cost DSM potential.

[113] *Id.* at 6-7.
[114] *Id.* at 8-10.

D. The Companies Have Failed to Prove an Absence of Wasteful Duplication.

In addition to failing to establish a genuine need for Mill Creek 6, the Companies have not satisfied their burden of proving an absence of wasteful duplication by demonstrating that their proposed resources, including Mill Creek 6, represent the most reasonable, least-cost alternatives. The record demonstrates that the Companies failed to account for the full costs and risks associated with the construction and operation of Mill Creek 6. The Companies also cut short their analysis of reasonable alternatives to Mill Creek 6, rendering their CPCN application defective.

1. The Companies Underestimate the Cost of Mill Creek 6.

The Companies have failed to account for the full costs or risks associated with the construction of Mill Creek 6. The Companies attached a price tag of $1.415 billion to Mill Creek 6, yet a number of uncertain costs associated with Mill Creek 6 could elevate the price even higher.

As detailed in Joint Intervenor witness O'Leary's testimony, the Companies may have underestimated the true cost of Mill Creek 6 by 20% or more due to recently rising costs for natural gas turbines.[115] The Companies' $1.415 billion estimated cost would correlate with approximately $2,194 per kilowatt (kW). Yet in March 2025, the CEO of NextEra Energy told investors that the cost of natural gas combined cycle power plants had risen to $2,400/kW,[116]

[115] Revised Testimony of Sean O'Leary on Behalf of Joint Intervenors, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Association, and Mountain Association, Case No. 2025-00045, at 6:13-7:1 (Aug. 29, 2025) [hereinafter "O'Leary Direct"].
[116] *Id.* at 7:1-4 (citing NextEra Energy, March Investor Presentation (Mar. 2025).

with the potential for tariffs to push the cost to between $2,600 and $2,800.[117] Furthermore, analysis by Enverus Intelligence Research demonstrated that capital gas expenditures can now range as high as $3,000/kW, far exceeding the estimated $2,194/kW cost for Mill Creek 6.[118]

In his rebuttal testimony, Companies witness Tummonds attempted to dismiss Mr. O'Leary's concerns with the Companies' cost estimate, stating: "No one can predict with perfect certainty what actual construction costs will be two years from now, but our current estimates for Brown 12 and Mill Creek 6 are reasonable and based on the best information currently available[.]"[119] Yet, unlike for Brown 12, the Companies had not yet entered into a Unit Reservation Agreement ("URA") to secure certain turbine pricing at least as of the time of the August hearing in this proceeding,[120] so the Companies' cost estimate for Mill Creek 6 is necessarily beset by a high degree of uncertainty. And even after entering into a URA, costs will remain uncertain: taking Brown 12 as an example, the Brown 12 URA locked in pricing for the gas turbine and generator packages, but left pricing for the balance of the power island equipment scope (steam turbine, heat recovery steam generator, other power island equipment,

[117] *Id.* at 7:7-8 (citing Emma Penrod, *NextEra Energy CEO urges 'energy pragmatism' amid rising costs, demand*, Utility Dive (Apr. 24, 2025)).
[118] *Id.* at 8:6-8 (citing Corianna Mah & Scott Wilmot, Enverus, *Stranded Sparks: Texas Energy Fund Gas Project Withdrawals* (Jun. 9, 2025)).
[119] Rebuttal Testimony of David L. (Dave) Tummonds, Vice President, Power Generation on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company, Case No. 2025-00045, at 4:7-10 (July 28, 2025) [hereinafter "Tummonds Rebuttal"].
[120] LG/E-KU Resp. to PSC 1-34; Response of Kentucky Utilities Company and Louisville Gas and Electric Company to the Joint Motion of Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Coalition, and Mountain Association's Third Request for Information Dated May 27, 2025, Case No. 2025-00045, Question 1 (June 6, 2025) [hereinafter "LG/E-KU Resp. to JI 3-1"]; August 7, 2025 HVT at 9:32:55 AM to 9:34:00.

site delivery, and engineering) merely indicative.[121] Given this uncertainty, there is a significant risk that the Companies are underestimating the price for Mill Creek 6.

Interconnection costs are another factor that could increase the price of Mill Creek 6. Although the Companies have conducted preliminary analysis of transmission impacts, the Companies ultimately rely on their independent transmission organization ("ITO") for analysis of system and network upgrades.[122] For Mill Creek 6, the Companies do not intend to submit an interconnection request until November 2025, and the ITO's analysis of system and network upgrades needed for Mill Creek 6 cannot begin until then.[123] In the interim, the Companies have assumed that interconnection cost will be 2% of the total project cost,[124] or roughly 4% if transformer costs are included in interconnection costs.[125] However, as Joint Intervenor witness Chiles testified, a 5% value for interconnection costs is more typical than 2%.[126]

Transmission costs could be further underestimated as a result of failing to assess needed mitigation measures for impacts to nearby transmission systems (referred to as "Affected Systems").[127] The Companies' independent transmission siting assessment does not indicate that the Companies considered any Affected Systems outside of the Companies' system, and until the ITO completes an evaluation of the transmission service request ("TSR") for Mill Creek 6,

[121] LG/E-KU Resp. to JI-3-3(e).
[122] August 7, 2025 HVT at 9:14:14 AM to 9:15:15 AM; LG/E-KU Resp. to JI 1-25(a).
[123] August 7, 2025 HVT at 9:14:14 AM to 9:15:15 AM; LG/E-KU Resp. to JI 1-25(a).
[124] Direct Testimony of David L. (Dave) Tummonds, Senior Director, Project Engineering on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company, Case No. 2025-00045, at 11 (Feb. 28, 2025) ("Transmission costs are estimated to be approximately 2% of the total cost of the NGCCs").
[125] August 7, 2025 HVT at 9:27:20 AM to 9:27:45 AM.
[126] Testimony of John W. Chiles on Behalf of Joint Intervenors Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Association, and Mountain Association, Case No. 2025-00045, at 6:4-8 (June 16, 2025) [hereinafter "Chiles Direct"].
[127] *Id.* at 14:12-15:20.

potential impacts to Affected Systems will remain uncertain.[128] The Companies would be responsible for any violations of thermal, voltage, or stability criteria on Affected Systems caused by Mill Creek 6, and such mitigation could take the form of additional transmission expansion costs to be paid by LG&E-KU ratepayers.[129] In addition to potentially raising project costs, impacts to Affected Systems could also result in a reduction to project output.[130] Companies witness Tummonds, for his part, has stated that total network upgrades costs are generally not known at the commencement of a project and certainly are not known at the time of quoting a project, but if you were to assign network upgrade costs to a specific unit, it would likely result in an additional 1-3% (approximately $14-42 million) in costs per NGCC.[131]

In response to Mr. Chiles' raising these concerns, Companies witness Bellar stated "that the Companies will take necessary steps to ensure that any load added to the transmission system (data center load or not) will comply with the governing process that protects against significant unwanted effects."[132] But such an assurance is insufficient. The issue is not whether the Companies will take necessary steps to protect against significant unwanted effects. The issue is whether the Companies have proven that these impacts and mitigation measures would not alter the costs of the projects such that they do not represent the reasonable, least-cost alternative. The Companies have not met their burden in this regard.

[128] *Id*.
[129] *Id*. at 15.
[130] *Id*.
[131] August 7, 2025 HVT at 9:27:50 AM to 9:28:33 AM.
[132] Bellar Rebuttal at 12:1-5.

2. The Companies Have Failed to Fully Assess the Risks of a Gas-Heavy Portfolio Lacking Meaningful Fuel Diversity.

In addition to potentially underestimating the construction costs of Mill Creek 6, the Companies have also discounted other potential risks associated with a gas-heavy portfolio.

The Companies have stated that they agree that "fuel diversity matters."[133] Yet the Companies' proposal would double-down on their already fossil fuel dominated resource portfolio. When SREA witness Smith raised concerns about the Companies' lack of fuel diversity, Companies witness Schram responded with the counterintuitive claim that Mill Creek 6 and Brown 12 would improve the Companies' fuel diversity by increasing the amount of gas capacity compared to coal.[134] While increased gas generation may lead to an increased balance between gas and coal in the "fossil fuel portfolio,"[135] it would not improve diversity between fossil fuels and other sources, leading to continued risk exposure. In fact, as Companies witness Schram himself testified, there is a "long-term correlation of coal and natural gas prices," with "[n]atural gas and thermal coal [being] largely economic substitutes,"[136] meaning that increased reliance on natural gas would still expose the Companies to many of the same cost risks that reliance on coal would.

SREA witness Smith testified to certain risks of increasing reliance on natural gas generation, particularly compared to renewable resources. Witness Smith explained that natural gas is economically dependent on the fuel marketplace, requires regular fuel purchases, and

[133] Rebuttal Testimony of Charles S. Schram, Vice President, Energy Supply and Analysis, on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company, Case No. 2025-00045, at 5:1 (July 18, 2025) [hereinafter "Schram Rebuttal"].
[134] *Id.* at 5:1-11.
[135] *Id.*
[136] *Id.* at 7-8.

requires upkeep for turbines and surrounding gas and electric infrastructure.[137] In contrast, renewable generation has very low operating expenses.[138] Witness Smith further testified to the fact that the value of gas has diminishing returns, since as dependency on gas increases, so does dependency on third-party delivery of fuel.[139] This dependency on third-party delivery of fuel comes with certain vulnerabilities in the case of extreme weather events like Winter Storm Elliott.[140]

An additional risk associated with expanding the Companies' fossil fuel portfolio is the potential cost impacts of future decarbonization regulations. As Joint Intervenor witness O'Leary explained, a requirement to retrofit gas-fired power plants for carbon capture and sequestration would cause the cost of gas generation to roughly double.[141] Looking at the Companies' emissions specifically, in 2020, the Companies emitted 29.4 million tons of carbon dioxide, and the cost of mitigating these emissions through carbon capture and storage would be approximately $2.4 billion annually.[142] Expanding natural gas generation to meet projected data center demand would lead to added regulatory cost risk if the federal government adopts new decarbonization regulation in the future.[143]

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[137] Direct Testimony of Benjamin W. Smith on Behalf of Southern Renewable Energy Association, Case No, 2025-00045, at 16-17 (June 16, 2025) [hereinafter "Smith Direct"].
[138] *Id*.
[139] *Id*. at 17:3-5.
[140] *Id*. at 17:3-20.
[141] O'Leary Direct at 9:5-9.
[142] *Id.* at 10:12-11:2.
[143] *Id.* at 11:3-4. The Companies witness Imber cursorily responded to Witness O'Leary's testimony on regulatory risk, claiming that carbon regulation would in fact reinforce the value of NGCCs, but expanding the Companies' renewables portfolio would undoubtedly lead to greater insulation from decarbonation regulatory compliance costs than gas. Rebuttal Testimony of Philip A. Imber Director, Environmental Compliance on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company, Case No. 2025-00045, at 3:3-17 (July 18, 2025).

