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

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

Public Version

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I. INTRODUCTION

The proposed Stipulation[1]—providing for, among other things, the construction of two new natural gas combined cycle ("NGCC") units, a new selective catalytic reduction facility ("SCR") at a coal-fired unit, the extension of life for a different coal unit, and creating two new cost recovery mechanisms—goes too far in the Louisville Gas & Electric Company and Kentucky Utilities Company's ("LG&E/KU or the "Companies") quest to attract data centers to their territory while providing nothing meaningful for existing ratepayers. Rather than mitigate ratepayer risk from building new generation to serve speculative load growth from data centers, the Stipulation lays the groundwork for securing cost recovery from existing customers regardless of whether (or when) new customers appear.

The Stipulating Parties should be keen to recall that data centers are not the only industry of value within the Commonwealth. As the Companies themselves point out, Governor Beshear has announced more than $6.3 billion of new investment in Kentucky across diverse industries from healthcare to advanced manufacturing of glass, electric vehicles, appliances, and uranium enrichment.[2] Kentucky's economic development trajectory has been strong without data centers, and it would be prudent to take care before committing unprecedented levels of public investment toward what may turn out to be the technology sector's latest bubble. The

[1] The "Stipulation and Recommendation" is Stipulation Testimony Exhibit 1 to the 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, Case No. 2025-00045 (July 29, 2025).
[2] Post-Hearing Brief of Kentucky Utilities Company and Louisville Gas and Electric Company, Case No. 2025-00045, at 5 (Sept. 5, 2025) [hereinafter "LG&E/KU Initial Br."].

Commonwealth's historic level of new investments is entirely independent of data center development and will continue to flourish regardless of whether data centers choose to locate within the state.

Yet the Companies' application is narrow-mindedly fixated on building generation to attract data centers, to the detriment of ratepayers, because the General Assembly has deemed the attraction of data centers to be of "paramount importance" to Kentucky's economic future.[3] The General Assembly's blanket statement that attracting data centers is of "paramount importance" does not override the Commission's obligation to ensure the Companies have properly demonstrated need and an absence of wasteful duplication in this application. In fact, the General Assembly has designated many other areas of Kentucky's economy to be of "paramount importance."[4] For example, the General Assembly has previously stated that the "expansion of tourism"[5] and "creating new jobs"[6] are of "paramount importance." The General Assembly's proclamation of the "importance" of attracting data centers does not dictate a ruling in favor of building generation for this express purpose. The Companies' desire to attract data centers notwithstanding, the General Assembly and Governor Beshear's administration's work to induce economic development spans multiple industries and geography, and it would be a mistake to overemphasize a single industry to be served only by LG&E/KU. That is not how the Beshear

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[3] *Id.* at 5-6 (Sept. 5, 2025).
[4] *See, e.g.*, KRS 154.24-020 (finding the development and growth of the service and technology industries in the Commonwealth is of paramount importance); 2025 KY H.B. 430 ("achieving efficiency in pupil transportation in the Commonwealth is of paramount importance").
[5] KRS 148.853.
[6] KRS 154.28-015 ("the inducement of the location of agribusiness, electric generation, or manufacturing facilities is of paramount importance").

administration has brought and continues to bring diverse industrial growth to the state; and is not what the General Assembly intended when creating state-wide incentives.

II. THE COMPANIES HAVE NOT COME CLOSE TO DEMONSTRATING A "REASONABLE BASIS FOR ANTICIPATION" OF SUFFICIENT LOAD GROWTH TO NECESSITATE BOTH PROPOSED NGCCS.

In a filing that reads more like an economic development marketing brochure than a brief addressing the statutory standards for a CPCN applicable to this proceeding, the Companies contend that there is "abundant evidence" of need for the nearly 1.4 GW and $2.8 billion of natural gas combined cycle ("NGCC") capacity proposed herein. In support, however, they cite only to an economic development queue and expected value calculation that were shown through testimony and cross examination to provide no reliable basis for distinguishing between speculative data center projects versus load that is actually likely to come online, along with a number of online press releases announcing potential economic development projects. Meanwhile, the Companies fail to even acknowledge in their post-hearing brief that there is still only a single data center project—Camp Ground Road—that the Companies say has a better than even chance of coming to fruition, and the only other publicly announced data center project proposed for their service territory—Oldham County—was recently cancelled, as have been a number of other projects that had been identified as Prospects in the Companies' queue. In short, nothing in the Companies' post-hearing brief changes the fact that the evidence in the record simply does not support the assumption of 1,750 MW of data center load growth upon which the purported need for two new NGCCs is based.

A. The caselaw relied on by the Companies fails to support their position.

In their initial brief, the Companies base much of their argument on a 1965 holding by the Kentucky Court of Appeals (then the highest court in the state) that the question of need under the CPCN standard is "not one which must be answered with absolute certainty; it is sufficient that there is a reasonable basis of anticipation."[7] But no party has taken the position that need can be established only through "absolute certainty." And a review of both the decision relied on by the Companies— *Kentucky Utilities Co. v. Public Service Commission*—and the record in this proceeding shows that the Companies have failed to establish a "reasonable basis of anticipation" of the 1,750 MW of data center load growth upon which the Companies' request for CPCNs for nearly $2.8 billion in NGCC capacity is based.

First, the Companies contend that "Satisfying the [CPCN need] Standard Does Not Require Signed Contracts."[8] Nothing in the *Kentucky Utilities Co.* decision, however, states as such. To the contrary, the Court in that case found that Big Rivers had established a need for a proposed 75 MW power plant because it could reasonably anticipate serving the load of the Meade County electric cooperative, which had "enter[ed] into a contract with Big Rivers to buy power commencing in 1969."[9] By contrast, the record in the present matter is undisputed that the Companies have not entered signed contracts to provide service to any data center load.

[7] LG&E/KU Initial Br.at 11-12, citing *Ky. Util. Co. v. Pub. Serv. Comm'n*, 390 S.W.2d 168, 172 (Ky. 1965).
[8] *Id.* at 11.
[9] *Ky. Util. Co.,* 390 S.W.2d at 171, 172.

Second, the *Kentucky Utilities Co.* case is inapposite because, unlike the data center load that the Companies speculate will materialize over the coming years, the Meade County electric cooperative load that Big Rivers was seeking to serve already existed (and was under contract to purchase power from LG&E through 1968). In fact, the Court in *Kentucky Utilities Co.* noted that "there really is no serious contention in this case that the consumer market will not be sufficient to make the Big Rivers plan feasible" and that "everyone in this case agrees that the existing service facilities are inadequate to meet the needs of the immediately foreseeable future." As such, the real issue in *Kentucky Utilities Co.* was whether "the existing utilities, rather than a newcomer, should be allowed to supply the inadequacy," not whether an inadequacy existed.[10] By contrast, the Companies' claimed need for two new NGCCs is heavily disputed and, as discussed in the following sections, lacks anything beyond cursory support in the record.

B. The Companies' economic development queue and expected value calculation fail to demonstrate a reasonable basis to anticipate 1,750 MW of data center load.

In their initial brief, the Companies contend that their queue of potential data center and other economic development projects, and an "expected load value" calculated by assigning probabilities to those projects, provide "abundant evidence" to support the assumed 1,750 MW of data center load in the 2025 CPCN Load Forecast.[11] This contention fails for a number of reasons.

[10] *Id.* at 172, 173.
[11] LG&E/KU Initial Br. at 13.

1. There is only a single data center project that, by the Companies' own analysis, has a greater than even chance of coming online.

While the Companies fail to offer any explanation in their brief as to what does and does not count as a "reasonable basis for anticipation," one logical definition is that the load has a better than even chance of actually coming online. Even under the Companies' own flawed analysis, there is only one prospective data center project—the 525 MW Camp Ground Road project—that would fit such definition.

While the Companies failed to explain their queue or the expected value calculation in their post-hearing brief, the record shows that each project in the queue is categorized into one of five economic development stages—Inquiry, Suspect, Prospect, Imminent, and Announced. The stage to which a project is categorized determines the percentage probability assigned to that project, which reflects the Companies' assumption of the likelihood that a project in that stage will end up coming online. The "expected load value" for the queue is then calculated by multiplying the MW size of each project in the queue by the percentage probability assumed for that project. The expected load values cited in the Companies' initial brief are based on assumed probabilities of 10% for the Inquiry stage, 20% for Suspect, 50% for Prospect, 80% for Imminent, and 100% for Announced.

As discussed in Section II(B)(3) below, there are numerous flaws in the Companies' queue and expected load value calculation that render them an unreliable and inadequate basis to support the 1,750 MW of data center load assumption. But even accepting the Companies' own probabilities, one would reasonably expect a claim of a "reasonable basis for anticipation" to focus primarily, or even entirely, on projects with a high likelihood of coming online – i.e. those in the Imminent or Announced stages. However, for all the Companies' talk of an "unprecedented," "enormous," and "surging" need,[12] the reality is that there is not a single data center project that has reached the Announced stage, and there is only one—Camp Ground Road—in the Imminent stage. While the Companies do not even acknowledge that reality in their initial brief, it is fatal to the contention that there is somehow a "reasonable basis for anticipation" of 1,750 MW of data center load.

2. Data center projects in the Prospect stage of the queue have been far more likely to leave the queue than to advance.

The Companies, of course, contend that prospective data center projects that it considers to have a 50% chance of coming online—i.e. those in the Prospect stage—should also count towards a "reasonable basis for anticipation" of the assumed 1,750 MW of data center load growth. A review of the projects in the Prospect stage of the queue, however, shows that there is significant uncertainty as to whether they will come online. For example, the March 31, 2025 version of the queue produced in response to the first round of discovery in this proceeding showed six prospective data center projects in the Prospect stage, with a combined capacity of 2.2 GW.[13] Only one those projects—Opportunity ID 3657, which is part of the aforementioned Camp Ground Road proposal—has advanced beyond the Prospect stage since March, and then only at a reduced size of 123 MW (rather than 200 MW). Meanwhile, two of those projects with

[12] *Id.* at 13, 18.
[13] See Opportunity IDs 3655, 3941, 3741, 2868, 3657, and 3140 in Attachment "15-AG-KIUC_DR1_LGE_KU_Attach_to_Q33(a)_-_03.31.25_C4_Project_Tracking" to Louisville Gas and Electric Company's and Kentucky Utilities Company's Responses to the Attorney General's and Kentucky Industrial Utility Customers Initial Data Requests, Case No. 2025-00045, Question 33(a) (April 17, 2025) [hereinafter "LG&E/KU Response to AG-KIUC 1.33(a)"].

a combined capacity of 950 MW have withdrawn or been removed from the queue.[14] While some additional prospective data center projects have entered the Prospect stage of the queue since then, some of those were more recently withdrawn, including Opportunity ID 3782 (450 MW)[15] and 3326 (100 MW)[16]. In total, 1.5 GW of proposals that were in the Prospect stage at some point since March are no longer in the queue, while only 123 MW of such prospective load has advanced.

