

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matters of:

ELECTRONIC APPLICATION OF KENTUCKY	)	
UTILITIES COMPANY AND LOUISVILLE GAS	)	
AND ELECTRIC COMPANY FOR	)	CASE NO.
CERTIFICATES OF PUBLIC CONVENIENCE	)	2025-00045
AND NECESSITY AND SITE COMPATIBILITY	)	
CERTIFICATES	)	

**SOUTHERN RENEWABLE ENERGY ASSOCIATION’S  
INITIAL POST HEARING MEMORANDUM BRIEF**

Comes now the Southern Renewable Energy Association (also “SREA”), by and through counsel, and, in accordance with the Public Service Commission’s Order dated August 11, 2025, respectfully files this Initial Post Hearing Memorandum in support of its post-hearing position and the Order’s listed topics as follows.

**I. INTRODUCTION**

On February 28, 2025, Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E” collectively “Companies”) tendered a Joint Application seeking the Public Service Commission’s (“PSC” or “Commission”) issuance of Certificates of Public Convenience and Necessity (“CPCN”) for the construction of two (2) approximately 645 megawatt (“MW”) net summer rating natural gas combined cycle combustion turbine (“NGCC”) facilities along with on-site natural gas and electric transmission construction associated with the facilities.<sup>1</sup> One facility is proposed for location at KU’s E.W. Brown Generating Station in Mercer County and is identified in this proceeding as “Brown 12.”

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<sup>1</sup> Joint Application (tendered Feb. 28, 2025), page 1.

The second facility is proposed for location at LG&E's Mill Creek Generating Station in Jefferson County and is identified in this proceeding as "Mill Creek 6."

The Joint Application further seeks a CPCN to construct a 400 MW, 4-hour (1600 megawatt hour – "MWh") lithium-ion battery energy storage system ("BESS") facility proposed for location at LG&E's Cane Run Generating Station in Jefferson County; a CPCN to construct a selective catalytic reduction ("SCR") facility for the Ghent 2 generation facility at KU's Ghent Generating Station in Carroll County; and site compatibility certificates for Brown 12, Mill Creek 6, and the Cane Run BESS.<sup>2</sup>

The Commission Staff determined that the Joint Application tendered on February 28, 2025 met the minimum filing requirements and entered a letter into the record stating that the Joint Application had been accepted for filing.<sup>3</sup> The Commission entered Orders granting intervention to the following parties: the Kentucky Office of the Attorney General ("OAG");<sup>4</sup> Kentucky Industrial Utility Customers, Inc. ("KIUC");<sup>5</sup> Kentuckians for the Commonwealth ("KFTC"), Kentucky Solar Energy Society ("KSES"), Metropolitan Housing Coalition ("MHC"), and Mountain Association ("MA"), (jointly, "Joint Intervenors");<sup>6</sup> Louisville/Jefferson County Metro Government ("Louisville Metro") and

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<sup>2</sup> Joint Application (tendered Feb. 28, 2025), pages 1 and 2. Through a Stipulation and Recommendation filed into the record of this case, the Companies seek a withdrawal, without prejudice, of the CPCN for the Cane Run BESS facility.

<sup>3</sup> PSC No Deficiency Letter (filed Mar. 4, 2025).

<sup>4</sup> Order (Ky. P.S.C. Mar. 7, 2025).

<sup>5</sup> Order (Ky. P.S.C. Mar. 28, 2025).

<sup>6</sup> Order (Ky. P.S.C. Mar. 28, 2025).

Lexington-Fayette Urban County Government (“LFUCG”), (jointly);<sup>7</sup> Sierra Club;<sup>8</sup> Southern Renewable Energy Association (“SREA”);<sup>9</sup> and the Kentucky Coal Association (“KCA”).<sup>10</sup> The Commission entered an Order denying Alfred Brown’s motion to intervene.<sup>11</sup>

The Commission’s procedures for processing the instant case include, among other things, discovery, the opportunity for intervening parties to file testimony into the record, and a public evidentiary hearing which included the opportunity for examination of witnesses who filed testimony into the record. Further, the Commission entered Orders incorporating, by reference, the following cases into the record for the instant case: Case No. 2022-00402,<sup>12</sup> Case No. 2023-00123,<sup>13</sup> Case No. 2024-00326,<sup>14</sup> Case No. 2025-

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<sup>7</sup> Order (Ky. P.S.C. Mar. 31, 2025).

<sup>8</sup> Order (Ky. P.S.C. Mar. 31, 2025).