The Companies' parent company, PPL, appears to have recognized the risks of maintaining such a carbon-intensive portfolio, by adopting a goal of net-zero emissions by 2050[144] and specifically stating that "[d]ecarbonizing our generation fleet in Kentucky is a critical component to achieving net-zero emissions."[145] In contrast to their parent company, the Companies have declined to adopt an independent greenhouse gas emissions goal.[146] The Companies also did not incorporate PPL's 2050 net zero goal in its analysis of the proposed resources, despite the fact that the 40-year assumed book life of the NGCC units would extend through 2050.[147]

Crucially, Mill Creek 6 would exacerbate risks associated with a fossil fuel-heavy resource portfolio while delivering little local economic benefit. Witness O'Leary testified to the likely meager economic benefits of Mill Creek 6 compared to the economic benefits of distributed generation and energy efficiency.[148] Specifically, a $2 billion, 1,000 MW gas-fired power plant typically employs only about thirty people.[149] The same is true of the projected data center load that Mill Creek 6 is being proposed to serve, and Mr. O'Leary explained that both gas generation and data centers are highly capital intensive but not very labor intensive.[150] In

[144] Response of Kentucky Utilities Company and Louisville Gas and Electric Company to the Kentucky Coal Association's Supplemental Request for Information Dated May 2, 2025, Case No. 2025-00045, Question 2(a) (May 16, 2025), [hereinafter "LG/E-KU Resp. to KCA 2-2(a)"].
[145] PPL Corp., *Reshaping Our Future,* https://www.pplweb.com/sustainability/energy-and-environment/climate-action/ (last visited Sept. 4, 2025).
[146] Response of Kentucky Utilities Company and Louisville Gas and Electric Company to Louisville/Jefferson County Metro Government and Lexington-Fayette Urban County Government's First Request for Information Dated March 28, 2025, Case No. 2025-00045, Question 15 (Apr. 17, 2025) [hereinafter "LG/E-KU Resp. to LM-LFUCG 1-15"].
[147] LG/E-KU Resp. to KCA 2-2.
[148] O'Leary Direct at 22:6-29:6.
[149] *Id.* at 26:6-9.
[150] *Id.* at 22:14-24:10.

contrast, businesses involved in distributed generation and energy efficiency are generally labor intensive and conducted nearly exclusively by local contractors whose employees live in the community.[151] They therefore have a significant beneficial impact on local jobs.[152]

3. The Companies Have Failed to Fully Consider Alternatives.

The Companies have also failed to fully assess reasonable alternatives to their proposed resources, a necessary component of avoiding wasteful duplication. Specifically, the Companies did not adequately assess the potential of battery energy storage systems ("BESS") agreements procured through a Request for Proposal ("RFP") process, and the Companies did not sufficiently assess the value of several existing solar power purchase agreements ("PPAs"). As discussed in Section II.D.4, *infra*, the Companies have also failed to reasonably evaluate demand-side resource potential.

The Companies have acknowledged that BESS will have an important role in providing reliable service to customers for years to come, including by helping to ensure reliable service during peak periods.[153] Yet the Companies did not include BESS in the 2024 RFP that they issued when developing the present resource proposal.[154] The Companies' resource assessment was therefore not fully informed by current BESS market dynamics. Companies witness Schram

[151] *Id.* at 26:14-18.
[152] *Id.* at 26:14-29:6.
[153] Direct Testimony of Charles R.(Chuck) Schram, Director, Power Supply, on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company, Case No. 2025-00045, at 25:11-26:6 (Feb. 28, 2025) [hereinafter "Schram Direct"]; *see also* SREA witness Smith Direct at 4:6-6:6 (describing benefits of BESS).
[154] Schram Direct at 12:5-9.

provided several attempted justifications for the Companies' decision not to issue a BESS RFP when developing its present resource proposal, but none are convincing.

First, Mr. Schram referenced the potential execution risk associated with BESS agreements, stating that BESS agreements would fail in a similar manner to several solar PPAs.[155] However, as SREA witness Smith explained, "a solar PPA-arrangement is wholly different than a best practice for standalone storage in a competitive marketplace," meaning that the failure of certain solar PPAs cannot serve as a justification for failing to pursue market-competitive BESS through an RFP.[156] Specifically, witness Smith explained that:

> In standalone storage, the "buyer" buys the grid benefits of the storage, and the "seller" can be compensated in a number of ways. Or, to simplify matters for the Companies, they could simply seek a build-own-transfer procurement where a BESS developer builds and holds a storage facility until it is operational and then sells it to the Companies[157]

Notably, the Companies did not perform any analysis to determine how the impact of BESS cost increases might impact BESS agreements differently than self-builds, analysis that should have been conducted prior to dismissing the potential for a BESS RFP on the basis of execution risk.[158]

Witness Schram also attempted to justify the Companies' failure to issue a BESS RFP by claiming that: (1) colleagues at other utilities have told him that battery services contracts can present unforeseen challenges that, had the utility personnel known about them in advance, they would have attempted to address in the agreement, and (2) the Companies continue to desire to

[155] *Id.* at 13:19-14:5.
[156] Smith Direct at 8. 8~~:5-18~~.
[157] *Id*.
[158] LG/E-KU Resp. to JI 1-53.

gain operational experience with these facilities at utility scale.[159] These attempted justifications fail, too. The proposed Stipulation and Recommendation that the Companies have entered into, discussed *infra*, includes a commitment to issue an RFP for renewable energy *and* energy storage by mid-2026,[160] prior to the anticipated operation date of the Companies' in-progress BESS, the Brown BESS.[161] When asked what the Companies would do to supplement their lack of operational experience prior to the mid-2026 stipulation RFP, witness Schram stated that the Companies will continue to have discussion with colleagues at other independent system operators ("ISOs") to better understand battery operations and integration, and that these conversations will benefit the Companies despite their own lack of operational experience.[162] The Companies have put forward no compelling explanation for why such conversations could not have sufficiently educated the Companies to allow them to include BESS in their 2024 RFP.

In addition to arbitrarily excluding BESS from their 2024 RFP, the Companies failed to consider the potential value of three existing solar PPAs that are not yet operational. Witness Schram expressed concern about how the increased price for solar will impact the viability of these PPAs,[163] and the Companies have assumed that none of these projects will reach the operational stage.[164] When asked whether the Companies conducted any analysis or modeling to determine whether the PPAs would be favorable to customers at increased prices, Witnesses Schram and Wilson responded only that the "Companies evaluated responses from the 2024 RFP

[159] Schram Direct 14:5-12.
[160] Stipulation and Recommendation at Art. V, para. 5.1.
[161] LG/E-KU Resp. to AG-KIUC 1-30(a) ("Along the noted timeline, the Companies expect to make the facility operational in January 2027.").
[162] August 6, 2024 HVT at 4:25:40 PM to 4:26:50 PM.
[163] Schram Direct 9:14-10:7.
[164] LG/E-KU Resp. to LM-LFUCG 1-16(b).

in this CPCN proceeding and demonstrated that the current market prices for solar PPAs are not economic."[165] But analysis of the 2024 RFP responses does not suffice to rule out the potential for existing PPAs to be favorable to customers at increased prices, since the existing PPAs likely have better speed-to-market than PPAs solicited as part of the 2024 RFP. In fact, two of the three non-terminated PPAs are already in the interconnection queue,[166] with one of them being assessed as part of a recent Transitional Cluster Study.[167] In order to avoid wasteful duplication, the Companies should have assessed whether these existing PPAs could deliver economical value to customers, even at an increased price.

4. The Companies have not evaluated the economics of increased DSM resources and introduce too much risk of wasteful duplication.

Finally, the Companies cannot show an absence of wasteful duplication as a result of failing to reasonably evaluate demand-side resource potential and instead treating the resource as an input to resource modeling. Notwithstanding the existence of an approved 7-year plan, a prudent utility reevaluates DSM potential and more aggressive investment in pursuing cost-effective savings before making billion-dollar supply-side investments.

Instead of evaluating DSM resource potential on equal footing, the Companies reduced the vast majority of DSM to a load forecast input. That was an unforced error, particularly when the Companies claim an immediate need for quickly scalable, least-cost, and no-regrets mix of resources—mix being a key word. DSM/EE should have been evaluated on equal footing with

[165] LG/E-KU Resp. to JI 1.51(a).
[166] LG/E-KU Resps. to JI 1.44(d),144(f).
[167] *See* August 6, 2025 HVT at 4:31:00 PM to 4:32:28; *see also* LG/E-KU Resp. to JI PH-2.

supply-side alternatives to test whether more (or less) DSM/EE could be a cost-effective part of the mix.

Not three years ago, the Companies plainly understood that it would have been absurd to propose the projects in 2022-00402 without also expanding DSM investments. Indeed, at the time, the Companies proposed to increase budgets and savings expectations. That earlier expectation still applies, and the Companies were remiss in not doing more to test greater investment in avoiding waste and improving efficiency.

Here, Joint Intervenors highlight particularly the Companies' indifference to exploring virtual power plant development, as detailed in Mr. Eiden's testimony. The Companies have not meaningfully considered VPP development potential, appear to object to seriously doing so, and refuse even the recommendation to issue a request for information to gauge market interest in VPP development. In the Companies view, such a solicitation of potential is duplicative and unnecessary because (1) they are not like ERCOT; and (2) Mr. Eiden references a definition that the Companies' existing DSM Plan could meet.[168] The Companies did not otherwise did not rebut Mr. Eiden's testimony related to VPP potential and reasonable next steps.