The most high profile withdrawal of a data center project that had been in the Prospect stage was the Oldham County proposal, the public announcement of which the Companies had identified as "add[ing] more certainty to a significant portion of the economic development load forecast."[17] That 600–700 MW project was withdrawn in the face of local opposition and challenges to zoning approval.[18] One would expect a serious discussion of whether there is a reasonable basis to assume 1,750 MW of data center load to address how such a significant and high profile cancellation impacts that assumption. The Companies' initial brief, however, does not even acknowledge, much less discuss, the Oldham County cancellation or any of the other Prospect stage data center proposals that are no longer in the queue. Combined with the limited extent to which any of that Prospect load has advanced beyond that stage, the number of

[14] The two data center Prospects in the March 2025 version of the queue that are no longer in the September 2025 version are Opportunity ID 3655 and 2868.
[15] Opportunity ID 3782 was advanced from the Suspect stage in the June version of the queue to the Prospect stage in the July version but is not in the latest version of the queue that the Companies produced on September 16, 2025.
[16] Opportunity ID 3326 was included in the Prospect stage in the June version of the queue, but does not appear in the July, August, or September versions of the queue.
[17] LG&E/KU Resp. to PSC 1-1(b).
[18] LG&E/KU Resp. to PSC 5-11.

Prospect stage cancellations calls into serious doubt the inclusion of such load in the determination of the amount that there is a reasonable basis to anticipate coming online.

3. The economic development queue and expected value calculation do not provide a reliable basis for separating out speculative data center projects from prospective load that is likely to come online.

While the Companies trumpet the size of their economic development queue and expected value calculation,[19] their initial brief is bereft of any demonstration that the queue and calculation provide a reliable basis for distinguishing between speculative projects and prospective load that is actually likely to come online. Without such a demonstration, the queue provides no evidentiary support for the Companies' 1,750 MW data center load growth assumption, as speculative projects cannot rationally be considered a reasonable basis to anticipate new load coming online.

While the Companies' failure to demonstrate in its initial brief the reliability of its queue and expected value calculation is telling, it is not surprising, given the clear evidence that both are riddled with inadequacies and flaws that render them unreliable. Those flaws and inadequacies were detailed in Joint Intervenors' initial brief,[20] and include:

- There is no barrier to entry to the queue, as the Companies add prospective data center projects to the queue and expected value calculation after a single telephone call from the developer asking for high level information

[19] LG&E/KU Initial Br. at 13.
[20] Initial Brief of Joint Intervenors Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Coalition, and Mountain Association, Case No. 2025-00045, at 13-20 (Sept. 5, 2025) [hereinafter "JI Initial Br."].

- Projects can advance through the economic development stages almost entirely on the basis of the frequency of communication and exchange of information, as opposed to meaningful and objective benchmarks

- With the exception of projects in the "Announced" stage – which none of the prospective data centers projects are in – none of the stages require any written contracts or financial commitments

- There is no written documentation of the decisions to assign or advance a prospective project to a particular economic development stage

- Despite repeated requests, the Companies refused to provide any explanation of the basis for the probabilities assigned to each of the five economic development stages

- The Companies' probabilities fail to account for the additional uncertainty at issue with co-locator facilities, of which most of the data center projects in the queue are, rather than hyperscalers.

In the absence of any meaningful and objective standards regarding inclusion of projects in the queue or probability that a project will actually come to fruition, the Companies in their post-hearing brief fall back on their staff's "decades of experience in economic development in Kentucky" as somehow justifying their assumptions about data center load.[21] But while experience can be relevant to assessing the reasons certain decisions were made, it is of little import where, as here, no explanation or documentation has been provided as to why each projects was assigned a particular percent probability or categorized in a particular economic development stage. In short, the Companies' appeal to "experience" is nothing more than an attempt to replace the need to provide evidentiary support for its decisions with a meaningless standard of "we're not going to explain our reasoning but just trust us."

[21] LG&E/KU Initial Br. at 13.

The Companies attempt to fall back on experience should also be rejected because none of the referenced experience has involved assessing potential large load data center growth either within the Companies' service territory or in the Commonwealth.[22] In addition, witness Bevington acknowledged at hearing that he did not track a number of factors clearly relevant to the likelihood of a prospective data center project coming online, including whether the project would need zoning changes, the status of permitting for the project, whether the developer is shopping the project around to other utilities or states, or the credit worthiness of the developer.[23] In short, the Companies reference to "experience" does nothing to overcome its failure to distinguish between speculative data center proposals from prospective load for which there is a reasonable basis to anticipate coming online.

C. The Companies' Claims About Non-Data Center Economic Development Do Not Support a Finding of a Need for Both of the Proposed NGCCs.

In an implicit concession of the weakness of their 1,750 MW data center load growth assumption, the Companies spend more of their initial brief discussing prospective non-data center economic development projects that are not included in their 2025 CPCN Load Forecast than they do on discussing the data center load assumption that is. First, the Companies highlight that the August 2025 version of their economic development queue included approximately 2.2 GW of potential non-data center load with a claimed expected load value of 500 MW.[24] Second, the Companies summarize a series of press releases from 2024 and 2025 announcing planned

[22] Aug. 6 HVT at 2:43:00 to 2:45:31 PM. (Jones).
[23] Aug. 6 HVT at 10:03AM, 10:24:20AM to 10:26:35 AM. (Bevington).
[24] LG&E/KU Initial Br. at 13, 18.

new or expanded projects in Kentucky, and other efforts by the state government to bring economic development to the Commonwealth.[25]

This last-minute focus on non-data center economic development load does little to help the Companies' inadequate showing of need. The potential non-data center economic development load in the queue faces similar uncertainties as the data center load in that the majority of the projects (1.39 GW) are in the low likelihood Suspect or Inquiry stages, and only 230 MW are in the high likelihood stages that may provide a reasonable basis for anticipation that they will actually come online.[26] In addition, it is notable that the amount of non-data center load in the queue is declining. The 2.2 GW in the August version of the queue is a drop from the 2.6 to 2.8 GW found in the March, June, and July versions of the queue, and the September 2025 version of the queue has only 1.97 GW of such load.[27]

As for the economic project press releases, while the Companies state that such projects are not reflected in the 2025 CPCN Load Forecast,[28] it is not clear whether or to what extent they are included in the queue numbers discussed in the previous paragraph. If they are, then they add nothing to the discussion above. If they are not, the proposals should not play any role in decision making in this proceeding as there is no information in the record as to the project status

[25] *Id.* at 14-17.
[26] Attachment "03-PSC_DR2_LGE_KU_Attach_to_Q17(g)_-_Updated_KIUC_DR1-33(a)_-_Project_Tracking_Filed_08.13.25_REDACTED" to the Louisville Gas and Electric Company's and Kentucky Utilities Company's Supplemental Response to the Commission Staff's Second Request for Information, Question No. 17(g) (Aug. 13, 2025).
[27] Attachment "03-PSC_DR2_LGE_KU_Attach_to_Q17(g)_-_Updated_KIUC_DR1-33(a)_-_Project_Tracking_Filed_09.16.25_REDACTED" to Louisville Gas and Electric Company's and Kentucky Utilities Company's Supplemental Response to the Attorney General's and Kentucky Industrial Utility Customers Third Set of Data Requests, Question No. 3 (Sept. 16, 2025)..
[28] LG&E/KU Initial Br. at 16.

or the likelihood that any of those proposals may actually come to fruition. In short, press releases announcing a project do not provide a reasonable basis for anticipation of new load for purposes of establishing need under the CPCN statute.

D. The Companies' Contention that the Lack of Cost Recovery Approval in this Docket Enables the Commission to "Confidently" Approve Both NGCCs Rings Hollow.

The Companies attempt to assuage concerns about approving the NGCCs on the basis of such an uncertain load forecast by contending that approval of a CPCN does not guarantee approval of cost recovery for the projects.[29] Leaving aside the unlikeliness of the denial of cost recovery for a project that has received a CPCN in the absence of severe post-approval cost escalation, this contention especially rings hollow given the inclusion of the Mill Creek 6 Adjustment Clause in the Stipulation. That Adjustment Clause would authorize LG&E to recover all non-fuel costs of MC6, including depreciation and a return on equity, through a monthly rate adjustment, so long as the Companies had executed at least 500 MW of service agreements for data center customers under the proposed Extremely High Load Factor ("EHLF") tariff by 2031. As Joint Intervenors explained in their initial brief, the MC6 Adjustment Clause and metrics provide no benefit to ratepayers, especially because MC6 would not be needed to serve the 500 MW of data center load that the Stipulation would establish as the key to LG&E unlocking cost recovery for that NGCC.[30] In other words, if the only data center project that the Companies own

[29] LG&E/KU Initial Br. at 29-30.
[30] JI Initial Br. at 60-63. As Joint Intervenors noted, the Companies could accommodate up to 630 MW in 2028 with the addition of the Cane Run BESS alone. August 4, 2025 HVT at 1:20:00–1:21:50PM. Looking out to 2031 and beyond, even without the BESS and assuming the retirement of MC2 in that year, the Companies could serve 924 MW of new load without MC6. See Louisville Gas and Electric Company's and Kentucky Utilities Company's Responses to the Commission Staff's Post-Hearing Request for Information, Case No. 2025-00045, Question 4 (Aug. 22, 2025) [hereinafter "LG&E/KU

analysis shows has a better than even chance of coming online—Camp Ground Road—actually materializes at its current 525 MW size, cost recovery for MC6 would essentially be a foregone conclusion even if none of the highly speculative data center load that the Companies base their request for the MC6 CPCN comes to fruition. Such a scenario is directly contrary to the Companies' contention that a lack of cost approval recovery in this proceeding is a reason that the Commission could feel confident approving the NGCC CPCNs despite the speculative nature of the data center load forecast.