<sup>9</sup> Order (Ky. P.S.C. Mar. 31, 2025).

<sup>10</sup> Order (Ky. P.S.C. Apr. 10, 2025).

<sup>11</sup> Order (Ky. P.S.C. Jun. 4, 2025).

<sup>12</sup> Order, (Ky. P.S.C. Mar. 13, 2025) (incorporating by reference Case No. 2022-00402, *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan and Approval of Fossil Fuel-Fired Generating Unit Retirements* (filed Jan. 6, 2023)).

<sup>13</sup> Order, (Ky. P.S.C. Mar. 13, 2025) (incorporating by reference Case No. 2023-00123, *Electronic Application of Kentucky Utilities Company for Approval of Special Contract Between Kentucky Utilities Company and Blueoval Sk, LLC* (filed Apr. 14, 2024)).

<sup>14</sup> Order, (Ky. P.S.C. Mar. 13, 2025) (incorporating by reference Case No. 2024-00326, *Electronic 2024 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (filed Oct. 18, 2024)); see also Order, (Ky. P.S.C. Aug. 11, 2025) (filings in Case No. 2024-00326 made on or after February 14, 2025, incorporated by reference).

00105,<sup>15</sup> all monthly environmental surcharge filings made by KU beginning with the filings made for January 2024 and for each month thereafter, until and including, the date of the issuance of the Order in the instant case.<sup>16</sup>

Upon a request by the Joint Applicants, an Informal Conference was held at the Commission's Offices on July 22<sup>nd</sup> and July 23<sup>rd</sup>.<sup>17</sup> The purpose of the informal conference "was to allow the parties an opportunity to discuss the issues and the possible resolution of issues in these proceedings."<sup>18</sup> From the Intra-Agency Memorandum documenting the Informal Conference:

As a result of discussions had at the IC, LG&E/KU; the Attorney General; Southern Renewable Energy Association (SREA); Kentucky Coal Association (KCA); and Kentucky Industrial Utilities Customers (KIUC) were able to come to an agreement resolving all of the issues in this proceeding. Louisville/Jefferson Metro Government and Lexington/Fayette Urban County Government (LFUCG) took no position on the Stipulation and Recommendation and will not oppose it at the hearing. Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Association, and Mountain Association (collectively, Joint Intervenors) and Sierra Club elected not to join the stipulation and recommendation. LG&E/KU filed the Stipulation and Recommendation resulting from this IC on July 29, 2025.

An evidentiary hearing was held on August 4<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup>. In that the evidentiary hearing was held after the filing of the Stipulation and Recommendation (and post-hearing

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<sup>15</sup> Order, (Ky. P.S.C. May 14, 2025) (incorporating Case No. 2025-00105, *Electronic Application of Kentucky Utilities Company for Approval of Its 2025 Compliance Plan for Recovery by Environmental Surcharge* (filed Apr. 30, 2025)).

<sup>16</sup> Order, (Ky. P.S.C. May 29, 2025).

<sup>17</sup> Intra-Agency Memorandum (filed July 31, 2025).

<sup>18</sup> *Id.*

discovery was permitted),<sup>19</sup> both the Joint Application and the proposed Stipulation and Recommendation have been placed before the Commission for the testing of the evidence presented in support and opposition of each.

The Commission's August 11, 2025 post-hearing Order directed the Companies to file an initial memorandum brief in support of their post-hearing position and upon topics listed in the August 11<sup>th</sup> Order.<sup>20</sup> The following is the list of topics expressly identified for discussion:

- LG&E/KU's existing authority, or lack thereof, to delay or extend Mill Creek 2's retirement until Mill Creek 6's in-service date or beyond;
- An analysis of need and absence of wasteful duplication for Brown 12, Mill Creek 6, and the Ghent 2 SCR; and
- Whether new proposals, such as the life extension for Mill Creek 2; and the Mill Creek 2 and 6 Adjustment Clauses are properly before the Commission and ripe for decision.

The Commission further found that each remaining party, should they choose to do so, may file an initial memorandum brief in support of their post-hearing position and discussing the above-topics listed in the August 11<sup>th</sup> Order.<sup>21</sup> Pursuant to the provision of authority through the Commission's August 11<sup>th</sup> Order and in response to the Commission's strong encouragement to submit briefs on certain topics, SREA files this Post-Hearing Memorandum. SREA discusses its post-hearing position upon the Joint

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<sup>19</sup> Order, (Ky. P.S.C. Aug. 11, 2025).