As to the Company's first response point, the fact of the matter is that being outside of ERCOT's deregulated market is not an actual barrier to VPP development.[169] The record makes this plain, particularly Mr. Eiden's discussion of VPP, including references to the activities of FERC-jurisdictional utilities to develop cost-effective VPP resources. Mr. Eiden's recommendation to pursue a request for information to gauge market interest in VPP

[168] Isaacson Rebuttal at 7.
[169] *Contra* Isaacson Rebuttal at 7.

development makes sense for utilities outside of ERCOT,[170] including vertically-integrated, state-regulated, investor-owned utility monopolists.

Second, focusing on whether the Companies have something that could be labeled a VPP using the Brattle Group definition referenced by Mr. Eiden desperately misses the point. In fact, the Companies' emphasis on individual programs performs the classic fallacy of not appreciating when "the whole is greater than the sum of the parts."[171] Mr. Eiden's observations stand: the existing DSM Plan includes some demand flexible measures that could contribute to VPP development, VPP development can be cost-effectively accelerated with utility-sponsored programs and incentives targeting the most effective set of measures, and gauging market potential is an overdue first step in that direction.

In sum, cost-effective energy efficiency and demand response programs do take time and do cost money—every resource does. But cost-effective demand-side management is genuinely no-regrets for customers with real speed-to-market advantages. These investments accelerate and enable weatherized building shells, installation of cold-climate heat pumps, updated commercial LED lighting for small businesses and commercial customers. Different people may have different views (or no view at all) when it comes to their utilities' generation mix; but all customers appreciate more comfortable buildings and affordable utility bills. The Companies' persistent indifference to improving and expanding DSM resources has been costly—for customer bills and the system as a whole—and practically has had and continues to have the effect of creating an inflated appearance of need for more costly supply-side resources.

[170] *Contra* Isaacson Rebuttal at 7.
[171] Eiden Direct at 63-64.

III. THE MC2 RETIREMENT ADVISORY REQUEST, MC2 ADJUSTMENT CLAUSE, AND THE MC6 COST RECOVERY MECHANISM ARE NOT RIPE FOR DECISION AND WOULD BE INAPPROPRIATE TO APPROVE VIA OPPOSED SETTLEMENT IN FULLY LITIGATED CASE.

Joint Intervenors respectfully submit that settlement terms newly seeking assurance of retirement authority (para. 4.2.), proposing an "Adjustment Clause MC2" (para. 4.4), and proposing a "Mill Creek 6 Cost Recovery Mechanism (para. 2.1), raise matters that are not ripe for decision or otherwise suitable for adjudication here. As a matter of law, these terms must fail, and given their claimed significance to the overall balance of interests reflected in the settlement, the settlement fails without them.

As with Kentucky Courts, the Commission's original jurisdiction requires justiciability, including ripeness and avoidance of advisory opinions. "The Commission has declined to issue advisory opinions in the past," and must not "render advisory opinions or consider matters which may or may not occur in the future."[172] For example, the Commission has previously found that, in the absence of some actual contractual dispute, an order opining on the scope of its jurisdiction vis a vis an electric service contract would amount to an advisory opinion.[173]

To avoid requests for what might amount to an advisory opinion, utilities may seek declaratory judgment. Declaratory judgments regarding the meaning and scope of a provision of KRC Chapter 278 do not require an "actual controversy," but can only be made "upon

[172] Order, *In the Matter of: Electronic Application of Kenergy Corp. For a Declaratory Order*, Case No. 2023-00309 (Ky. P.S.C. Aug. 6, 2024).
[173] *E.g.*, Order, *In the Matter of: Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order*, Case No. 2013-00413, at 19 (Ky. P.S.C. Jan. 30, 2014); Order, *In the Matter of: Joint Filing of by Big Rivers Electric Corporation and Kenergy Corp. of a Load Curtailment Agreement with Century Hawesville*, Case No. 2014-00046, at 2 (Ky. P.S.C. Feb. 14, 2014).

application by a person substantially affected."[174] The Commission has previously recognized this distinction,[175] and it is relevant here.

Here, **Settlement Article IV, Paragraph 4.2** improperly seeks an advisory opinion on a matter unrelated to the CPCN and Site Certificate Applications at issue and is more appropriately addressed through a declaratory judgment or other proceeding. By agreeing that an order approving settlement must "explicitly state that the Utilities' existing authority to retire Mill Creek 2 suffices for a later retirement," the Stipulating Parties call for the Commission to construe its authority under KRS 278.264, and the Companies' authority under the Commission's November 6, 2023 Order in Case No. 2022-00402. The Companies' application and requested relief, however, are grounded in KRS 278.020(1) and KRS 278.216, with no reference at all to KRS 278.264 or any rights or relief related thereto. As a result, the question of MC2 retirement authority is not properly before the Commission, and opining on that authority here would amount to an advisory opinion.

It would further be inappropriate for the Commission to reach beyond the requested relief to issue an advisory opinion on an issue of first impression under a relatively novel statutory scheme. An issue of first impression is better addressed in the context of an actual controversy, through full briefing and argument, which is unlike the circumstances here: prompted via an opposed settlement entered shortly before hearing.

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[174] 807 KAR 5:001, Section 19.

[175] *E.g.*, *In the Matter of: Elec. Petition of Kenergy Corp. for A Declaratory Ord.*, No. 2023-00309, at 5 (Aug. 6, 2024); Order, *In the Matter of: Electronic Application of Kenergy Corp. For a Declaratory Order,* Case No. 2020-00095, at 5-6 (Mar. 11, 2021) (distinguishing "actual controversy" requirement of Kentucky Declaratory Judgment Act, with 807 KAR 5:001, Section 19, which states, in relevant part, that the Commission may issue a declaratory order with respect to the meaning and scope of a provision of KRS Chapter 278 "upon application by a person substantially affected.").

These justiciability limits make sense, and do not put the Companies at a dead end or require any particular action vis a vis the prudent operation of Mill Creek 2. For one, there apparently is no dispute: the stipulating parties agree the Companies already have, and the Companies do not withdraw, existing retirement authority.[176] Two, nothing prevents the Companies from seeking a declaratory judgment pursuant to the Commission's ordinary rules.[177] Or the Companies could wait until a request to recover incremental costs beyond 2027 is properly before the Commission in a base rate case, at which time, the Companies' authority to retire the unit, or not, will be properly noticed and ripe for decision.

The **Mill Creek 2 Adjustment Clause** term, Settlement Article IV, Paragraph 4.4, presents another matter not ripe for decision, not adequately supported by the record and not otherwise appropriate for adjudication through an opposed settlement. The recovery of costs related to Mill Creek 2's hypothetical operation beyond 2027, or beyond 2031, goes impermissibly beyond the requested relief in this CPCN proceeding, which was limited to CPCNs, site compatibility certificates, and accounting of costs during construction. The Commission cannot approve new cost recovery via a new adjustment clause unless and until the Companies provide notice, file an application seeking appropriate relief, and make an adequate showing that recovering the costs, and doing so in the manner proposed, would be just and reasonable. None of that has happened here.

[176] Joint Stipulation Testimony of Lonnie E. Bellar, Executive Vice President, Engineering, Construction and Generation for PPL Services Corporation and Robert M. Conroy, Vice President, State Regulation and Rates on behalf of Kentucky Utilities Company and Louisville Gas and Electric Company [hereinafter "Stipulation Testimony"], Case No. 2025-00045, Ex. 1 at Art. IV., Sec. 4.2 (July 29, 2025). Stipulation Testimony Exhibit 1 is hereinafter "Stipulation and Recommendation".
[177] *See* 807 KAR 5:001, Section 19.

Because none of that has happened, the record here is not sufficiently developed to support reasoned decision-making by the Commission on Mill Creek 2 costs or cost recovery beyond 2027. Approving the Mill Creek 2 Adjustment Clause without proper notice, application, or support would only serve to invite appeal and jeopardize the finality of this CPCN proceeding. That sort of jeopardy is entirely unnecessary. There is time for the Companies to pursue appropriate avenues to request a Mill Creek 2 Adjustment Clause, and time will also test the forecasted large load customer growth assumption allegedly justifying Mill Creek 2's continued operation substantially beyond the operation date of Mill Creek 5.

The Commission should reject the injection of a Mill Creek 2 Adjustment Clause into this proceeding via opposed settlement and allow the issue of Mill Creek 2 costs beyond 2027 to ripen and arise in an appropriate future proceeding.

Similarly, the **Mill Creek 6 Cost Recovery Mechanism**, Settlement Article IV, Paragraph 2.1, presents issues not ripe for decision, not adequately supported by the record, and not otherwise appropriate for adjudication through an opposed settlement. Paragraph 2.1 asks the Commission to authorize the Companies' recovery via a new surcharge, of Mill Creek 6's non-fuel costs, beginning on Mill Creek 6's in-service date and continuing through Mill Creek 6's retirement [178]The stipulation continues to prescribe that Mill Creek 6's non-fuel costs be *partially* and *temporarily* off-set by incremental revenues from the customers causing the alleged need for Mill Creek 6, to the extent they exist and take service when the time comes, which it

[178] Stipulation and Recommendation, at Art. II, para. 2.1(A).

continues to define vis a vis a "Rate EHLF" that is unapproved and still at issue in the Companies' rate cases and another novel customer classification.[179]

Over the course of this CPCN proceeding, the Companies insisted that customer protections against the stranded asset and other financial risks of MC6 were irrelevant and beyond the proper scope of this proceeding.[180] Whether or not one agrees with the Companies' past objections, to some degree, those objections did stunt development of the record in this proceeding. Addressing cost allocation and recovery methods for all Mill Creek 6's non-fuel costs once in-service is a major question that cannot reasonably be considered in the circumstances here. The Commission should avoid reaching these issues, which are unripe, underdeveloped, and more appropriately saved for another proceeding, if and when the need arises.

IV. IN THE EVENT THE COMMISSION DOES FIND THE MC2 EXTENSION TO BE RIPE, THE COMMISSION HAS AUTHORITY TO EXTEND THE APPROVED RETIREMENT OF MC2.