III. THE COMPANIES HAVE NOT DEMONSTRATED AN ABSENCE OF WASTEFUL DUPLICATION FOR MC6.

Joint Intervenors' initial brief pointed out several ways in which the Companies failed to establish an absence of wasteful duplication for Mill Creek 6.[31] These include the failure to issue a battery storage Request for Proposals, which the Companies did not address in their initial brief, and a failure to fully assess demand-side management ("DSM") potential, which Joint Intervenors discuss further in Section IV below. As Joint Intervenors explained in their initial brief, the Companies have not proven that Mill Creek 6 represents the most reasonable, least-cost alternative, and the Commission should deny the Companies' application for a CPCN for that unit.

Resp. to PSC PH-4"] (showing that 1,470 MW of data center load growth could be served in 2031 and thereafter with the addition of the 645 MC6 NGCC, which means that at least 825 MW of such growth could be served without MC6). As such, the Companies could serve both the Camp Ground Road data center project, and the 230 MW of non-data center economic load in the Announced or Imminent stage as of the August 2025 version of the queue without MC6. Yet, under the Stipulation, cost recovery for MC6 would still be approved.

[31] JI Initial Br. at 36-48.

Joint Intervenors noted in their initial brief that Mill Creek 6 could exacerbate the Companies' cost exposure if decarbonization regulations are promulgated in the future.[32] The Companies, for their part, relied on their 2024 IRP analysis to argue that "the stipulated NGCC resources are also economical resources across more restrictive environmental regulatory scenarios."[33] This argument is misleading at best. Specifically, the Companies claimed that the IRP analysis shows:

> [T]he NGCC resources are least-cost even with *zero* incremental economic development load growth in an environmental regulatory scenario in which the Clean Air Act 111(b) and (d) greenhouse gas regulations (or their equivalent) are in effect; in that scenario, *five* new NGCCs are least-cost in 2032, not just the two included in the Stipulation.[34]

However, the referenced IRP resource plan (low load, Ozone National Ambient Air Quality Standards ("NAAQS") + 2024 Effluent Limitations Guidelines ("ELG") + Clean Air Act Greenhouse Gas Rules ("GHG")) also assumed that Mill Creek 2 would retire by 2027, and that the remaining Mill Creek coal units (Mill Creek 3 and Mill Creek 4), Brown 3, and all Ghent units would all retire by 2032, and both Trimble County coal units by 2039.[35] The least-cost mid-load resource plan for the Ozone NAAQS + ELG + GHG scenario likewise assumed the retirement of Mill Creek 2 by 2027, Brown 3 by 2031, and Mill Creek 3 and 4, all Ghent units,

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[32] *Id*. at 41.
[33] LG&E/KU Initial Br. at 22.
[34] *Id*. at 22-23 (emphasis in original).
[35] 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, Vol. III, 2024 IRP Resource Assessment at 48, tbl. 8, Low Load column (Oct. 18, 2024) [hereinafter "2024 IRP"]; *id*. at 52 n. ("The Resource Assessment assumes Mill Creek 1 is retired at the end of 2024, Haefling 1-2 and Paddy's Run 12 are retired in 2025, and Mill Creek 2 is retired in 2027.").

and both Trimble County coal units by 2039.[36] Finally, the least-cost high-load resource plan for the Ozone NAAQS + ELG + GHG scenario assumed the retirement of Mill Creek 2 by 2027, Brown 3 by 2031, and Mill Creek 3 and 4 and all Ghent units by 2039.[37] With the Companies now seeking to extend the retirement date of Mill Creek 2, and with no commitment regarding if and when the Companies would pursue the retirement of the other units, the Companies cannot rely on these IRP resource plans to demonstrate the economic propriety of constructing Mill Creek 6.

The Companies also argued in their initial brief that wasteful duplication does not exist because "in the unlikely event the stipulated resources are not immediately needed to serve the Companies' own customers, there are numerous ways the Companies could make productive use of any surplus capacity."[38] The Companies state that they could make off-system sales, or that they could sell energy, capacity, or both to other utilities in Kentucky or purchasers elsewhere.[39] Joint Intervenors respond to this argument more fully in Section VIII(A) below. Importantly, the Companies have put forward no evidence that other utilities or neighboring regional transmission operators ("RTOs") would seek to meet capacity or energy needs through purchases from the Companies, nor that such sales would economically justify the cost of constructing and operating Mill Creek 6. Furthermore, as Sierra Club highlighted in its initial brief, the Companies have themselves stated that they "do not expect to make capacity sales" and that any capacity sale or other firm power sale from a generating unit would mean that that unit could no longer be

[36] *Id*. at 48; 52 n. 56.
[37] *Id*. at 48; 52 n. 56.
[38] LG&E/KU Initial Br. at 26.
[39] *Id*.

available to serve native load.[40] More generally, if the Commission were to accept the Companies' argument, it is doubtful that wasteful duplication could ever be established, as utilities could always claim that they could sell any excess energy or capacity at an unspecified time in the future. The Commission should therefore reject the Companies' attempt to prove an absence of wasteful duplication by reference to the hypothetical potential for off-system sales.

Finally, Joint Intervenors' initial brief highlighted significant uncertainty regarding construction and operation costs for Mill Creek 6, resulting in part from an incomplete transmission upgrade analysis—which the Companies' initial brief did not address—along with the lack of a Unit Reservation Agreement ("URA") for Mill Creek 6.[41] After Joint Intervenors filed their initial brief, the Companies filed a supplemental discovery response in which they produced an August 27, 2025 URA for Mill Creek 6.[42] Although this is a meaningful step in reducing some of the cost uncertainty with Mill Creek 6, significant uncertainty remains. [redacted]. This

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[40] Sierra Club's Post-Hearing Brief, Case No. 2025-00045, at 19 (Sept. 5, 2025) [hereinafter "Sierra Club Initial Br."] (quoting KU/LG&E response to AG-KIUC 2-9).
[41] JI Initial Br. at 36-39.
[42] Companies' September 8, 2025 Supplemental Response to Staff PH-18.
[43] Confidential Attachment to Companies' September 8, 2025 Supplemental Response to Staff PH-18, 1-2.
[redacted] Confidential Attachment to Companies' September 8, 2025 Supplemental Response to

is not surprising: as Joint Intervenors explained in their initial brief, the Brown 12 URA also failed to resolve all price uncertainty by leaving pricing for the balance of the power island equipment scope (steam turbine, heat recovery steam generator, other power island equipment, site delivery, and engineering) merely indicative.[44] As Joint Intervenor witness O'Leary further explained regarding the Brown 12 URA, "no mention is made of whether similar price guarantees have been secured for other equipment, such as pumps, tanks, cooling towers, and other items, which typically cost more than $100 million in 2024 and which are also subject to inflationary pressures."[45] Furthermore, as explained in Joint Intervenors' initial brief, transmission-related costs may still be higher than the Companies' have assumed.[46] Lastly, the Companies have not selected an engineering, procurement, and construction ("EPC") firm,[47] despite EPC contractor costs being one of the major pricing components for Mill Creek 6,[48] and despite "it [being] entirely reasonable for the winning firm to have been identified [prior to seeking a CPCN] and an estimated capital cost to have been developed, based, at least in part, on the winning firm's bid," as witness Anna Sommer testified in Case No. 2022-00402.[49] The

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Staff PH-18, at 2; LG&E-KU Resp. to Staff 1-34(b); Confidential Attach. to LG&E-KU Resp. to JI 1-18(a), at 2.

[44] JI Initial Br. at 37-38 (citing LG/E-KU Resp. to JI-3-3(e)).

[45] JI Resp. to Staff 1-1 to Joint Intervenors.

[46] JI Initial Br. at 38-39.

[47] Response of Kentucky Utilities Company and Louisville Gas and Electric Company to the Commission Staff's Second Request for Information Dated April 30, 2025, Case No. 2025-00045, Question 57 (May 16, 2025) [hereinafter LG&E/KU Resp. to Staff 2-57"].

[48] Response of Kentucky Utilities Company and Louisville Gas and Electric Company to Joint Motion of Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Coalition, and Mountain Association's Initial Request for Information, Case No. 2025-00045, Dated March 28, 2025, Question 21(a) (Apr. 17, 2025) [hereinafter "LG&E/KU Resp. to JI 1-21(a)"]

[49] Case No. 2022-00402, [Corrected] Testimony of Anna Sommer on Behalf of Joint Intervenors Metropolitan Housing Coalition, Kentuckians For The Commonwealth, Kentucky Solar Energy Society, and Mountain Association, at 11-12 (Sept. 1, 2023).

Companies' economic case for Mill Creek 6 therefore still relies on cost assumptions that are far from certain.

IV. THE COMPANIES' FLAWED AND ABSENT EVALUATIONS OF COST-EFFECTIVE DEMAND-SIDE POTENTIAL UNDERMINE THE CLAIMED NEED AND INVITE WASTFUL DUPLICATION.

Joint Intervenors' Initial Brief walks through the Companies continued practice of undervaluing demand-side potential, relying on indefensible avoided cost assumptions, and failing to evaluate increased investment in, and expansion of, DSM-EE programs on equal footing with supply-side alternatives.[50] Without a more serious showing that the potentially least-cost potential of expanded demand-side programs were evaluated, the claimed need is overstated and the Companies cannot show an absence of wasteful duplication.