<sup>20</sup> Order, (Ky. P.S.C. Aug. 11, 2025), page 3, Ordering Paragraph 8.

<sup>21</sup> Order, (Ky. P.S.C. Aug. 11, 2025), page 4, Ordering Paragraph 9.

Application and the Stipulation and Recommendation. SREA thereafter addresses each of the three (3) topics identified by the Commission.

## **II. SREA's Positions**

SREA's participation in the instant case has been active and includes, among other things, developing the record through discovery,<sup>22</sup> the filing of evidence into the record through the Direct Testimony of Benjamin W. Smith,<sup>23</sup> and responses to requests for information.<sup>24</sup> SREA also examined the evidence placed into the record by the Companies and by the remaining parties through testimonies and various responses to requests for information. SREA also participated in the Informal Conference and the public evidentiary hearing. SREA's respectfully submits that its positions are well-developed and in furtherance of the purposes of KRS Chapter 278 including the maintenance of reasonable service and the protection of ratepayers.

### **A. The Withdrawal of the Cane Run Battery Energy Storage System CPCN Request, Without Prejudice, is Lawful and Reasonable.**

Through Article I, Section 1.2 of the Stipulation and Recommendation, the Companies agree to withdraw their request for the Cane Run BESS CPCN without prejudice.<sup>25</sup> Through the Stipulation and Recommendation, the Companies retain the ability to re-file the CPCN Application for Cane Run BESS, or a substitute for it, at any

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<sup>22</sup> SREA Initial Requests for Information (filed Mar. 28, 2025) and SREA Supplemental Requests for Information (filed May 2, 2025).

<sup>23</sup> SREA Direct Testimony of Benjamin W. Smith (filed June 16, 2025) (hereinafter "Smith Direct Testimony").

<sup>24</sup> SREA Responses to KU and LG&E Data Requests (filed July 3, 2025).

<sup>25</sup> Stipulation and Recommendation (filed July 29, 2025), page 3.

time.<sup>26</sup> The additional requirement upon the Companies, as a consequence of the Stipulation and Recommendation, is that the CPCN application for Cane Run BESS, or its substitute, will be supported by a competitive procurement process. Based upon evidence in the record, the Companies' commitment is reasonable and, therefore, should be accepted.

SREA's positions upon the Joint Application are manifest foremost and principally through the Direct Testimony of Benjamin W. Smith. As is set forth in the testimony, Mr. Smith recommended that the Companies issue a Request for Proposals ("RFP") for the proposed BESS facility and "that the Commission require the Companies to study and consider competitively procured resources as the Companies contend with increases in demand and to further diversify the generation portfolio."<sup>27</sup> Mr. Smith's testimony thoroughly explains and documents the support for these positions. Evidence supporting the reasonableness of Section 1.2 is present in the record for this case, and the Companies' commitment through Section 1.2 furthers the purposes of KRS Chapter 278, the provision of reasonable service at reasonable rates. It is lawful and reasonable.

**B. The Companies' Commitment to Increased Transparency and Shareholder Communication is Lawful and Reasonable.**

Through Article 1, Section 1.6., the Companies commit to providing semi-annual in-person construction, economic development, and load forecast updates to the Commission. Further, the Companies commit to allowing all intervenors in the instant case to attend such update meetings. In view of the present facts and circumstances

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<sup>26</sup> *Id.*

<sup>27</sup> Smith Direct Testimony at pages 3 and 4.

facing the Companies regarding potential demand, greater transparency and the provision of timely information concerning construction, economic development, and load forecast updates to the Commission is appropriate and will facilitate the purposes of KRS Chapter 278. Permitting all intervenors in the instant case to attend such update meetings is consistent with normal Commission practices for such update. The provision is lawful and reasonable.

**C. The Companies' Renewable RFP, Shareholder Feedback, and Contracting Resources Commitments are Lawful and Reasonable.**

Through Article V, Section 5.1, the Companies commit to issue a request for proposals ("RFP") for renewable energy and energy storage by mid-2026 seeking to procure energy and capacity of utility scale solar, wind, storage, and/or hybrid resources. Through Article V, Section 5.2, the Companies, prior to issuing the RFP, agree to give intervenors to this proceeding the opportunity to provide feedback on the RFP. Through Article V, Section 5.3, the Companies commit that for any cost-effective resources or those needed to serve customer requests (for instance, Green Tariff Option 3) identified in the RFP responses, the Companies will complete contracting (with appropriate regulatory-out provisions) by mid-2028, and apply for Commission approval by December 31, 2028, seeking approval for cost-effective resources. In view of the Companies' stated and reasonably expected need for renewable energy and energy storage, these provisions of the Stipulation and Recommendation are wholly consistent with furthering the Companies' goals in a best practices manner and are lawful and reasonable.