If the Commission instead determines that the question of the Companies' Mill Creek 2 retirement authority is properly at issue, then: yes, the Companies' existing authority allows operation of the unit beyond 2027. Nothing in KRS 278.264 or the Commission's November 6, 2023 Order approving the retirement (a) precludes the Companies from responding to changes in assumptions and circumstances by delaying an already-approved retirement or (b) requires that

[179] *Id.*, at Art. II, para. 2.1(C).
[180] For example, in LG/E-KU's Response to JI 1-21(c). seeking an explanation of any cost guarantees the Companies were offering ratepayers related to Brown 12 and Mill Creek 6, the Companies objected: this request [is] irrelevant to the subject matter of this proceeding under KRS 278.020(1) and the Commission's prior orders.

the Companies return to the Commission for a new approval to delay the already-approved retirement.

The Commission's Retirement Order made clear that "LG&E/KU should also not proceed with the retirement of Mill Creek 2 until construction of Mill Creek 5 is completed"; but did not otherwise condition the retirement approval on a specific time period.[181] As a result, the Companies' authority to retire Mill Creek ripens upon Mill Creek 5's completion and continues indefinitely, subject to the Commission's ongoing jurisdiction. No party sought rehearing or appeal of the Commission's retirement and CPCN findings or holdings, and it would not have made sense to do so.

Approving Mill Creek 2's retirement upon completion of Mill Creek 5 comports with Section 278.264(2)(d), which requires (with limited exception) replacement generation to come online *before* commencing retirement or decommissioning of a fossil generating unit. That is the only time limitation the statute places on retirement approvals. Once the replacement unit is online, KRS 278.264 is not at all concerned with precisely when a utility must act on a Commission-approved retirement, unless specified as a condition by the order approving retirement.[182] The Commission certainly acted within its discretion to grant retirement authority that ripens upon operation of replacement generation and continues without explicit limitation.

Even with an open-ended retirement approval, the Commission retains jurisdiction and various means to reconsider the prudence of the Companies' plan under the existing retirement approval order. As necessary to fulfill its duties, the Commission enjoys statutory authority to

[181] Case No. 2022-00402, Nov. 6, 2023 Final Order at 114.
[182] KRS 278.264(1) (Commission may approve, approve with conditions, or deny a retirement application).

investigate the condition of the Companies, including convening a formal hearing in such matters.[183] Or, as was the case with the Companies' Trimble County Unit 1/2 overbuild, the Commission may review the Companies' conduct under prior orders concerning Mill Creek 2 as a result of intervenors' arguments in a rate case.[184] A party with standing to intervene further has the ability to file a complaint with the Commission should concerns arise related to a utility plant, including but hardly limited to Mill Creek 2's planning and operation.[185]

Assured by its own continuing jurisdiction, the Commission promoted the objectives and intent of the Legislature by granting open-ended retirement approval for Mill Creek 2.[186] The premise of SB 4, as reflected in the "emergency clause," was that an emergency existed because "the United States is retiring coal-fired electric generating units at an unprecedented rate, with retirements potentially affecting employment rates, tax revenues, and utility rates, and compromising the reliability of electric power service and resilience of the electric grid." In an attempt to protect coal-fired electric generating units from retiring, the Legislature codified a rebuttable presumption against such retirements and imposed a multi-part test for approval.[187] In that larger context, of course the statute allows for open-ended retirement approvals.[188]

The standards and procedures of KRS 278.264 are intended to slow or stop certain retirements, and nothing in the Commission's order approving Mill Creek 2's retirement appears

[183] KRS 278.250.
[184] Case No. 9243, Order, *An Investigation and Review of Louisville Gas and Electric Company's Capacity Expansion Study and the Need for Trimble County Unit No. 1* (Oct. 14, 1985) ("Trimble County Case"); *see also* Case No. 2022-00402, Joint Intervenors Supplemental Post-Hearing Comment at 3-5).
[185] KRS 278.260.
[186] KRS 446.080(1); *Maupin v. Tankersley*, 540 S.W.3d 357, 359 (Ky. 2018) ("We liberally construe our reading of a statute with the goal of achieving the legislative intent of the General Assembly regarding the statute's purpose."); *City of Fort Wright v. Bd. of Trs. of Ky. Ret. Sys.*, 635 S.W.3d 37, 40 (Ky. 2021).
[187] KRS 278.264(2)(a)-(d).
[188] *Jefferson Cty. Bd. of Educ. v. Fell*, 391 S.W.3d 713, 719 (Ky. 2012).

intended to force that retirement by a date certain, and particularly not should circumstances materially change. It follows that the Companies retain the authority and the obligation to retire Mill Creek 2 after Mill Creek 5's in-service date, consistent with all the Companies' duties under the law, and subject to the Commission's ongoing jurisdiction.

V. THE STIPULATED SETTLEMENT IS NOT IN THE PUBLIC INTEREST, IS UNREASONABLE, AND SHOULD BE DENIED.

On July 29, 2025, the Companies filed Joint Stipulation Testimony, as well as a Stipulation that purports to be a total settlement of all issues in this proceeding.[189] Joint Intervenors respectfully submit that the Commission should reject the proposed Settlement Stipulation in its entirety. The negotiated terms of the settlement could have either been included in the original application or are more appropriate for consideration in separate proceedings. While the Companies would have the Commission believe that certain purported benefits of the proposed settlement "could not be achieved through a fully litigated outcome," and could only be accomplished by approval of the Stipulated Settlement.[190] That is plainly not so. If the provisions put forth in the settlement are in fact lawful and in the public interest, these provisions certainly could be accomplished outside of settlement. To the extent that the proposed settlement terms reflect a reasonable balance among competing interests or least-cost portfolio decisions, the Companies can and should pursue them, and the Commission may approve them in subsequent

[189] *See* Stipulation Testimony at 4. The parties in this proceeding that have entered into the Stipulation include the Companies, AG, KIUC, KCA, and SREA (together, the "Stipulating Parties"). Sierra Club, Joint Intervenors, and Louisville Metro/LFUCG did not sign on to the Stipulation, with Sierra Club and Joint Intervenors in opposition to the Stipulation and Louisville Metro/LFUCG taking no position. *Id.* at 3.
[190] *Id.* at 7.

proceedings where issues are ripe for decision and supported by a well-developed factual record and due process.

A. Standards for Considering Settlement Stipulations.

In determining whether the terms of a proposed settlement agreement are in the public interest and are reasonable, the Commission has taken into consideration whether the settlement agreement is fair and equitable, supported by substantial evidence, and in accordance with the law and regulatory principles.[191]

"The Commission is not bound to the terms of a proposed settlement, and, especially where there is a non-unanimous settlement, the proffer of a settlement does not shift the burden of proof to an intervenor who is not a party to the settlement."[192]

The Commission has the authority to modify[193] or deny[194] provisions of a settlement agreement that are not in the public interest or are otherwise unreasonable.

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[191] *See*, *e.g.*, Order, *In the Matter of: Clark Energy Coop., Inc. Alleged Failure to Comply with KRS 278.042*, Case No. 2010-00334, at 4 (Nov. 23, 2010); Order, *In the Matter of: Application of New Cingular Wireless PCS, LLC for Issuance of a Certificate of Public Convenience & Necessity to Construct a Wireless Commc'ns Facility [ ]*, Case No. 2010-00031, at 2 (Oct. 4, 2010); Order, *In the Matter of: CTA Acoustics, Inc.*, Case No. 2003-00226, at 3-4 (Feb. 19, 2004); Order, *In the Matter of: The Application of Kentucky Utilities Co. to Assess A Surcharge under KRS 278.183 to Recover Costs of Compliance with Env't Requirements for Coal Combustion Wastes*, Case No. 93-465, at 4-5 (Aug. 17, 1999).

[192] Order, *In the Matter of: Elec. Application of Kentucky Power Co. for (1) A Gen. Adjustment of Its Rates for Elec. Service; (2) an Order Approving Its 2017 Env't Compliance Plan; (3) an Order Approving Its Tariffs & Riders; (4) an Order Approving Acct. Pracs. to Establish Regul. Assets & Liabilities; & (5) an Order. Granting All Other Required Approvals & Relief*, Case No. 2017-00179, at 7 (June 28, 2018).

[193] *See, e.g.*, *id.* (finding that the provisions of the Settlement were supported by substantial evidence, in the public interest and should be approved, subject to modifications).

[194] *See, e.g.*, Order, *In the Matter of: Electronic Application of Kentucky Power Company for (1) A General Adjustment of its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) A Securitization Financing Order; and (5) All Other Required Approvals and Relief*, No. 2023-00159 (Jan. 19, 2024) (denying settlement provisions that were not supported by substantial evidence or did not provide a benefit to ratepayers); Order, *In the Matter of: Alternative Rate Filing Application of Middletown Waste Disposal,*

The proposed settlement here reflects categories of actions that a reasonably diligent utility could make, and the Commission has authority to approve, as a matter of ordinary prudence independent of negotiated positions. As discussed in detail below, the provisions of the proposed settlement are not in the public interest, reasonable, or in accordance with the law and regulatory principles. Accordingly, the Commission should reject the Stipulation in totality. In the event the Commission does approve any of the requested CPCNs, the Commission should Order the companies to adopt ratepayer-protective provisions beyond what is offered in the Stipulation to ensure the immense financial risk associated with building the requested resources for uncertain load does not fall on the shoulders and wallets of ratepayers, but is instead shared by utility shareholders who are more than eager to gamble billions of dollars on data center load materializing within the Commonwealth.

B. Withdrawal of the Cane Run BESS CPCN will result in increased costs to ratepayers.

Article I, Paragraph 1.2 of the Stipulation provides for the Companies to withdraw their request for the Cane Run BESS CPCN without prejudice in this case, maintaining the option to re-file at any time.[195] However, withdrawal of the Cane Run BESS will not result in any savings for ratepayers. As confirmed at the hearing, the Companies will spend the capital requested for the Cane Run BESS one way or another. As witness Bellar explained, a withdrawal of the Cane Run BESS will result in no change to the Companies' capital plan and rate base projections.[196]

Inc., No. 2009-00227, at 9 (Apr. 30, 2010) (denying settlement upon finding that the proposed terms would "produce revenue in excess of that found reasonable."); Order, *In the Matter of: City of Augusta, Kentucky*, Case No. 98-497, at 6 (July 14, 1999) (rejecting settlement upon finding proposed rate "would generate revenues in excess of that found necessary to cover" costs of service).