Taking a considerably more narrow view of the evidence, the Companies' Initial Brief asserts that there is no reason to believe adding "new DSM-EE programs could realistically or economically satisfy the load growth poised to happen in Kentucky,"[51] and offer three supporting observations: two years ago, the Commission approved a cost-effective demand-side management-Energy Efficiency ("DSM-EE") Plan; modeling for the resource assessment included dispatchable DSM measures; and non-Stipulating parties provided no evidence of programs or measures the Companies overlooked or that might have an effect "on the need for or cost-effectiveness of the stipulated resources."[52] In fact, none of these observations weigh in the Companies' favor, and there is every reason to believe that the Companies do not know and have

[50] JI Initial Br. at 25.
[51] LG&E/KU Initial Br. at 23.
[52] *Id.* at 23-24.

not reasonably attempted to identify or pursue the demand-side resource potential in their territories, directly undermining their own case for need and an absence of wasteful duplication.

First, the Companies can file a DSM Plan update even while they have an approved program, as was the case in Case No. 2022-00402.[53] At the time, despite having 2019-2025 DSM Plan approval, the Companies explained that with increasing supply-side resource needs, "the Companies' avoided cost of capacity has significantly increased since the Companies' most recent DSM-EE Program Plan filing," which in turn "positively impacts the cost-effectiveness of" DSM-EE programs and "allows the Companies to now seek approval for an expanded DSM-EE Program Plan that is cost-effective."[54] But for that mid-plan DSM-EE update in Case No. 2022-00402, "their customers would have been stuck with an out-of-date portfolio, based on flawed avoided capacity cost assumptions, for the duration of the approved plan period."[55]

With an unfortunate prescience, Witness Grevatt cautioned in Case No. 2022-00402 that, while it might be reasonable for the Commission to approve a seven-year DSM Plan spanning 2024 to 2030, there must also be an expectation for updates on at least a three-year interval.[56] In response, the Companies rested on their "proven track record" of "seeking mid-plan program

[53] [Revised] Direct Testimony of James Grevatt, *In the Matter of: Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402, at 11 (Aug. 29, 2023) [hereinafter "Case 2022-00402, Grevatt Direct"]; *see also* Case No. 2022-00402, Direct Testimony of John Bevington, Director, Business And Economic Development Kentucky Utilities Company and Louisville Gas and Electric Company, Ex. JB-1 at 2 (Dec. 15, 2022) [hereinafter "Case 2022-00402, Bevington Direct"] (stating that Companies filed "a mid-plan adjustment to request approval for additional budget and programs to support a substantive increase in their portfolio offerings that will make more comprehensive energy efficiency and demand response opportunities available to a broader customer population.").
[54] Case No. 2022-00402, Bevington Direct at 5.
[55] Case No. 2022-00402, Grevatt Direct at 48.
[56] *Id.*

adjustments": "Each time, the Companies have completed only approximately three years of a seven-year plan before requesting approval of a new plan because of changing circumstances."[57] Although the Companies continued to assure that "[s]hould circumstances change, the Companies will file a mid-plan update to propose additional cost-effective DSM-EE,"[58] that did not happen in the course of (or even parallel to) this CPCN resource assessment and application.

Second, the Companies' DSM-EE Plan investment and savings are more underwhelming than robust. As the record reflects, comparing the Companies' 2024-2030 DSM Plan proposed savings and investments to reported 2018 savings and investments of 52 investor-owned utilities, as reported by the American Council for an Energy Efficient Economy ("ACEEE"), one finds the Companies toward the back of the pack: 40 of 52 peer utilities achieved greater savings as a percent of MWh sales; and 43 of 52 peer utilities spent a larger share of annual revenue.[59] "Simply put, the Companies are obtaining far, far less savings for their Kentucky customers than comparable utilities across the country."[60]

Even if the Companies' existing DSM Plan were "robust"—it is not—that is not the same thing as a utility showing that it evaluated all potentially least-cost resource contributions, including demand-side resources. Without a credible potential study using reasonable avoided cost values, there is no empirical basis to say how much cost-effective potential the Companies

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[57] Case No. 2022-00402, Rebuttal Testimony of Lana Isaacson, Manager, Emerging Business Planning and Development, Kentucky Utilities Company and Louisville Gas and Electric Company, at 12 (Aug. 9, 2025); Case No. 2022-00402, Post-Hearing Brief of Kentucky Utilities Company and Louisville Gas and Electric Company, at 51 (Sept. 22, 2023).
[58] Case No. 2022-00402, Post-Hearing Brief of Kentucky Utilities Company and Louisville Gas and Electric Company, at 50.
[59] Case No. 2022-000402, Grevatt Direct at 24-25.
[60] *Id.* at 25.

are missing.[61] Without modeling of accelerated energy and demand savings as a result of DSM-EE program investments, there is no empirical basis to say how much DSM-EE might reduce need and provide a more reasonable alternative (and complement) to higher-cost, higher-risk, longer-term supply-side resources.[62]

Raising a third point: the Companies bear the burden of showing by clear and satisfactory evidence both need and an absence of wasteful duplication. The Companies had the information, means, and obligation to reasonably investigate DSM potential and promptly pursue a mid-plan update. The Companies cannot make up for their own evidentiary shortcomings by shifting their burden and complaining that an intervenor did not do the Companies' work for them.

Fourth, in point of fact, the great weight of the evidence in the record here, including Case No. 2022-00402, shows compelling reasons to think there is considerable achievable cost-effective demand-side potential available to the Companies, and with limited exceptions for certain demand response programs, the Companies did not adequately evaluate this resource. In particular, Witnesses Grevatt and Eiden scrutinized the Companies' DSM Plan and planning,

[61] *Id.* at 26-29 (key inputs not updated in most recent potential studies); (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 at Sec. IV. 14-34 (Aug.1, 2025) [hereinafter "Eiden Direct"].

[62] 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 8 (Feb. 23, 2023) 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).(in order to show an absence of wasteful duplication, "the [CPCN] applicant must demonstrate that a thorough review of all reasonable alternatives has been performed").

identified shortcomings, and offered recommendations, which are summarized in Joint Intervenors' earlier briefs.[63]

Finally, in another attempt to discount the notion of evaluating cost-effective DSM-EE, the Companies grossly mischaracterize intervenors' evidence as amounting to "vague suggestions and generalities" without "actionable (or even analyzable) proposals."[64] Joint Intervenors' DSM-EE recommendations from Case No. 2022-00402 are entirely actionable:

1. Re-assess economic potential using avoided cost values that reflect future resource needs;
2. Conduct a low-income market characterization study to capture demographic data and characteristics of their lower-income customer segment, similar to a Maryland Low-Income Market Characterization Report prepared for the Maryland Office of People's Counsel in 2018. Like the Maryland study, the Companies' market characterization should "furnish data that can be used to understand the energy affordability issues faced by [Kentucky's] low-income population and to inform the design of existing and future programs." The findings of the study should be used to inform income eligibility criteria and the scale and scope of Income Qualified DSM-EE programs;
3. Conduct a meaningful analysis of comprehensive home retrofit program design opportunities that includes a rational analysis of PAYS;
4. Develop a portfolio plan that ramps up savings to achieve 1.0% gross energy savings as a percent of 2021 sales by 2027 and maintains a similar level of savings through 2030;
5. Increase combined direct load control ("DLC") and Bring-You-Own Device ("BYOD") program participation to approximately 250,000 customers in total by 2030 by, for example, proactively enrolling DLC

[63] *Generally*, JI Initial Br. at Sec. II.C., 25-35; Eiden Direct at 5-9; Case No. 2022-00402, Joint Intervenors' Initial Brief at Sec. II, 3-42; Case No. 2022-00402, Joint Intervenors' Response Brief at Sec. I, 1-7.
[64] LG&E/KU Initial Br. at 24.

customers in BYOD to avoid the expected attrition when program switches fail and preserve valuable demand response resource;

6. Prepare and file a DSM-EE Plan update in 2026, based on a potential study refresh with credible avoided costs and updated cost-effectiveness screening.[65]

These continue to be actionable recommendations, and there are more. Witness Eiden affirmed Witness Grevatt's earlier observations and recommendations regarding needed potential study improvements, while adding a variety of further recommendations that the Companies can and should act on in his testimony.[66] If further explanation and task management is needed, the Companies might seek help by "actively solicit[ing] input and ideas from a wide range of sources, including the DSM-EE Advisory Group, national and regional market research, utility peers, and technical publications," something they claim to do continuously,[67] but puzzlingly have not done vis a vis the many actionable and analyzable recommendations. The Companies therefore cannot claim that the potentially least-cost potential of expanded demand-side programs were meaningfully evaluated.

V. DELAY MAY NOT BE SO COSTLY AS THE COMPANIES THREATEN AND IS NOT A REASONABLE BASIS TO SUPPORT NEED AND ABSENCE OF WASTEFUL DUPLICATION FINDINGS.

The Commission should be skeptical of claims that Mill Creek 6 must be approved now lest the Companies miss their last chance to secure Texas Gas Transmission ("TGT") gas

[65] Case 2022-00402, Grevatt Direct, Sec. III.
[66] Eiden Direct at 4-9.
[67] 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 5 (July 18, 2025) [hereinafter "Isaacson Rebuttal"].

transportation capacity to serve Mill Creek 6 until 2036 or later.[68] The evidence on this issue boils down to otherwise unsupported hearsay statements, which should not trump the more reasonable assumption that interstate pipeline companies will continue to expand capacity to meet legitimate needs.

The Companies supplied no documentation to support a claim that project Borealis would mark its last opportunity to secure TGT transmission capacity for Mill Creek: no public-facing or investor statements from TGT or its parent company; no regulatory filing; no alert or other communication from TGT to the Companies or any other existing or prospective customer. Although not bound by rules of evidence, the Commission should give little weight to otherwise unsupported hearsay statements like the ones offered about TGT's gas supply expansion plans.

Further, the Companies attempt to force a decision in their favor by claiming that any delay in approving their application will result in tremendous cost increases, reminding the Commission that cost estimates for Brown 12 have increased by 40% in just two years.[69] However, it is worth noting that the Commission rightfully denied the Companies request for Brown 12 in 2023; but for the speculative data center load growth in this proceeding, the

[68] 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 4 (July 18, 2025) [hereinafter "Schram Rebuttal"] (citing Companies' Supplemental Response to KCA 1-4, Supp. Attach. 1, at [pdf] 8 (May 30, 2025) ("A key advantage to commissioning Mill Creek 6 in 2031 is that it will enable the Companies to bid for gas transportation through Texas Gas Transmission's ("TGT") proposed Borealis project, which will be TGT's last opportunity for significant capacity additions on its existing rights-of-way within a five- to eight-year horizon. . . . TGT expects Borealis to be fully subscribed, with subscriber commitments to the project likely taking place during the fourth quarter of 2025.")).
[69] LG&E/KU Initial Br. at 4, 31.