**D. The Companies' SEEM Reporting Commitment is Lawful and Reasonable.**



Through Article VI, Section 6.1, the Companies commit, beginning in the first quarter of 2026 and ending in the first quarter of 2031, to file annual reports on their participation in the Southeast Energy Exchange Market (“SEEM”), including company-specific cost and benefit assessments and underlying data. Given the Companies’ stated energy and capacity needs and the planning for meeting those needs, the greater transparency provided through the information will assist the Commission, stakeholders, and the public. It is lawful and reasonable.

**E. Discussion of Commission Identified Topics**

**Topic 1 - LG&E/KU’s existing authority, or lack thereof, to delay or extend Mill Creek 2’s retirement until Mill Creek 6’s in-service date or beyond.**

SREA respectfully submits that Topic 1 should be separated into two (2) separate subjects: Authority, or lack thereof, to delay or extend Mill Creek 2’s retirement until Mill Creek 6’s in-service date; and Authority, or lack thereof, to delay or extend Mill Creek 2’s retirement beyond 2031.

**Topic 1, Part 1 - The Companies have the existing authority to delay or extend Mill Creek 2’s retirement until Mill Creek 6’s in-service date.**

The starting point for analyzing the Companies’ authority to delay or extend Mill Creek 2’s retirement until Mill Creek 6’s in-service date is KRS Chapter 278, specifically, KRS 278.262 and KRS 278.264, legislation enacted expressly to provide the Commission with instructions regarding the approval or denial of the retirement of an electric generating unit. KRS 278.264 requires a utility to apply to the Commission for an order approving the retirement of an electric generating unit. To an extent, KRS 278.264 is a complement to KRS 278.020, the certificate of convenience and necessity requirement for construction. KRS 278.264 was created in 2023; certainly, the General Assembly was

well-aware of KRS 278.020 when it enacted the instructions for retirement. Thus, the statutes necessarily should be read in combination when examining the legislative intent for each.<sup>28</sup>

For a utility with authority to construct pursuant to a certificate, KRS 278.020(1)(e) provides the circumstances through which the authority conferred by the issuance of a certificate of convenience and necessity becomes void. Therefore, in very general terms, a utility with authority to construct may defer action and continue to study the reasonableness of the exercise of authority that it has obtained; however, it does so facing the consequence of being divested of authority by **operation of statute** if the delay extends more than one (1) year from the grant of authority and fails to satisfy the criteria of the statute preventing divestment.

Comparatively, a utility with authority to retire pursuant to an Order of the Commission does not face the consequence of being divested of authority to retire by operation of statute because KRS 278.264 does not contain a provision similar to KRS 278.020(1)(e). The plain language of KRS 278.264(2)(d) confirms the position that the legislative intent for retirement is for an orderly retirement or decommissioning of the electric generating unit synchronized with the unit's replacement being ready for service or that other circumstances permit the retirement or decommissioning.

Specifically, KRS 278.264(2)(d) provides:

The utility shall not commence retirement or decommissioning of the electric generating unit until the replacement generating capacity meeting the requirements of paragraph (a) of this subsection is fully constructed, permitted, and in operation, unless the utility can

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<sup>28</sup> See, *for comparison*, Case No. 2022-00402, Order (Ky. P.S.C. Nov. 6, 2023), page 99 (“A statute should be liberally construed to carry out the intent of the legislature.”).

demonstrate that it is necessary under the circumstances to commence retirement or decommissioning of the existing unit earlier.