[195] *Id.* at 3.

[196] *See* August 4, 2025 HVT at 1:26:30–1:27:30pm; Joint Intervenors' Hearing Ex. 1, *PPL Corporation 2nd Quarter 2025 Investor Update* (July 2025).

Rather, the Company expects to make incremental transmission and distribution investments that will result in the same amount of investment, even without the construction of the Cane Run BESS.[197]

Even worse, withdrawal of the Cane Run BESS CPCN will likely lead to *increased* costs to ratepayers. Witness Bellar explained at the hearing that if the Stipulation is approved, the Companies will withdraw their CPCN request to be re-filed at a later date, likely in early 2026, for an intended in-service date of 2029, in order to avoid the foreign entities of concern restriction[198] by using U.S. sourced materials for the BESS project.[199] To support this belief, witness Bellar stated that in conversations with an unidentified battery manufacturer employee, such a delay would allow for the "possibility that they could produce all the battery parts locally in the U.S. and they would be able to apply for the additional 10% [Investment Tax Credit adder]."[200] However, the Companies do not have a U.S. source at this time and witness Bellar acknowledged that "there are very few if any options that are totally sourced from U.S.-based sources."[201] A single hearsay statement from a battery manufacturer employee is not enough evidence to support the flimsy position that the Companies will be able to meet Foreign Entity of Concern ("FEOC") requirements to capture an extra 10% investment tax credit ("ITC") adder. Rather, by withdrawing their application now with the intent to re-file within a year, the Companies introduce the risk of increasing costs and guarantee administrative inefficiency. Even

[197] *Id.*
[198] *See* One Big Beautiful Bill Act, H.R.1, 119th Cong. (2025).
[199] August 4, 2025 HVT at 2:14:00–2:15:00.
[200] August 4, 2025 HVT at 2:16:00–2:16:30pm.
[201] August 4, 2025 HVT at 2:10:00–2:11:30pm.

assuming the Companies could achieve a 50% investment tax credit by delaying the Cane Run BESS by one year or more, the Companies admit that would likely not fully offset rising costs.[202]

The Companies' commitment to support their re-filing with a competitive procurement process is of no consequence either. The Companies' failure to issue an RFP or provide other recent, real market pricing evidence is a fatal defect in their evidence in support of the Cane Run BESS. Stakeholders should not have to bargain with regulated monopolies for processes that ensure their proposal for $775 million[203] in capital investment is supported by real and recent indications of competitive prices on offer from third parties. Common sense and prudence demand that the Companies undertake that process for each and every resource proposal.

C. Mill Creek 6 Cost Recovery Review Metrics Provide No Benefit.

Article I, Paragraph 1.3 of the Stipulation urges illogical and unlawful "Mill Creek 6 cost recovery review metrics." The Commission should reject premature comment on relevant factors that may arise in a subsequent proceeding some years from now, particularly so where the stipulating parties recommend factors that would ordinarily be indicative of a vertically integrated monopoly utility's imprudence.

First, the Stipulation improperly invades the Commission's exclusive jurisdiction to determine the prudency of utility investments by pre-defining factors relevant to showing prudence. The Commission has a statutory duty to protect ratepayers from excessive costs by

[202] Response of Kentucky Utilities Company and Louisville Gas and Electric Company to the Commission Staff's Post Hearing Request for Information Dated August 13, 2025, Case No. 2025-00045, Question 19 (Aug. 22, 2025) ("LG/E-KU Resp. to Staff 6-19").
[203] Joint Application, Case No. 2025-00045, at 12 (Feb. 28, 2025) [hereinafter "Joint Application"].

ensuring rates are fair, just, and reasonable.[204] The Kentucky Constitution, statute, and court orders prescribe the standards applied by the Commission when it makes prudence and cost-recovery judgments. It is unnecessary and frankly improper to usurp the Commission's duty to apply the law based on the record before it in a future proceeding by pre-defining relevant cost recovery factors via terms in an opposed settlement.

Second, even if the pre-definition of cost recovery factors were necessary or appropriate, the specific factors proposed in the settlement set an extremely low bar. The Stipulation proposes cost-recovery for Mill Creek 6 can be shown by "having a total of at least 500 MW of executed electric service agreements under the Utilities' proposed Rate EHLF (Extremely High Load Factor) entered into by the in-service date for Mill Creek 6 in 2031."[205] However, the Companies readily admit that they can accommodate **up to 630 MW in 2028 with the addition of the Cane Run BESS alone**.[206] To the extent that 500 MW of executed service agreements would support the construction of a NGCC, it would support Brown 12—with an earlier construction and in-service date. Mill Creek 6, the second 645 MW NGCC requested by the Companies in this proceeding, cannot be justified by load that can be readily served by other existing and proposed resources. If the Companies have only 500 MW of new large load customers by the time they initiate a Mill Creek 6 cost recovery proceeding, that will indicate that Mill Creek 6 was unreasonable and developed in excess of actual need.

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[204] *See, e.g.*, Order, *In the Matter of: Electronic Application of Kentucky-American Water Company for An Adjustment of Rates, A Certificate of Public Convenience and Necessity for Installation of Advanced Metering Infrastructure, Approval of Regulatory and Accounting Treatments, and Tariff Revisions*, No. 2023-00191, at 52 (May 3, 2024).
[205] Stipulation and Recommendation, at Art. I, para. 1.3.
[206] August 4, 2025 HVT at 1:20:00–1:21:50pm.

Third, other pre-defined reasonableness factors are unsatisfactory and offer nothing new. In paragraph 1.3, the stipulation proposes that support for future cost recovery could be shown by:

- non-Rate EHLF load growth,
- an increase in off-system sales,
- the acquisition of municipal or other load,
- replacing lost capacity if the Ohio Valley Electric Corporation's coal plants close,
- selling to other utilities or data centers in Kentucky,
- or selling part of Mill Creek 6 capacity

Without additional context, there is presently as much reason to think these factors will weigh against cost-recovery when the time comes. The existence of an unspecified amount of non-Rate EHLF load growth is unlikely to show prudence of a 645 MW plant, and the Companies have presented no evidence suggesting that they are making this capital investment in relation to serving non-EHLF customers. Without specifics on net margins and opportunity costs, an increase in off-system sales cannot in itself show prudence or imprudence. In fact, even if off-system sales are profitable in the short-term, a vertically integrated utility that is not part of an RTO making substantial off-system sales ordinarily should indicate that the utility's decision-making imprudently led to an oversupplied portfolio. Neither can Mill Creek 6, once it is online, be used to justify the closure of the Ohio Valley Electric Corporation's coal plants where new replacement resources will be required to overcome the presumption against retirement.[207] These

[207] KRS.278.264(2) ("There shall be a rebuttable presumption against the retirement of a fossil fuel-fired electric generating unit. The commission shall not approve the retirement of an electric generating unit, authorize a surcharge for the decommissioning of the unit, or take any other action which authorizes or

provisions fail to support an actual showing of prudence and unlawfully attempt to predetermine factors that infringe upon the Commission's authority in future review proceedings. Accordingly, they must be discarded in their entirety.

D. The Stipulated Reporting Commitments Are Not Meaningful.

Under Article I, Paragraph 1.6 of the Stipulation, the Companies agree to provide semi-annual in-person construction, economic development, and load forecast updates to the Commission beginning in the second quarter of 2026 and ending in the second quarter of 2032.[208] Because any prudent utility would affirmatively report material changes in position on major capital projects, the Companies' offer for periodic updates is again of no real consequence.

With or without the settlement, the Commission can require reporting at any interval it deems reasonable, appropriate, and necessary to fulfill constitutional and statutory duties. The Commission enjoys exclusive jurisdiction over the regulation of rates and services by utilities,[209] and with it, ample authority to schedule hearings in both formal and informal proceedings.[210] Consistent with its broad authority and critical mandate, Kentucky law grants the Commission considerable discretion in the exercise of its authority. For example, KRS 278.040(3) provides, in pertinent part: "The commission may adopt . . . reasonable regulations . . .and investigate the

allows for the recovery of costs for the retirement of an electric generating unit, including any stranded asset recovery, unless the presumption created by this section is rebutted by evidence sufficient for the commission to find that: (a) The utility will replace the retired electric generating unit with new electric generating capacity . . .").

[208] Stipulation and Recommendation, at Art. I, para. 1.6.

[209] KRS 278.040.

[210] *See*, *e,g, In Re Union Light, Heat & Power Co.*, Case No. 2004-00403, at 1-2 (Dec. 2, 2004) ("Kentucky courts have long recognized the Commission as a quasi-judicial body with quasi-judicial power"); *Simpson Cty. Water Dist. v. City of Franklin*, 872 S.W.2d 460, 465 (Ky. 1994) ("The PSC acts as a quasi-judicial agency utilizing its authority to conduct hearings, render findings of fact and conclusions of law, and utilizing its expertise in the area and to the merits of rates and service issues.").

methods and practices of utilities to require them to conform to the laws of this state[.]" KRS 278.310 grants the Commission the power to hold hearings and conduct investigations concerning all matters within its jurisdiction.

This general investigative authority allows the Commission to open investigations to receive updates on projects and, if necessary, withdraw previously-approved CPCNs.[211] Additionally, pursuant to KRS 278.260, upon its own motion or by a written complaint by an interested person, the Commission may open an investigation into the rates or service of any utility.[212]

Further, the Commission could require more than the settlement offers. While the terms of the settlement allows all intervenors in this proceeding to attend the stipulated informal updates, it is unclear why such updates should not be open to any stakeholder regardless of party status here. The Commission has received a considerable number of public comments and the turnout at public hearing was significant. It is clear the community is concerned with the impact to residential customers that may result from the requested CPCNs.[213] Both Commissioner

[211] *See*, *e.g.*, Order, *An investigation and Review of Louisville Gas and Electric Company's Capacity Expansion Study and the Need for Trimble County Unit No. 1*, Case No. 1985-9243 (Oct. 14, 1985); Order, *In the Matter of: Electronic Investigation of Kentucky Power Company Rockport Deferral Mechanism*, Case No. 2022-00283, at 1 (Sept. 2, 2022) (the Commission initiated, on its own motion, a separate investigation proceeding to address the appropriate amortization period and recovery mechanism for the Rockport Unit Power Agreement).