Companies would have at least 400 MW of excess capacity,[70] meaning the Brown 12 NGCC was not needed when they last requested it. While the cost of an NGCC may be 40% more expensive in another two years if the Companies' application is denied now and they are required to re-seek approval at a later date, a resource is 100% too expensive if it is built and not needed. The Companies' position that any delay in approving the requested resources will result in increased costs presupposes the need to build new generation that the Companies have failed to adequately show and presumes that NGCCs will remain a least-cost resource despite inflated prices from continued high market demand. The Companies again are putting the cart before the horse—asking this Commission to approve an NGCC without demonstrating need and without adequately considering all alternative resources to show their chosen resource is indeed least-cost.

The Companies also attempt to justify their application to build new generation for data centers by claiming that one hypothetical 400 MW data center could result in up to $50 million in property tax revenue within a year of coming online.[71] That is a drop in the bucket within the context of billions of dollars that ratepayers are being asked to front for the mere hope that data centers may choose to build within LG&E/KU's territory. Without verifiable information to substantiate the Companies' belief that new load will develop at the level required to justify the

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[70] *Id.* at 18 ("The Companies' analysis shows that without the stipulated resources the Companies would be able to reliably serve only 400 MW of new load after Mill Creek 2's planned retirement in 2027.").
[71] *See*, *e.g.*, 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 8-10 (July 18, 2025) (estimating $50 million in first year property tax revenues for a 400 MW data center in Jefferson County).

requested resources, the Commission should decline to invest billions of ratepayer dollars to build new generation that is not presently needed.

VI. THE HISTORY OF THE TRIMBLE COUNTY GENERATING UNITS WEIGHS AGAINST APPROVING MILL CREEK 6.

The Companies argue in their Initial Brief that Trimble County 2 demonstrates the propriety of approving generation resources despite uncertain need,[72] but the Companies' reliance on Trimble County 2 is misplaced. Further, the Companies ignore the significant fallout that resulted from approving Trimble County 1, which demonstrates the risks associated with the Companies' present proposal.

The Companies' summary of the Trimble County 2 case leaves out a critical fact that the Commission relied on in its decision and that readily distinguishes that case from the present one. The Companies state that, "[i]n that case, the question was whether energy needs would increase as the Companies' load forecast indicates,"[73] but that is only partially correct. As the Commission explained in the very first paragraph of its Trimble County 2 Analysis section, the "primary concern [was] whether baseload capacity will be sufficient to meet the Companies' forecasted energy requirements," but the primary challenger to the Companies' application—the Attorney General—"*did not take issue with the Companies' energy forecasts*," and instead raised concerns about the Companies' peak demand forecasts.[74] This fundamental misalignment

[72] *See* LGE/KU Initial Br. at 27-29.
[73] *Id*. at 28.
[74] Order, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Expansion of the Trimble County Generating Station*, Case No. 2004-00507, at 3-5 (Nov. 1, 2005) (emphasis added) ("Trimble County 2 CPCN Order").

between (1) the proffered need for Trimble County 2 to support growing baseload energy requirements and (2) the Attorney General's critique of the Companies' peak demand forecasting was a primary reason—if not *the* primary reason—why the Commission approved the Trimble County 2 CPCN despite the Attorney General's concerns.

The Companies' attempt to analogize Trimble County 2 to the present case falls flat, as the concerns raised by Joint Intervenors and others in this proceeding directly call into question the Companies' alleged need for their proposed resources. As witness Stanton explained in her testimony, Joint Intervenors have "call[ed] into question LG&E-KU's load forecasts (both annual energy requirements and peak demand), indicating that the Companies are overestimating their forecasts resulting in their setting the wrong targets when assessing their need for new supply resources."[75] If the Companies' load growth forecast is inflated, as Joint Intervenors explain in Section II and in their Initial Brief, then there is simply no need for Mill Creek 6, and it should not be approved.

The risk of denying the CPCN for Mill Creek 6 also differs from the risk of denying Trimble County 2. Because Trimble County 2 was proposed to meet baseload energy needs, if the Trimble County 2 CPCN was denied, the Companies could have been in a position of needing "to run high-price peaking units or buy high-price peaking power to meet the baseload requirements of its customers."[76] Here, however, the Companies could accommodate up to 630 MW in 2028 with the addition of the Cane Run BESS alone, and Brown 12 would add another

[75] 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 8:11-15 (June 16, 2025).
[76] Trimble County 2 CPCN Order at 5.

645 MW of capacity.[77] It is therefore far from the case that denying the Mill Creek 6 CPCN would "clos[e] the door to economic development in the Companies' service territories,"[78] much less that it would increase costs for other ratepayers as denying the Trimble County 2 CPCN might have.

A much more appropriate comparison to the present case is Trimble County 1. In October 1978, LG&E obtained a certificate for two 495 MW-nameplate coal-fired generating units in Trimble County at an estimated cost of $542.6 million, or roughly $548,080/MW, with expected operational dates in 1983 and 1985.[79] However, it was not long before LG&E cancelled one of the two units, delayed the remaining unit until 1988, and increased the cost estimate for that single unit to $737.9 million.[80]

Delayed construction had been costly, but there was such a glut of capacity that even after cancelling the second unit, LG&E was uncertain that construction on even a single unit still made sense.[81] With the prospect of years more delay and ballooning costs, several parties in LG&E's then-recent rate case "challenged continuation of a cash return on LG&E's construction

[77] *See* JI Initial Br. at 61 (citing August 4, 2025 HVT at 1:20:00–1:21:50pm).
[78] LGE/KU Initial Br. at 28-29.
[79] Order, *In the Matter of 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. 9243, at 1 (Oct. 14, 1985) [hereinafter "First Trimble County Investigation"].
[80] *Id*. ("Since receiving the certificates LG&E has cancelled the second unit at Trimble County, delayed the completion of the first unit to 1988 and raised the cost estimate for Trimble County No. 1 to $737.9 million.").
[81] Order, *In the Matter of General Adjustment in Electric and Gas Rates of Louisville Gas and Electric Company*, Case No. 8924, at 32–33 (May 16, 1984) [hereinafter "1984 Rate Case"] ("More fundamental than the issue of allowing CWIP or accruing AFUDC is whether Trimble County should be built at all . . . . The Commission believes that the management of LG&E is responsible for deciding the fate of Trimble County and the record in this case clearly reflects that LG&E would prefer to perform additional studies before deciding the proper course to follow.").

work in progress balance . . . ."[82] That, in turn, prompted LG&E to restudy the need for even a single Trimble County unit through a new capacity expansion study.[83] Meaning, six years after issuance of the certificate, LG&E was back to the drawing board, with millions already sunk and more at risk. At best, customers were looking at a half-sized project with nearly tripled costs on a per megawatt basis ($1,490,707/MW), and the need for the project—even at half-size—remained unclear. Called to address LG&E's situation, the Commission ordered a further three-year construction delay for the single unit.[84]

But the Commission did not stop there. The Commission lamented the excess of capacity in the state, reflecting utilities' failures to plan better than their own self-interest required, and resolved to systematically address electric utilities' generation planning. The Commission was unmistakably concerned about poor generation planning generally, and in LG&E's particular case.[85] LG&E became the spark igniting the Commission's generation planning investigation docket.[86]

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[82] First Trimble County Investigation at 2.
[83] *Id*. at 1-2.
[84] *Id*. at 24-25.
[85] 1984 Rate Case at 33 (announcing in LG&E rate case order, that "[t]he Commission intends to move forward with Case No. 8666, Statewide Planning for the Efficient Provisions of Electric Generation and Transmission Facilities, to review not only the need for Trimble County, but also the future generation needs and construction plans of other electric utilities regulations by this Commission. Case No. 8666 will provide the opportunity for LG&E and other interested parties to present evidence of the need, or lack thereof, for Trimble County. The options to be considered will include, but not necessarily be limited to, further deferrals of Trimble County, cancellation of Trimble County, the installation of alternative types of generating units, purchasing capacity, refurbishing older generating units, joint ownership of generation capacity, power pooling, and other options. The Commission will consider these same options when reviewing the generation requirements and construction plans of all electric utilities.").
[86] Order, *In the Matter of An Inquiry into Kentucky's Present and Future Electric Needs and the Alternatives for Meeting Those Needs*, Admin. Case No. 308, at 1 (Oct. 9, 1986) (noting recent orders indicating intention to establish docket to review plans to meet electricity needs, and citing only the Oct. 14, 1985 Order in Case No. 9243, focuses on the need for Trimble County Unit No. 1).

Then, in a 1987 follow-up investigation into Trimble County 1, the Commission took additional steps to protect ratepayers from the costs of excess capacity. LG&E claimed in a 1987 Capacity Expansion Study that it could sell Trimble County 1 capacity in the future to further reduce its revenue requirements.[87] But in response to intervenors challenging LG&E's claimed ability to sell excess capacity in the future, in addition to other utilities also claiming there would be a market to sell their own capacity, the Commission acknowledged:

> [O]ne must be concerned as to the kind of market LG&E will confront in the early to mid-1990s. . . The Commission finds it is unreasonable for LG&E to basically assume there will be a buyers' market in the early to mid-1990s for the Trimble County Capacity. It is imperative that LG&E work to develop these markets.[88]

The Commission noted, however, that LG&E's "efforts" to do so had been "minimal" and found that it was "necessary to develop some form of rate-making treatment that [would] assure the ratepayers that [would] receive the benefits of the reduced revenue requirements that would result if such a sale occurred."[89] In order to "assure the ratepayers that completing Trimble County in 1991 [was] clearly in their best interests, the Commission [found] that a disallowance of 25 percent of Trimble County [was] necessary."[90] It was only after the Commission ordered that 25% of Trimble County 1 be excluded from the rate base that LG&E proceeded to sell 25% of Trimble County 1 capacity.[91]

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[87] Order, *In the Matter of Formal Review of the Current Status of Trimble County Unit No. 1*, Case No. 9934, at 30-31 (July 1, 1988) [hereinafter "Second Trimble County Investigation"].
[88] *Id*. at 31-32.
[89] *Id*. at 32.
[90] *Id*. at 33 (approved on rehearing in *Formal Review of the Current Status of Trimble County Unit No. 1*, Case No. 9934, Order on Rehearing (Ky. PSC Apr. 20, 1989), at 5-7).
[91] Direct Testimony of Kent W. Blake, Director of State Regulation and Rates for LG&E Energy Services Inc., *In the Matter of Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Expansion of the Trimble County Generating Station*, Case No. 2004-00507, at 3 (Dec. 9, 2004).