From Case No. 2022-00402:

With the passage of Senate Bill 4 in the 2023 session of the General Assembly, for the first time this Commission was given the explicit authority to grant or deny requests to approve the retirement of utilities' generating facilities. Furthermore, Senate Bill 4, codified as KRS 278.262 and 278.264, added reliability as a specific statutory standard for the Commission to apply in regulating electric utilities, in addition to the primary requirements of service, that service be adequate, efficient and reasonable. In recognition of the General Assembly's clear concern for the Commonwealth's electric transmission system, and the statute's dictate that the Commission ensure retirements are economic and do not negatively impact bulk grid reliability, this Order attempts to maximize the reliability of those dollars that will be spent on generation and transmission facilities, while minimizing the risk of burdensome rates and stranded costs.<sup>29</sup>

In terms of KRS 278.264, the authority obtained by the Companies regarding the retirement of Mill Creek 2 is not subject to a statutory provision that divests the authority if there is a delay or extension of the retirement date. Instead, the Companies are expected to pursue an orderly retirement or decommissioning by reference to the readiness of the replacement generating capacity or a demonstration that other circumstances deem an earlier retirement necessary. By reference to statute, the Stipulation and Recommendation is lawful and reasonable because the Companies have not been divested of authority and the intent of the statute is orderly replacement of generating capacity.

Having demonstrated that the Companies authority to extend or delay Mill Creek 2's retirement is authorized by and consistent with the intent of the statute, it remains necessary to examine whether an extension or delay violates an administrative regulation

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<sup>29</sup> Case No. 2022-00402, Order, (Ky. P.S.C. Nov. 6, 2023), pages 173 and 174.

or order of the Commission.<sup>30</sup> 807 KAR 5:006 (General Rules) and 807 KAR 5:041 (Electric) are the Commission's administrative regulations appearing pertinent to the analysis, and neither administrative regulation addresses this issue. The remaining question is whether there is anything in the Commission's final Order in Case No. 2022-00402, the docket in which the Companies' request to retire Mill Creek 2 was approved,<sup>31</sup> that prohibits an extension or delay of the Mill Creek 2 retirement.

The Ordering Paragraphs for the Commission's final Order in Case No. 2022-00402 appear at pages 178 through 181 of the Commission's November 6, 2023 Order.<sup>32</sup> The Ordering Paragraphs do not contain a divestment provision. Quite to the opposite; the Ordering Paragraphs condition the retirement of Mill Creek 2 on the Companies' construction of Mill Creek 5.<sup>33</sup> Therefore, while finding that the Companies "met their burden and rebutted the presumption against retirement with respect to" [among others] Mill Creek 2,<sup>34</sup> the Commission also found that "LG&E/KU should also not proceed with the retirement of Mill Creek 2 until construction of Mill Creek 5 is completed (emphasis in original)."<sup>35</sup>

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<sup>30</sup> See KRS 278.990(1).

<sup>31</sup> Case No. 2022-00402, Order (Ky. P.S.C. Nov. 6, 2023).

<sup>32</sup> While the November 6, 2023 Order would subsequently be revised by an Order on rehearing entered in Case No. 2022-00402 on December 7, 2023, the modification to the November 6<sup>th</sup> Order by the rehearing Order has no impact on this discussion.

<sup>33</sup> Case No. 2022-00402, Order, (Ky. P.S.C. Nov. 6, 2023), page 178, Ordering Paragraph 1.

<sup>34</sup> Case No. 2022-00402, Order, (Ky. P.S.C. Nov. 6, 2023), page 97.

<sup>35</sup> Case No. 2022-00402, Order, (Ky. P.S.C. Nov. 6, 2023), page 114.

While the Order speaks for itself, SREA respectfully submits the Order establishes that the immediate retirement of Mill Creek 2 was not permissible given the intent of KRS 278.264. Meanwhile, the Order does not place upon the Companies any time limit in which the Companies must retire Mill Creek 2. Again, SREA respectfully submits that the Order recognizes that the exact timing for a retirement is difficult to establish because “circumstances change.”<sup>36</sup> Consistent with the legislative intent of KRS 278.264 and also the reasoning of the final Order in Case No. 2022-00402, the Companies possess the authority to extend or delay a retirement if the decision is based upon a need to address a change in circumstance and effect an orderly replacement of a retired electric generating unit with new electric generating capacity. In this proceeding, there is sufficient evidence of a change in circumstance (among other things the expectation of demand from potential data centers) to support the reasonableness of the Companies’ proposal to extend or delay the retirement of Mill Creek 2 to the in-service date of Mill Creek 6. On this point, the Stipulation and Recommendation is both lawful and reasonable.

**Topic 1, Part 2 - The Companies have the existing authority to delay or extend Mill Creek 2’s retirement beyond 2031; however, while the Companies have the authority, questions concerning the regulatory consequences are not ripe and may never require resolution.**

At the outset, a delay or extension of the retirement of Mill Creek 2 beyond 2031 because Mill Creek 6 is not yet in-service is authorized for the reasons stated in the prior argument. Further, the regulatory consequences of a delay or extension of the retirement of Mill Creek 2 beyond 2031 because Mill Creek 6 is not yet in-service remain the same as described above. Nonetheless, synchronizing the retirement of Mill Creek 2 with Mill

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<sup>36</sup> Case No. 2022-00402, Order, (Ky. P.S.C. Nov. 6, 2023), pages 112 and 113.