[212] *See also* KRS 278.280(1) ("Whenever the commission, upon its own motion or upon complaint as provided in KRS 278.260, and after a hearing had upon reasonable notice, finds that the rules, regulations, practices, equipment, appliances, facilities or service of any utility subject to its jurisdiction, or the method of manufacture, distribution, transmission, storage or supply employed by such utility, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed, and shall fix the same by its order, rule or regulation.").

[213] Comments at the public hearing from residents and local elected officials were categorically in opposition to the proposed settlement, the Companies' proposed NGCCs, and data centers generally,

Hatton[214] and Commissioner Regan[215] pointedly suggested at the hearing that the Companies need to get serious about community engagement efforts around major investments and buildouts. Witness Bellar agreed with the suggestion, stating that the Companies need to rethink how they present information regarding data centers to the public in hearings moving forward, and should enter into discussions with the Commission to discuss how to accomplish that goal.[216]

E. Article III Rate EHLF Commitments Are Inappropriately Contingent on Changes of Positions and Outcomes in Separate Proceedings Involving Separate Parties.

Rate EHLF is proposed and pending in separate rate proceedings in Case Nos. 2025-00113 and 2025-00114. Approval of provisions regarding a proposed tariff under consideration in ongoing rate cases would violate due process. Parties in this proceeding cannot negotiate utility or Commission positions for a separate proceeding with different parties and broader issues.

Several parties in the rate proceedings are not a party to this CPCN proceeding, including: Walmart Inc.; the United States Department of Defense and all other Federal Executive Agencies ("DoD/FEA"); Kentucky Solar Industries Association, Inc. ("KYSEIA"); the Kroger Co.; and Kentucky Broadband and Cable Association ("KBCA"). As part of their motions seeking permission to intervene, each party put forth evidence that their intervention has "a special interest in the case that is not otherwise adequately represented" or that "intervention

raising concerns about rate and economic impacts, public health and climate harms, and stranded asset risks if projected demand from data centers fails to materialize. August 4, 2025 HVT at 9:20:00–10:45AM.
[214] August 4, 2025 HVT at 3:32:00 PM.
[215] August 4, 2025 HVT at 3:34:00 PM.
[216] August 4, 2025 HVT at 3:35:15–3:36:30 PM.

is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly disrupting the proceedings."[217]

Further, reflective of the separate and distinct character of a rate proceeding, several of the Companies' witnesses in the rate cases have not submitted testimony in support of this CPCN filing. Specifically, John Crockett, Elizabeth McFarland, Peter Waldrab, Shannon Montgomery, Vincent Poplaski, Julissa Burgos, Dylan D'Ascendis, Heather Metts, Drew McCombs, John Spanos, Daniel Johnson, Michael Hornung, and Tim Lyons.[218] Notably, Michael Hornung has testified on Rate EHLF and other tariff proposals in the rate cases, and Tim Lyons has testified on cost of service study issues. Given the absence of testimony from these witnesses and the opportunity for input from the rate case parties, it would be improper to make commitments related to rate and tariff issues in this proceeding.

Moreover, it would be arbitrary and capricious for the Commission to determine EHLF tariff agreements are reasonable in the absence of a fully developed record,[219] which has not happened in this proceeding. At various points in this proceeding, the Companies have objected to the relevance of information related to rates generally, Rate EHLF rates in particular, and generation project cost allocation issues beyond requested accounting treatments in its original pleading.[220] Given these objections, the CPCN record is incomplete and the CPCN participants

[217] 807 KAR 5:001, Section 4(11)(b).
[218] *Compare* Joint Application at 13 *with* KU Application, Case No. 2025-00113, at 4-5 (May 30, 2025); LG&E Application, Case No. 2025-00114, at 4-5 (May 30, 2025).
[219] *See BellSouth Telecommunications, Inc. v. Pub. Serv. Comm'n of Kentucky*, 380 F. Supp. 2d 820, 823 (E.D. Ky. 2004), aff'd sub nom. *BellSouth Telecommunications Inc. v. Goss*, 142 F. App'x 886 (6th Cir. 2005) ("The PSC's findings of fact made in the course of exercising its enforcement authority will be reviewed under the 'arbitrary and capricious' standard, and the Court will uphold the decision if it is 'the result of deliberate principled reasoning process, and if it is supported by substantial evidence.").
[220] *See*, *e.g.*, LG/E-KU Resp. to JI 1-134 ("Q 1-134(c): Please refer to the Direct Testimony of Tim Jones, pp. 33-34, and answer the following requests. Approximately when would the Companies expect tariff

are ill-equipped to make commitments regarding the Rate EHLF tariff. As the Companies state in response to a Staff request about tariffs for data center projects, "The Companies further respectfully suggest that addressing tariff issues would be more appropriate in the Companies' upcoming rate cases than in this CPCN proceeding."[221]

Evidence and information necessary to support adjustments to rates and tariffs must comply with legal requirements and provisions distinct from those presented in support of a

changes approved in their next general electric rate cases to go into effect? A 1-134(c): The Companies object to this request as irrelevant to the subject matter of this proceeding under KRS 278.020(1) and the Commission's prior orders. Without waiving that objection, none of the proposals in this proceeding will affect the base rates applications the Companies plan to file on May 30, 2025."); LG/E-KU Resp. to AG-KIUC 1-22(c) ("Q 1-22(c): Have the Companies assessed the possible rate impacts to existing customers especially if the load does not materialize or materializes slower than when new resources are added? Please explain any analysis that has been conducted. A 1-22(c): The Companies object to this request as irrelevant to the subject matter of this proceeding under KRS 278.020(1) and the Commission's prior orders. Without waiving that objection, no."); LG/E-KU Resp. to AG-KIUC 2-30: "Q 2-30: Please reference Tariff Filing ID TFS2025-00224, Rate DCP (Data Center Power) of East Kentucky Power Cooperative, Inc. . . . A 2-30: The Companies object to this entire request as irrelevant to the subject matter of this proceeding under KRS 278.020(1) and based on the Commission's legal standard of review of a request for a certificate of public convenience and necessity ("CPCN") stated in Case No. 2022-00402 . . ."") Response of Kentucky Utilities Company and Louisville Gas and Electric Company to the Attorney General and Kentucky Industrial Utilities' Customer Supplemental Request for Information Dated May 22, 2025, Case No. 2025-00045 Question 30 (May 16, 2025) ("LG/E-KU Resp. to AG-KIUC 2-30"); LG/E-KU Resp. to SC 1-10(e) ("Q-1-10(e): Please provide any communications that the Companies have provided to data center customers indicating what rate they should expect to pay. A-1.10(e): The Companies object to this request as irrelevant to the subject matter of this proceeding under KRS 278.020(1) and the Commission's prior orders. . ."") Response of Kentucky Utilities Company and Louisville Gas and Electric Company to the Sierra Club's Initial Request for Information Dated March 28, 2025, Case No. 2025-00045, Question 10(e) (Apr. 17, 2025) ("LG/E-KU Resp. to SC 1-10(e)"); LG/E-KU Resp. to SC 1-29(d) ("Q-1-29. Please refer to the Testimony of Robert Conroy at page 15, lines 16 – 20, which states, "This regulatory asset treatment of post-in-service costs would improve administrative efficiency for the Commission and reduce rate case costs for customers. Due to the magnitude of these investments, having either timely cost recovery or the proposed post-in-service regulatory accounting treatment would be necessary to avoid significant adverse impacts to the Companies' financial health." With respect to this statement please answer the following: . . . d. Provide any calculations with all formulas and links intact, showing the rate(s) that would be paid by data center loads taking service with the Companies. A-1.29(d): The Companies object to this request as irrelevant to the subject matter of this proceeding under KRS 278.020(1) and the Commission's prior orders.").

[221] LG&E-KU Resp. to Staff 1-28(b).

CPCN application.[222] Decisions regarding the appropriateness of Rate EHLF should therefore be made in the rate case, on a fully developed record after the conclusion of a public hearing and party briefing.

F. The MC2 Life Extension and Adjustment Clause Is Unsupported by the Record and Practically Unreasonable.

Aside from not being ripe, as noted above, the settlement provisions in Article IV of the Stipulation regarding the extension of life for Mill Creek 2 are unreasonable, and should be denied. The extension of life for Mill Creek 2 would be more costly than the Companies have noted in this record (based on their own previous evidence), and the adjustment clause proposed in Paragraph 4.4 would disproportionately favor industrial customers.

As an initial matter, Joint Intervenors stand by their contention above in Section IV that the Commission has authority to extend the approved retirement of Mill Creek 2. That said, keeping Mill Creek 2 in operation past the startup of Mill Creek 5 would be an imprudent and unreasonable decision, as shown in the Companies' last rate cases,[223] original application for a

[222] *See* KRS 278.180; KRS 278.190; 807 KAR 5:001 Sections 14, 16, 17.
[223] Case No. 2020-00349, *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. 2020-00350, *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*; [hereinafter "2020 Rate Cases"]. Although filed separately, the rate cases of the two companies were substantially considered together, including the same testimony and final orders.

CPCN for Mill Creek 5,[224] and related application for approval to retire Mill Creek 1 & 2[225] in the Companies' most recent IRP.[226] To the extent that there has been any meaningful comparison of alternatives in this case, the Companies' analysis of alternative resources further demonstrates that keeping Mill Creek 2 in operation past the startup of Mill Creek 5 would be imprudent and unreasonable.