Trimble County 1 should serve as a warning as to the costs of rushing headlong into a situation of excess capacity and uncertain need. It should also serve to emphasize the need for mechanisms that shield ratepayers from the risks and costs from such excess capacity. As discussed in Sections III and VIII(A), LG&E is again claiming that it could sell any excess capacity that results from the proposed resources, without any record evidence suggesting that such sales are feasible or economical. The Companies have also proposed to pre-decide cost recovery in this case in a manner that would expose ratepayers to significant costs if data center load does not materialize, as discussed in Sections VII, VIII(B) and in Joint Intervenors' Initial Brief.[92] The Commission should not let LG&E make the same mistake twice.

VII. MC2 AND MC6 ADJUSTMENT CLAUSES ARE NOT RIPE FOR DECISION AND MUST BE REJECTED.

Joint Intervenors' Initial Brief addressed why the proposed Mill Creek 2 ("MC2") and MC6 Adjustment Clauses are not ripe for decision or otherwise suitable for adjudication here.[93] For their part, the Stipulating Parties offer a handful of references to cases where they say the Commission approved a cost-recovery mechanism that was "not part of a published notice and first arose in settlement discussions."[94] In actuality, none of their examples apply here, where the Stipulation introduces and seeks approval of new cost-recovery mechanisms via an opposed settlement in a CPCN proceeding where the application did not seek any relief related to MC2; did not seek any ratemaking relief related to MC6 upon in-service through unit retirement; and

[92] JI Initial Br. at 52-53, 60-63.
[93] *Id.* at Sec. III, 49-53.
[94] LG&E/KU Initial Br. at 34.

the applicants opposed development of the record with respect to ratemaking implications of the proposed CPCNs.

The handful of authorities and examples offered by the Stipulating Parties are inapposite and unhelpful to the justiciability of the MC2 and MC6 adjustment clauses. The Companies rely on *Kentucky Public Service Commission v. Commonwealth ex rel. Conway*, 324 S.W.3d 373 (Ky. 2010) as providing "relevant principles the Commission has since followed in **approving mechanisms similar to the proposed Adjustment Clauses MC2 and MC6 that first arose in the context of settlement discussions**. . . ."[95] But really, the rate mechanism at issue in *Conway* was proposed as part of a gas utility's general rate case filing, the appeal had nothing to do with the justiciability of rate mechanisms introduced via opposed settlement, and neither the Companies nor other stipulating parties provided an example remotely like what the Stipulating Parties attempt with the proposed adjustment clauses.

In *Conway*, the Supreme Court of Kentucky resolved five consolidated appeals brought over a five-year period by the Office of the Attorney General challenging Commission orders approving Duke Energy Kentucky, Inc.'s[96] Accelerated Main Replacement Program Rider ("AMRP"),[97] holding that, so long as rates are fair, just, and reasonable, the Commission can allow recovery of costs outside a general rate case.[98] The AMRP Rider was first proposed as part of the requested relief in a base rate case, Case No. 2001-00092:

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[95] *Id.* at 33-34. Kentucky Coal Association relies on *Conway* for the same proposition. Kentucky Coal Association's Initial Brief, Case No. 2025-00045, at [pdf] 5-7 (Sept. 5, 2025) [hereinafter "KCA Initial Br."].
[96] *f/k/a* The Union Light, Heat and Power Company.
[97] *Kentucky Pub. Serv. Comm'n v. Com. ex rel. Conway,* 324 S.W.3d 373, 375 (Ky. 2010).
[98] *Id.* at 374.

> [Duke Energy Kentucky's] **application includes a proposal to establish an Accelerated Main Replacement Program (AMRP) Rider**, a tracking mechanism that will permit ULH&P to recover the costs of its accelerated cast iron and bare steel main replacement program.[99]

The AMRP was <u>not</u> introduced via an opposed settlement.[100]

If *Conway* bears on the justiciability of Adjustment Clauses MC2 and MC6, it is by establishing that the Companies could have elected to request relief including Adjustment Clauses or other ratemaking mechanisms (as indeed they did)[101] as part of its CPCN application:

> [W]e find nothing in the statutes that mandates that this rider or the calculation of the actual monetary surcharge could only be approved through a general rate case.[102]

The Companies had the lawful right to propose Adjustment Clauses or other cost-recovery mechanisms as part of this proceeding, and nothing prevents the Companies from seeking approval of fair, just, and reasonable cost-recovery mechanisms for incremental costs related to MC2 and MC6 in a separate proceeding. Having elected not to do so, it cannot use an opposed

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[99] Order, *In the Matter of: Adjustment of Gas Rates of the Union Light, Heat and Power Company*, Case No. 2001-00092, at 5 (Jan. 31, 2002).
[100] *Id.*
[101] With respect to Brown 12, Mill Creek 6, and the Cane Run BESS, the Companies' application did not seek ratemaking relief beyond approval of regulatory asset treatment for the difference between allowance for funds used during construction ("AFUDC") accrued at the Companies' weighted average cost of capital ("WACC") and AFUDC accrued using the Federal Energy Regulatory Commission's ("FERC") approved methodology; and (2) regulatory asset treatment for post-in-service carrying costs, operating and maintenance expense, property taxes, investment tax credit amortization, and depreciation expense until such costs are fully reflected in the Companies' retail base rates or an applicable cost recovery mechanism. Joint Application, Case No. 2025-00045, at 2 (Feb. 28, 2025) [hereinafter "Application"]. Stipulation terms unrelated to the MC2 and MC6 adjustment clauses resolve both requests.
[102] *Conway*, 324 S.W.3d at 381.

settlement to invent and impose new rate mechanisms and costs without application, notice, or evidentiary support.

Kentucky Coal Association offers *Iola Capital v. Kentucky Public Service Commission*, 659 S.W.3d 563 (Ky. App. 2022) as an example of the Commission approving "other kinds of proposals that have arisen for the first time in settlements or stipulations, not the applications giving rise to the proceedings or related customer notices."[103] But *Iola* addresses standing of a non-party to the original proceeding to collaterally attack a gas pipeline CPCN on notice grounds two years after it was granted in a base rate case—not the justiciability of ratemaking issues introduced via an opposed settlement in the CPCN proceeding itself.

Iola Capital arises from Case No. 2016-00371, a LG&E base rate case application that included a 10–12 mile pipeline extension in Bullitt County at a roughly $27.6 million capital cost, which LG&E believed was an ordinary extension not requiring a CPCN application. The Commission, however, determined that the size of the project did require a CPCN,[104] and granted LG&E a CPCN upon finding that it had provided all the information necessary to support one.[105] While there were two stipulations proposed and adopted in that rate case, neither stipulation addressed the pipeline extension CPCN, and no party appealed the Commission's final order granting the CPCN. Instead, two years after issuance of the CPCN, two landowners—Bernheim Arboretum and Research Forest and Iola Capital, LLC—filed a complaint with the

[103] KCA Initial Br. at [pdf] 6.
[104] Order, *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates and for Certificates of Public Convenience and Necessity*, Case No. 2016-00371, at 31-32 (June 22, 2017).
[105] *Id.* at 33-34.

Commission seeking to void the CPCN for failure to provide notice.[106] The Commission dismissed the Complaint finding that the property owners lacked standing to challenge the CPCN on notice grounds, and the Court of Appeals upheld that reasoning.[107] The facts and holdings of *Iola* have no bearing on the justiciability of establishing a new ratemaking mechanism via opposed settlement.

Further examples offered by the Companies and KCA of orders approving riders are similarly unhelpful. The Companies point to orders approving the Retired Asset Recovery Rider in their 2020 base rate cases and the Off-Systems Sales adjustment clauses in the 2014 base rate cases.[108] The Companies' Retired Asset Recovery Rider was a specific ratemaking method introduced at settlement, but critically, the rider accomplished recovery of originally filed expenses and revenues in a base rate case.[109] The issue of how to set fair, just, and reasonable rates to address that category of costs was at issue upon filing of the base rate case, creating a factual record sufficient for the Commission to make reasoned judgments about costs and recovery mechanisms for those costs. Here, the Companies provide an illustration of *Hope's* canonical principle that "[u]nder the statutory standard of 'just and reasonable' it is the result

[106] Order, *In the Matter of: Bernheim Arboretum and Research Forest v. Louisville Gas and Electric Company*, Case No. 2019-00274 (Dec. 20, 2019).
[107] *Iola Capital*, 659 S.W. 3d at 567.
[108] LG&E/KU Initial Br. at 34-35.
[109] Application, *In the Matter of: Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Case No. 2020-00349, (Nov. 25, 2020); Application, *In the Matter of: 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 Meter Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Case No. 2020-00350 (Nov. 25, 2020).

reached not the method employed which is controlling;"[110] but *Hope's* holding, of course, is unrelated to justiciability.

The same is true of the Companies' Off-Systems Sales adjustment clauses, which again established rates for a category of expenses and revenues that were included in the Companies' 2014 base rate case applications.[111] Ratemaking methods resulting from settlements in base rate cases are not the equivalent of what the Stipulation seeks to accomplish in this CPCN proceeding.

KCA highlights the Companies' 2011 Environmental Cost Recovery ("ECR") case as including a stipulated increase to the Companies' Home Energy Assistance programs, but misses critical facts distinguishing it from the instant case: (1) the Home Energy Assistance programs and related rate mechanisms already existed; (2) the stipulated $500,000 increase to the Home Energy Assistance programs was **funded by shareholders**—not ratepayers;[112] and (3) the stipulation was unanimous.[113] If anything, the example supports the legality of stipulation terms committing shareholders to bear certain costs or risks associated with the requested CPCNs; but nothing in this settlement does that.

[110] *Fed. Power Comm'n et al. v. Hope Nat. Gas Co.*, 320 U.S. 591, 602 (1944).
[111] Application, *In the Matter of Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates*, Case No. 2014-00372 (Nov. 26, 2014) (Off-Systems Sales).
[112] Order, *In the Matter of: Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00161, at 18, para. 14 (Dec. 15, 2011) ("KU's and LG&E's shareholders will make two additional annual contributions totaling $500,000 to the companies' Home Energy Assistance ("HEA") programs, consisting of a shareholder contribution of $250,000 in each of 2011 and 2012. These contributions will be split evenly between the KU and LG&E HEA Programs.").
[113] Case No. 2011-00161, Dec. 15, 2011 Order at 2-3; Appendix A.

Finally, the Attorney General's limited briefing of adjustment clause justiciability offers no supporting authority, yet emphasizes that:

> Even if the Commission is reluctant [to] approve the Adjustment Clauses here, it could certainly take notice of the Stipulation in those dockets and approve them there. But it is important that the Commission articulate support for the Adjustment Clauses and the Temporary Offset. Those mechanisms are important protections that were negotiated specifically for the benefit of ratepayers.[114]

It is not clear under what authority the Commission could "take notice of the Stipulation" in the Companies' ongoing rate cases and approve them" on that basis, and unclear how doing so would not deprive parties to the ongoing rate cases of fair and full proceedings. Further, and going to the core of justiciability, the quoted language solicits an advisory opinion articulating support for matters not properly at issue in this proceeding. But the Commission must avoid giving advisory opinions on matters that would more appropriately be settled elsewhere, are lacking in evidentiary support in this proceeding, and could deprive ongoing rate case proceedings of fairness and finality.

Justiciability constrains the Commission's jurisdiction and plenary ratemaking authority, and ratemaking matters injected via settlement in a CPCN are not ripe or otherwise appropriately before the Commission.[115]

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[114] Post-hearing Initial Brief of Attorney General, Case No. 2025-00045, at 6-7 (Sept. 5, 2025) [hereinafter "OAG Initial Br."].
[115] *Generally* Initial Brief of Joint Intervenors Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Coalition, and Mountain Association, Case No. 2025-00045, at Sec. III (Sept. 5, 2025) [hereinafter "JI Initial Br."].

VIII. THE STIPULATION IS UNREASONABLE, PROVIDES NO MEANINGFUL RATEPAYER PROTECTIONS, AND SHOULD BE DENIED IN ITS ENTIRETY.

A. The Stipulation's proposed MC6 Cost Recovery Review Metrics should be rejected, particularly with respect to Off-System Sales or other efforts to mitigate the financial harm if MC6 is not needed to serve native load.

Joint Intervenors' Initial Brief explained why the proposed Mill Creek 6 Cost Recovery Review Metrics fail to actually show prudence and unreasonably infringes on the Commission's authority.[116] For their part, the Companies state that, "in the unlikely event the stipulated resources are not immediately needed to serve the Companies' own customers, there are numerous ways the Companies could make productive use of any surplus capacity."[117] For example, the Companies could (1) make off-system sales; (2) sell energy, capacity, or both to utilities in Kentucky; or (3) sell additional capacity to neighboring RTOs or other parties.[118] But actually, this provision implicitly contemplates infringing on other Kentucky utilities' right to serve, is indicative of a lack of confidence that there will be an actual need arising from LG&E/KU's service territory, and yet seeks to reduce the risk to the Companies' shareholders of a future imprudence finding. Here, Joint Intervenors briefly respond to highlight an arbitrariness in the Companies' positions on off-system sales.

First, as Sierra Club explains in their initial brief, there are serious obstacles and financial implications to selling excess capacity which the Companies have not addressed on the current

[116] JI Initial Br. at 60-63.
[117] LG&E/KU Initial Br. at 26.
[118] *Id.*

record.[119] Nor have the Companies put forth any evidence in the record to support the potential prospect of a long-term sale of capacity as contemplated in the Stipulation.[120] Especially without a thorough exploration and complete record of the potential for long-term capacity and energy sales to other Kentucky utilities, the Commission cannot approve billions of dollars in investments where load growth remains highly speculative and uncertain.

Second, the Companies have explained that they could not possibly economically procure capacity from outside their service territory because "paying to build a new generation resource in a neighboring region and then paying for additional transmission capacity to that region, as well as paying for firm transmission capacity to move power across that region to the Companies' system, would only drive up the costs of a new resource the Companies could just as easily build in their own service territories."[121] Likewise, if the Companies find themselves in a grossly over-supplied position, they cannot proffer to economically sell capacity outside of their service territory for the same reasons. If LG&E/KU's strident position against the idea of relying on external resources or the likely costliness of doing so is to be believed, the Stipulation's terms providing for selling capacity if LG&E/KU's portfolio is oversupplied cannot reasonably offer anything real to customers.

Practically speaking, LG&E/KU are suggesting that should the stipulated resources be built and not needed to serve customers within their territory, they could become a supplier for

[119] Sierra Club Initial Br. at 18-19 (discussing the need to "undesignate" a generating unit to be able to enter into a capacity sale, which would mean that resource would no longer be available to serve native load).
[120] *See id.* at 19 (As Ms. Hotaling concluded, "there is no guarantee that a capacity sale would occur at all if there is no willing purchaser or that such a sale would recoup the investment in the projects.").
[121] LG&E/KU Initial Br. at 23-24.

other vertically integrated utilities in the state. Not only does this suggestion implicitly infringe upon the right of Kentucky utilities to serve their certified territory,[122] but it is wholly unsupported by the record. The record is devoid of any evidence demonstrating that neighboring utilities or RTOs seek to purchase capacity or energy from the Companies, or that such hypothetical purchases would be enough to justify the construction of an NGCC at their current price. If other utilities follow suit—attempting to justify "need" with a sell-to-neighbors escape hatch—the state may soon find itself with a serious oversupply problem. Absent an adequate showing of need, the Commission should not approve the Stipulation on the basis that excess capacity or energy could be sold elsewhere.

B. The Stipulation does not provide meaningful ratepayer protections.

As discussed at length in Joint Intervenors' Initial Brief,[123] the Stipulation provides no real benefit to ratepayers, the Commission, or the Commonwealth at large. Rather, the Stipulation seeks to side-step due process by improperly injecting new rate mechanisms, new tariff provisions, and new resource decisions that are unsupported on the current record and are more appropriate for consideration in separate proceedings.

First, the Attorney General comments in their post-hearing brief that "the financial terms in the Stipulation are a good deal for existing ratepayers" because it allows for new economic development load to be served while "protecting existing ratepayers from the potential harms

[122] KRS 278.018(1) ("[E]ach retail electric supplier shall have the exclusive right to furnish retail electric service to all electric-consuming facilities located within its certified territory, and shall not furnish, make available, render or extend its retail electric service to a consumer for use in electric-consuming facilities located within the certified territory of another retail electric supplier [.]").
[123] JI Initial Br. at 56, Sec. V.

caused by that new load."[124] To be clear, the most imminent risk to ratepayers is the Stipulation itself. As Sierra Club explains in their initial brief, the Companies' existing customers face significant risk if the proposed gas plants are built and the data centers do not materialize at the pace or scale the Companies hope.[125] If the Commission approves the Stipulation, the risk to ratepayers is not hypothetical—if the Companies build the proposed assets applied for here and new data center load does not appear, Sierra Club expert Stacy Sherwood estimates existing residential customers' bills will increase by $138.67 per year for LG&E and by $23.05 per year for KU.[126] Financial terms in the Stipulation do nothing to protect existing customers from that risk.

Second, the Attorney General points to the addition of a cost recovery metric, the MC6 Adjustment Clause, and the pending EHLF tariff as beneficial to existing ratepayers.[127] As explained in Joint Intervenors' initial brief, the benefits of these provisions are illusory and misleading, resulting in nothing of value for existing residential customers. With respect to the provision providing for at least 500 MW of executed electric service agreements as a cost recovery metric for MC6,[128] it either aims to improperly and unnecessarily prejudge cost recovery or it is only one of many factors for Commission consideration offering nothing meaningful. As the Companies concede, prudence review is within the Commission's exclusive purview and should not be limited by pre-defined factors. Further, a 500 MW metric itself

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[124] OAG Initial Br. at 2.
[125] Sierra Club Initial Br. at 17 (As explained by Sierra Club witness Chelsea Hotaling, "[m]aking significant investments in generation without any financial commitments from prospective customers places the risk on existing ratepayers.").
[126] *Id*.
[127] OAG Initial Br. at 2.
[128] Stipulation and Recommendation at Art. I, para. 1.4.

provides nothing of value where the Companies readily admit they can serve up to 400 MW of additional load with existing resources[129] and could serve 500 MW without the addition of MC6 in a myriad of ways, including with the addition of either Brown 12 or Cane Run BESS alone. Where the Companies claim that BR12 and MC6 are least-cost with the addition of at least 1,002 MW of new economic load,[130] the Stipulation's term providing for 500 MW of executed agreements as a cost-recovery metric is of no consequence.

Similarly, the proposed MC2 and MC6 Adjustment Clauses provide no cost-recovery benefits to ratepayers, are unsupported by the record, and are practically unreasonable.[131] The Companies contend that the Stipulation-proposed Adjustment Clauses MC2 and MC6 will both "tend to decrease over time as the net book value of the initial capital investments decreases with depreciation; with the proposed monthly reporting and annual review process, these mechanisms will ensure the Companies recover only prudently incurred costs, no more and no less."[132] If the Commission finds that these Adjustment Clauses are ripe for consideration in this proceeding, it should nonetheless deny approval of both clauses as they would result in *increasing* existing customer risk by embedding generational inequity into cost recovery and provide the Companies more assurance and less risk than a utility is expected to carry. Where the Companies are entitled to a reasonable opportunity to earn a fair return on its investments used to provide safe and reliable service to its customers, they are not entitled to a guarantee to recover every dollar spent.