Starting in their last rate cases five years ago, the Companies recognized the uneconomic nature of the continued operation of Mill Creek Unit 2 beyond 2027. At that time, the Companies projected that closing the unit by 2028 would result in a savings of $131.2 million.[227] The Companies' application in their previous CPCN continued to support this conclusion, noting the Companies may need to invest $110 million to install selective catalytic reduction ("SCR") technology to keep Mill Creek 2 online as early as 2026.[228] This conclusion is supported in the related retirement case, which noted SCR would be required for ozone-season operation beginning in 2027 due to EPA's Good Neighbor Plan.[229] By the time of their 2024 IRP, this

[224] Case No. 2022-00402, *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*.
[225] Case No. 2023-00122, *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Approval of Fossil Fuel-Fired Generating Unit Retirements* ("2023 Retirement Case"). This case was consolidated with Case No. 2022-00402, by its May 16, 2023 Order.
[226] Case No. 2024-00326, *Electronic 2024 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*.
[227] 2020 Rate Cases, Testimony of Lonnie E. Bellar Chief Operating Officer Kentucky Utilities Company and Louisville Gas and Electric Company, Ex. LEB-2 at 10 (Nov. 25, 2020).
[228] Case No. 2022-00402, Direct Testimony of Stuart A. Wilson, Director, Energy Planning, Analysis and Forecasting Kentucky Utilities Company and Louisville Gas and Electric Company, at 4 (Dec. 15, 2022).
[229] Case No. 2023-00122, Ex. SB4-1 at 6, Direct Testimony of Stuart A. Wilson Director, Energy Planning, Analysis and Forecasting Kentucky Utilities Company and Louisville Gas and Electric Company (May 10, 2023).

assumption was so fundamental that it was *assumed* to close in 2027.[230] When discussing stay-open costs of units planned for retirement the Companies explicitly stated that "Mill Creek 2 is 50 years old and is slated to retire in 2027 to allow for the commissioning of a new NGCC, Mill Creek 5. Although the other units could theoretically operate beyond their depreciable book life, doing so would require a higher level of capital investments."[231] The Companies themselves point to the need to retire Mill Creek 2 to allow for Mill Creek 5 to start operations—but even if they didn't it would face higher need for capital investments, as with all the rest of the Companies' units planned for economic retirement.

Understanding some of what has changed (or has not) requires a brief diversion into environmental requirements. U.S. EPA is required by the Clean Air Act ("CAA") to set National Ambient Air Quality Standards ("NAAQS") for a set of pollutants known as the "criteria pollutants."[232] Those standards are to be set at a level "based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health."[233] Because the science of public health is constantly changing, U.S. EPA is required to review, and as appropriate, update those standards.[234] U.S. EPA most recently updated the NAAQS for ozone or "smog" in 2015, lowering it to a level of 70 parts per billion ("ppb").[235] Ozone is generally a summertime

[230] *See*, *e.g.*, Case 2024-00326, 2024 IRP, Volume III, attached *2024 IRP Resource Assessment* at 52, n.56.
[231] *Id.* at 53.
[232] CAA § 109 (42 U.S.C. § 7409); Direct Testimony of Philip A. Imber Director, Environmental Compliance on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company, Case No. 2025-00045 at 2–3 (Feb. 28, 2025) [hereinafter "Imber Direct"].
[233] CAA at § 109(b) (42 U.S.C. §7409(b)).
[234] CAA § 109(d) (42 U.S.C. § 7409(d)).
[235] U.S. EPA, *National Ambient Air Quality Standards for Ozone*, 80 Fed. Reg. 65,292 (Oct. 26, 2015).

pollutant, being formed by the interaction of nitrogen oxides ("NO_X") and volatile organic compounds ("VOCs") in the sunlight.[236]

Upon promulgation of a new standard each state has essentially two obligations: to ensure that the air within their borders meets and maintains the standards (infrastructure and nonattainment state implementation plan ("SIP") requirements),[237] and that pollution from within their borders does not cause or contribute to nonattainment in downwind states (so-called "Good Neighbor Plans," often considered a part of the infrastructure SIP requirements).[238] The time periods for limiting pollution that impacts locations inside and outside the state generally are required to line up, such that a state's Good Neighbor Plan is required to avoid causing or contributing to nonattainment past the other state's attainment deadline.[239] The standard by which EPA judges whether a plan is sufficient is whether the standards can be implemented through use of reasonably available control technology ("RACT").[240]

When the U.S. EPA determines that a state or state has not adequately implemented either of these provisions, it is required to step in and adopt a federal implementation plan ("FIP").[241] U.S. EPA has done that for varying sets of eastern U.S. States several times over the past decades, most recently by adopting the Good Neighbor Plan for the 2015 Ozone NAAQS

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[236] U.S. EPA, *Ground-level Ozone Basics* (last updated Mar. 11, 2025), https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics.
[237] CAA § 110(a) (42 U.S.C. § 7410(a)) and CAA Title I, Part D (42 U.S.C. §7501 to § 7515).
[238] CAA § 110(a)(2)(D)(i)(I) (42 U.S.C. § 7410(a)(2)(D)(i)(I)). Somewhat confusingly, the most recent version of the federal implementation plan ("FIP") relating to this provision is also referred to as *the* Good Neighbor Plan.
[239] U.S .EPA, *Federal "Good Neighbor Plan" for the 2015 Ozone National Ambient Air Quality Standards*, 88 Fed. Reg. 36,654, 36,657 (June 5, 2023).
[240] *Id.* at 36,661.
[241] CAA § 110(c) (42 U.S.C. § 7410(c)).

(or "the Good Neighbor Plan").[242] The federal good neighbor plans are generally cap-and-trade plans that allow a polluter (such as the Companies) to potentially trade emissions amongst their various units to achieve compliance.[243] Due to ongoing litigation, that plan is currently on hold as it applies to Kentucky.[244]

What has *not* changed is that a portion of Kentucky, consisting of Jefferson, Oldham, and Bullitt Counties remain in nonattainment with the 2015 ozone NAAQS.[245] This imposes an independent requirement on the Commonwealth of Kentucky to implement reasonably available control measures, including all reasonably available control technology ("RACT/RACM"), at each major polluter in the nonattainment area independently (i.e., not on a cap-and-trade basis), an obligation for which the Commonwealth is now more than two and a half years overdue.[246]

However, while the Companies continue to insist that SCR is needed to continue operation of Ghent 2 past 2028,[247] their analysis in this case seems to have changed the position regarding timing of the need for SCR on Mill Creek Unit 2, located in the Louisville

[242] *See* U.S. EPA, *Federal "Good Neighbor Plan" for the 2015 Ozone National Ambient Air Quality Standards*, 88 Fed. Reg. 36,654 (June 5, 2023).
[243] *Id.*, generally.
[244] *See* U.S. EPA, *Federal "Good Neighbor Plan" for the 2015 Ozone National Ambient Air Quality Standards; Response to Judicial Stay*, 89 Fed. Reg. 87,960 (Nov. 6, 2024).
[245] U.S. EPA, *Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards*, 83 Fed. Reg. 25,776, 25,806 (June 4, 2018); U.S. EPA, *Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Marginal for the 2015 Ozone National Ambient Air Quality Standards*, 87 Fed. Reg. 60,897, 60,919 (Oct. 7, 2022); U.S. EPA, *Air Quality Designations; KY; Redesignation of the Kentucky Portion of the Louisville, KY-IN 2015 8-Hour Ozone Nonattainment Area to Attainment*, 90 Fed. Reg. 294 (Jan. 3, 2025).
[246] U.S. EPA, *Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Marginal for the 2015 Ozone National Ambient Air Quality Standards*, 87 Fed. Reg. 60,897, 60,899-900 (Oct. 07, 2022).
[247] Imber Direct, *supra* note 225, at 4-5; Direct Testimony of Stuart A. Wilson, Director, Energy Planning, Analysis and Forecasting, on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company, Case No. 2025-00045, at 3 (Feb. 28, 2025);Direct Testimony of Lonnie E. Bellar, Senior Vice President, Engineering and Construction, on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company, Case No. 2025-00045, at 9 (Feb. 28, 2025).

nonattainment area. Overlooking the contribution to Louisville's ongoing nonattainment and obligation to install RACT at any units in that area, the Companies' analysis now simply states they "would need to confirm that extending Mill Creek 2's life into 2031 would not affect their ability to self-comply with fleet NOx allocations during the 2027-2030 ozone seasons; being unable to do so would require adding SCR to Mill Creek 2 even for a short-term life extension."[248] This ignores the separate and very real requirement for the state to require RACT to reduce contributions to Louisville's nonattainment. RACT requirements are overdue, and it is possible that the Louisville Metro Air Pollution Control District ("LMAPCD") has been simply kicking the can down the road, relying on the assumption that Mill Creek 2 will be retiring by 2027, as LG&E indicated to them over three years ago in their original application for Mill Creek 5.[249] As stated by Companies witness Imber during the hearing, it is entirely possible that LMAPCD will require installation of SCR to keep Mill Creek 2 operating after opening Mill Creek 5.[250] This makes intuitive sense, because as also explained by Imber, the Companies previously had an agreement with the LMAPCD that effectively restricted them from running Mill Creek 1 and Mill Creek 2 during the summer, by setting a daily limit on NO_X emissions from the plant.[251] That agreement terminated upon the closure of Mill Creek Unit 1.[252] However,

[248] Supp. Attach. 1 at 4, to the Supplemental Response of Kentucky Utilities Company and Louisville Gas and Electric Company to the Kentucky Coal Association's First Request for Information Dated March 28, 2025, Case No. 2025-00045, Question No. 4 (May 30, 2025); *see also* Attach. 1 to Response of Kentucky Utilities Company and Louisville Gas and Electric Company to the Metropolitan Housing Coalition, Kentuckians for the Commonwealth, Kentucky Solar Energy Society and Mountain Association's Initial Request for Information Dated February 17, 2023, Case No. 2022-00402, Question 19 (Mar. 10, 2023).
[249] *Id.*
[250] August 7, 2025 HVT at 10:01:00 to 10:02:00.
[251] *Id.* at 9:59:45 to 10:00:15.
[252] *Id.* at 10:00:30 to 10:01:04.

upon starting Mill Creek Unit 5, keeping Mill Creek 2 open and operating at the same time would represent an increase in emissions during the summer months over baseline—a baseline that has so far failed to achieve attainment in the Louisville area with the current smog standard.