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[129] LG&E/KU Initial Br. at 18.
[130] *Id.* at 18. It is important to note that the analysis cited in support of this claim does not necessarily show that the projects are, as the Companies claim, "economical," but only that under low and mid-gas price forecasts, a scenario with the Stipulated projects is modestly lower cost than a scenario in which the 300 MW Cane Run BESS is pursued instead of MC6. LG&E/KU Resp. to PSC 5-4(a).
[131] JI Initial Br. at 51-53; 74-75.
[132] LG&E/KU Initial Br. at 39.

Moreover, as explained in further detail in Joint Intervenors' Initial Brief,[133] this financial impact would by design hit residential customers the hardest, as both Adjustment Clause MC2 and MC6 "tend to be favorable to industrial customers."[134]

Lastly, as the Attorney General and the Companies both acknowledge, the EHLF tariff is not under review and cannot be approved in this proceeding.[135] As discussed in Joint Intervenors' Initial Brief, approval of provisions regarding a proposed tariff pending approval in an ongoing rate case would be a violation of due process and are inappropriate for consideration in this proceeding.[136] While the Companies implore the Commission to approve the Stipulation without modification because "other issues that could affect customers' rates . . . do not have to be resolved now,"[137] this plea to punt the resolution of issues that will result from approval of Stipulation to a future date is not good enough. The Companies' suggestion that such issues could best be addressed in future proceedings is unconvincing, especially as the Companies work to reel in data center customers with the promise of low rates.

For all of the reasons set forth above and in Joint Intervenors initial brief, the Stipulation should be denied in its entirety.

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[133] JI Initial Br. at 74.
[134] *Id.*; 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).
[135] LG&E/KU Initial Br. at 19; OAG Initial Br. at 3.
[136] JI Initial Br. at 65.
[137] LG&E/KU Initial Br. at 40.

IX. THE GREAT DEPTH AND BREADTH OF STAKEHOLDER INTERESTS REPRESENTED IN THIS PROCEEDING DO NOT SUPPORT THE STIPULATION.

The Companies rely on the "depth and breadth" of support for their Stipulation to show its reasonableness,[138] but the reality is that the majority of the public and their advocates involved in this proceeding oppose or did not join the stipulation.

As summarized below, the interests of non-stipulating parties go far beyond those shared with the Stipulating Parties, and in some instances are directly opposed. Beginning with the four organizations collectively participating as Joint Intervenors, for over forty years, Kentuckians have organized through Kentuckians For The Commonwealth ("KFTC") to work for a fair economy, a healthy environment, new safe energy, and an honest democracy.[139] With more than 12,000 members, more than half served by the Companies, KFTC brings deep experience and understanding of the needs of residential customers.[140]

Kentucky Solar Energy Society ("KYSES") opposes the Stipulation, despite sharing an interest in the development of renewable energy resources, like Southern Renewable Energy Association ("SREA") and others. KYSES is "comprised of members who include residential solar energy customers taking service from LG&E and KU in its service territory; solar energy enthusiasts (including potential future solar customers); professionals working in the clean

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[138] LG&E/KU Initial Br. at 3 ("The depth and breadth of support for the Stipulation also demonstrate its reasonableness.").
[139] Joint Motion of Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Coalition, and Mountain Association for Full Intervention as Joint Intervenors, Case No. 2025-00045, at para. 6 (Mar. 17, 2025) [hereinafter "JI MTI"].
[140] *Id.* at para. 7.

energy field in business, nongovernmental organizations, and academia; and advocates for a transition to a clean energy economy."[141]

Metropolitan Housing Coalition ("MHC") is comprised of roughly 300 individual and organizational members. "MHC members include representatives of low-income households, private and non-profit housing developers, service providers, financial institutions, labor unions, faith-based and neighborhood groups, and other advocacy groups, advocating with a united voice for fair, safe, and affordable housing in the Metro Louisville area."[142] MHC drives affordable housing development through multiple strategies, including maintaining "a loan pool for non-profit developers to create affordable housing, whether rental or owner-occupied, new or rehabilitated," with energy efficiency measures and renewable energy as means to limit utility bills.[143]

Mountain Association ("MA") is a Community Development Financial Institution and a nonprofit that "works with people in Eastern Kentucky and Central Appalachia to create economic opportunity, strengthen democracy, and support sustainable use of natural resources."[144] "MA's energy programs work to strengthen the region's residents, small businesses, local governments, communities, and non-profits by helping to reduce energy costs and consumption, increase energy security, and build resilience in the face of climate change."[145] Mountain Association has worked with hundreds of small commercial Kentucky Utilities

[141] *Id.* at para. 9.
[142] *Id.* at para. 11.
[143] *Id.* at para. 16.
[144] JI MTI at para. 18.
[145] *Id.*

Company customers over fifteen (15) years providing financing to access investments in energy efficiency and renewable energy, resulting in reduced operating expenses. "Mountain Association focuses a key part of its programs and research on assisting small commercial ratepayers in Eastern Kentucky, who are often not represented in [Public Service Commission] cases, with cost saving measures."[146]

Across just these four entities, there is significant breadth and depth of opposition to the Stipulation, reflecting interests reaching residential, commercial, and other small customers from the perspectives of promoting healthy communities, economic and social justice, housing affordability, economic development, energy security and resilience, and more.[147]

The Companies observe that Joint Intervenors are "just four organizations," which they compare unfavorably to Kentucky Industrial Utility Customers'("KIUC") ten members.[148] The math is right, but meaningless. KIUC's ten members—some of which overlap with members of Kentucky Coal Association—share an "exclusive" interest in keeping industrial rates low, explained in a single paragraph of KIUC's motion to intervene without any effort to distinguish members from one another.[149] It is impossible to confuse the diverse interests of Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Coalition, and Mountain Association with the exclusive interest in industrial rates from an ad hoc association of customers paying industrial rates.

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[146] *Id.* at para. 20.
[147] The Stipulation was further opposed by the Sierra Club, with Louisville Metro and LFUCG supporting only the term acknowledgment that Louisville Metro Air Pollution Control District jurisdiction continues.
[148] LG&E/KU Initial Br. at 4 n.13.
[149] Motion to Intervene of Kentucky Industrial Utility Customers, Inc., Case No. 2025-00045, at para. 6 (Mar. 14, 2025) [hereinafter "KIUC MTI"].

Second, and contrary to the Companies' characterizations, the Office of the Attorney General ("OAG") has not acted as a "primary consumer advocate" in this proceeding.[150] The Attorney General's statutory mandate under KRS 367.150(8) does not allow the office to advocate for any subset of consumers. As such, the Attorney General's presence in a proceeding cannot diminish or substitute for the special interests raised by intervenors, each of which enjoys a greater ability to advocate for the interests of residential, small commercial, and other customers.

More practically, although tasked to represent the interests of "consumers" generally, the Attorney General substantially allied itself in this proceeding with a subset of just ten consumers, collectively, KIUC, among the nearly one million consumers required to take electric service from the Companies. The Attorney General co-sponsored expert testimony in this proceeding with KIUC under a Memorandum of Understanding providing that "their interests are sufficiently aligned for the purposes of these matters such that utilizing the same witnesses will not present a conflict and will result in cost savings for both parties[.]"[151] But as an ad hoc association of ten large industrial customers, KIUC's "interest is exclusively related to large industrial customers," and its purpose "is to represent the industrial viewpoint on energy and utility issues before this Commission and before all other appropriate governmental bodies."[152] Because the interests of ten industrial consumers sometimes are in direct conflict with consumers paying residential, commercial, municipal, or other rates—as, for example, with proposing to use

[150] LG&E/KU Initial Br. at 4.
[151] OAG and KIUC, Mem. of Understanding, Case No. 2025-00045, at 1 (Mar. 19, 2025) (Executed Witness Sharing Memorandum).
[152] KIUC MTI at 2, paras. 3, 6.

Group 1 and Group 2 methodology for revenue allocation under the proposed Mill Creek 6 ("MC6") Adjustment Clause—the Attorney General stifled its own ability to be a broader or primary public advocate in this proceeding.

Finally, the relative breadth and depth of opposition to the stipulation is reflected through public comments. Throughout this proceeding, members of the public, their representatives, and associations provided written comments opposing the resources green-lit by the Stipulating Parties. Hundreds of public comments have been entered into the docket, with Commenters' opposition to the Companies' application including, among other things, concern for rate increases exacerbating energy unaffordability issues within the LG&E/KU service territory; the lack of public information and community engagement in the development and service of data center projects; concern over noise, air, and water pollution from both the Companies' proposed resources and potential data center facilities; and most notably, fear of stranded assets leaving ratepayers bearing the long-term expense for the Companies' multi-billion dollar investments. After over thirty minutes of public comment at a July 7 meeting in Lexington and over two hours of public comment at a July 15 meeting in Louisville, concerned consumers also turned out to provide ninety minutes of public comment opposing the settlement at the start of the August 2025 hearing, explicitly criticizing the Attorney General's support for the settlement, questioning the need for the proposed resources, seeking help achieving more affordable bills, advocating for cleaner energy resources, and more. While the Companies suggest the Commission should dismiss the opposition from a "handful of vocal activists—not all of whom are the Companies' customers"[153] as not indicative of the vast majority of the Companies' hundreds of thousands of customers, the lack of public support for the Companies' application speaks for itself. LG&E/KU's customers have been vocal in this proceeding, and rightfully so, as this application plainly has not been made in the public's interest.

Public advocates outside the Stipulation recognize it offers woefully few benefits while reaching too far beyond what the record and the Commission's jurisdiction here can support. While the Commission need not make a finding related to the significance of the interests represented in a proposed stipulation and those opposed, the record here in fact shows that the weight and diversity of public advocates and consumers oppose, or do not support, the settlement.

X. CONCLUSION

For the reasons set forth above and in their initial brief, Joint Intervenors respectfully request the Commission deny the Companies' CPCN application for Mill Creek 6 and reject the proposed Settlement Stipulation.

<Signature page to follow>

[153] LG&E/KU Initial Br. at 41-42.

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 17, 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.

Byron L. Gary