Further, the potential impact of having Mill Creek 2 operational when Mill Creek 5 comes online significantly affects the financial analysis provided by the Companies in this case. The analysis provided at the request of the Commission assumes the addition of an SCR in 2031 at an additional expense of $163 million.[253] It also assumes operation and maintenance of that SCR only beginning in 2031.[254] The record is devoid of analysis of the likely true financial impact of keeping Mill Creek 2 online even short-term, as it fails to discuss the cost and even feasibility of constructing an SCR for that unit while simultaneously completing construction of the already-approved and under-construction Mill Creek 5 unit.

Moreover, this financial impact would, by design, end up hitting those least able to afford it—the Companies' residential ratepayers, particularly those of the least means. Like the proposed Adjustment Clause MC6, Adjustment Clause MC2 uses the same accounting as LG&E's Adjustment Clause Environmental Cost Recovery Surcharge ("ECR"), which the Companies themselves opposed as it "tends to be favorable to industrial customers."[255] Adjustment Clause MC2 follows the proposal for a new "generation cost recovery rider (GCRR)" originally proposed by Lane Kollen in intervenor testimony on behalf of the Attorney

[253] Attach. 1 at 6, to Response of Kentucky Utilities Company and Louisville Gas and Electric Company to The Commission Staff's Third Request for Information Dated May 23, 2025, Case No. 2025-00045, Question 8(b) (June 6, 2025).
[254] *Id.* at 5.
[255] Rebuttal Testimony of Robert M. Conroy, Vice President, State Regulation and Rates, on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company,
Case No. 2025-00045, at 12 (July 18, 2025) [hereinafter "Conroy Rebuttal"].

General and Kentucky Industrial Utility Customers ("AG-KIUC").[256] That proposal recommended "timely recovery of the actual incremental non-fuel costs of Mill Creek 6 after it enters commercial service, net of the incremental non-fuel revenues from the 85% pre-sale (548 MW) EHLF load used to justify need,"[257] through "allocation and rate design follow[ing] the Group 1/Group 2 methodology previously authorized for the Companies' environmental surcharges and Retired Asset Recovery Riders."[258] This is precisely the cost recovery mechanism Company witness Conroy described as "favorable to industrial customers."[259] This appears to be because, like the Companies' ECR Rider,[260] it creates a billing factor depending on the rate class of a ratepayer based on the overall ratio of expenses to "Revenue as a Percentage of Total Revenue" for two groups of ratepayers: Group 1, consisting of residential ratepayers, and various local and state government services,[261] and Group 2, consisting of primarily commercial and industrial service.[262] Of note, the proposed adjustment clause includes the new tariff EHLF in Group 2, along with commercial and industrial services, leaving residential and government

[256] Direct Testimony and Exhibits of Lane Kollen on Behalf of the Attorney General of the Commonwealth of Kentucky and the Kentucky Industrial Utility Customers, Inc., Case No. 2025-00045, at 4-5 (Jun. 16, 2025).
[257] *Id.* at 12.
[258] *Id.* at 14.
[259] Conroy Rebuttal at 12.
[260] LG&E, P.S.C. Electric No. 13, Original Sheet No. 87 (effective July 1, 2021).
[261] Rates RS (residential service); RTOD-Energy (residential time-of-day energy); RTOD-Demand (residential time-of-day demand); VFD (volunteer fire department); AES (all electric school); LS (lighting service); RLS (restricted lighting service); LE (lighting energy service); and TE (traffic energy service).
[262] Rates GS (general service); GTOD-Energy (general time-of-day energy service); GTOD-Demand (general time-of-day demand service); PS (power service); TODS (time-of-day secondary service); TODP (time-of-day primary service); RTS (retail transmission service); FLS (fluctuating load service); EVSE (electric vehicle supply equipment); EVC-L2 (electric vehicle charging service - level 2); EVC-FAST (electric vehicle fast charging service), and OSL (outdoor sports lighting service).

ratepayers behind, with a much smaller denominator in their adjustment factor, even further benefiting all Group 2 ratepayers.[263]

In short, the extension of life for Mill Creek 2 would be a very costly band-aid disproportionately favoring industrial customers, that would in fact be detrimental to the public health in Louisville, even if it is allowed by environmental authorities, and should be a non-starter.

G. Article V Renewable RFP Terms Are Hollow Commitments.

Article V, Paragraph 5.1 of the Stipulation provides that the Companies commit to issue a RFP for renewable energy and energy storage by mid-2026.[264] If approved as part of settlement, or other disposition that grants multiple CPCNs, the practical reality is that Article V will not lead to cost-effective diversification and modernization of the Companies' generation portfolio.

First, an RFP seeking to procure energy and capacity from utility scale solar, wind, or storage is immaterial if the resources proposed in this proceeding are approved. Should the Commission approve the Companies' requests for CPCN certificates for two 645 MW NGCCs and a 400 MW BESS, LG&E/KU would have no need for additional generation that may be identified through an RFP. Even without the BESS, should Mill Creek 2 stay online beyond 2027, the need for additional resources is further foreclosed. The Stipulation makes no commitment to procure a fixed amount of energy or capacity, thus an RFP could be a fruitless exercise.

[263] Stipulation and Recommendation, Ex. 2 at 1.
[264] Stipulation and Recommendation at 9, para. 5.1.

Second, while the Companies agree to give intervenors in this proceeding the opportunity to provide feedback on the RFP before it is issued,[265] that is meaningless if the Companies cannot demonstrate actual need to contract resources. The Stipulation provides that the Companies will complete contracting and seek approval for "any cost-effective resources or those needed to serve customer requests,"[266] but again this is contingent on need materializing to justify additional generation.

The Stipulation seeks to approve the Companies' already unprecedented buildout of generation while banking on data center load materializing at the levels the Companies hope for. If data center load does not come to fruition, the Companies are obligated to make prudent decisions about whether to construct generation, even after obtaining CPCN approval. However, make no mistake that renewable generation would be the first on the chopping block. The Companies have made clear that "[i]f it becomes prudent to prioritize the NGCCs based on the circumstances, [they] will do so."[267] Resources that have been approved by the Commission or are already in the Companies' fleet will surely take precedence over yet-to-be identified additional renewable resources.

Nor have the Companies made any effort to promote renewable energy options to attract potential data center customers and indicate that no customer has specifically requested renewable energy resources at this time.[268] While renewable resources offer promising potential

[265] *Id.* at Art. V, para. 5.2.
[266] *Id.* at Art V., para. 5.3.
[267] Bellar Rebuttal Testimony at 8.
[268] LG/E-KU Resp. to JI 1-148 ("Q 1.148: Please refer to the Direct Testimony of John Bevington, p.9, lines 16–19, describing Meta's pledge to work with Entergy Louisiana to bring at least 1,500 MW of new renewable energy to the grid. (a) Have the Companies' potential data center customers expressed interest in renewable energy resources to meet their projected Demand? A 1.148(a): Not specifically at this time. (b) Do the Companies' intend to bolster their renewable resource portfolio to attract potential data center

in terms of commercial readiness and speed to market, that potential benefit is erased by the Stipulation's contemplated timeline. In the unlikely scenario that the Companies have a resource need that an RFP bid resource can cost-effectively supply, the Companies will complete contracting by mid-2028 and apply for Commission approval by December 31, 2028.[269] However, the Companies' have stressed that speed to market is the first priority in attracting data center customers that can be built and operational in as little as 18 months.[270] By waiting until the end of 2028 to seek Commission approval, it is a certainty that any cost-effective renewable energy resources cannot be online in time to provide operational flexibility to support incoming data center load in the near term. If all goes as contemplated by the Stipulation—Mill Creek 2 remains in service beyond 2027, the Cane Run BESS is re-filed for a 2029 in-service date, and Brown 12 is operational in 2030—it is difficult to see where renewable resource additions fit into the Companies resource planning in the next five years.

The Renewable RFP commitment cannot correct for the Companies' failure to issue an RFP that could have provided real market pricing to support their Cane Run BESS proposal. While the Companies have agreed as part of the Stipulation to withdraw their request for Cane Run BESS at this time, maintaining the option to re-file in the future with support from a

customers? . . . A 1.148(b): The Companies have a duty to provide safe and reliable service at the lowest reasonable cost. Therefore, they do not seek to 'bolster' their generating fleet to attract customers of any kind; rather, they seek to have adequate resources to serve existing and reasonably anticipated new customer needs reliably and economically. The Companies also have the Solar Share Program and a variety of Green Tariff offerings for customers interested in renewable resources beyond those already included in the Companies' resource portfolio."); LG&E/KU Resp. to Staff 1-17(c) ("Q 1.17(c): Explain whether any of the projects have net-zero emissions or other sustainability goals. A 1.17(c): The Companies are unaware of the data center projects in their economic development queue having any such goals . . .).

[269] Stipulation and Recommendation at Art. V, para. 5.3.

[270] Bellar Rebuttal Testimony at 2.

competitive procurement process, this RFP would not serve as that competitive procurement exercise. Should the Companies re-file the Cane Run BESS for Commission approval in early 2026, as they are currently envisaged, issuing a Renewable RFP in mid-2026 would again be of no value.

For the reasons stated above, the Commission should deny the Stipulation and instead require the Companies to issue a new RFP that seeks updated renewable energy and energy storage proposals that are tailored and appropriately sized to address actual needs that exist today in the Companies' service territory. For example, if a proposed photovoltaic ("PV") facility variable output needs to be stabilized in order to connect to the grid, propose a battery sized for that need. If there is a locational troubling spot on the grid, consider BESS to provide ancillary service to stabilize. If the value of a renewable energy project can increase by adding storage to deliver firm energy commitments during certain hours of the day (i.e. dispatchable solar) that is the time to explore BESS ownership.

VI. CONCLUSION

For the foregoing reasons, Joint Intervenors respectfully request that the Commission deny the Companies' CPCN application for Mill Creek 6, for which the Companies have failed to prove a need and the absence of wasteful duplication. Joint Intervenors further request that the Commission reject the proposed Settlement Stipulation–which is unreasonable and not in the public interest–in its entirety.

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 September 5, 2025; that the documents in this electronic filing are a true representation 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.

Ashley Wilmes