Creek 6 is a very different matter from simply delaying or extending the retirement of Mill Creek 2 beyond 2031 in a scenario in which Mill Creek 6 goes in service by the end of 2031 and Mill Creek 2 continues operations for other purposes.

Again, the starting point for analyzing the Companies' authority (under this second scenario) to delay or extend Mill Creek 2's retirement beyond 2031 is KRS Chapter 278. As noted in the prior argument, KRS 278.264 does not contain a provision that divests the authority to retire after a specific period of time. Therefore, the Companies can delay or extend the retirement of Mill Creek 2 without losing authority by operation of KRS 278.264. Also, the Companies do not appear subject to a divestment of authority by operation of an administrative regulation in this second scenario.

The obvious concern, though, is the regulatory consequence for a change in the Companies' position regarding Mill Creek 2 by reference to the final Order in Case No. 2022-00402 (as modified on rehearing). In Case No. 2022-00402, the Companies argued that "it was economical to retire Mill Creek 2 and Ghent 2 rather than equipping them with SCR or operating the plants only outside of the ozone season."<sup>37</sup>

Pursuant to Article IV, Section 4.5 of the Stipulation and Recommendation, the Companies make, at pertinent part for this discussion, the following commitment:

As part of their 2027 Integrated Resource Plan filing, the Utilities will provide an analysis of the continued operation of Mill Creek 2 beyond 2031. If the analysis determines continued operation of Mill Creek 2 is economical, the Utilities will take the necessary steps to obtain the required approvals to allow Mill Creek 2 to operate beyond 2031.<sup>38</sup>

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<sup>37</sup> Case No. 2022-00402, Order, (Ky. P.S.C. Nov. 6, 2023), page 14. Unlike Mill Creek 2, the Companies' request to retire Ghent 2 was denied in Case No. 2022-00402 (page 178, Ordering Paragraph 3).

<sup>38</sup> Stipulation and Recommendation, page 9.

This portion of the Stipulation and Recommendation is not simply about using Mill Creek 2 to facilitate an orderly transition and replacement of generating capacity. In this scenario, Mill Creek 2 has the potential to be called upon to do more than temporarily fill a gap. For this scenario, the Companies commit to perform an examination of whether Mill Creek 2 can be economical to operate (separate and apart from the pending Mill Creek 6 synchronization).

While the language of the commitment may appear to drift perilously close to a repudiation of the Companies' position in Case No. 2022-00402, there has been no change of position by the Companies in the instant case regarding Mill Creek 2 satisfying the conditions of KRS 278.264. The Companies have not presented any evidence that the continued operation of Mill Creek 2 beyond 2031 (for this commitment) is economical. Rather, they merely commit to study the issue.

The Companies are free to conduct whatever studies they deem advisable.<sup>39</sup> Of itself, the Companies study of the issue does not constitute any change in position or support a finding that there has been a change in circumstance. In fact, the only action presently required by the Stipulation and Recommendation is for the Companies to provide an analysis.

Any additional action by the Companies pursuant to Section 4.5 is expressly contingent upon a determination by the Companies that the continued operation of Mill Creek 2 is economical. On its face, the Stipulation and Recommendation does not present

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<sup>39</sup> Recovery of the cost of the studies through rates is a separate matter.

any change in circumstance or questions concerning the Companies' authority to delay or extend the retirement of Mill Creek 2.

Thus, a decision by LG&E and KU to delay or extend Mill Creek 2's retirement beyond 2031 is recognized by the Stipulation and Recommendation as presenting questions involving future facts and circumstances that are not presently known and therefore not answerable or relevant in the instant case.<sup>40</sup> As importantly, questions concerning the regulatory consequences of a decision by the Companies to delay or extend Mill Creek 2's retirement beyond 2031 (for reasons other than synchronizing its retirement with Mill Creek 6's in-service date) may never require resolution because the analysis may confirm, once more, that Mill Creek 2's continued operation beyond 2031 is not economical (rendering the remaining portions of Section 4.5 moot).

If there is a change in the Companies' position regarding whether the continued operation of Mill Creek 2 beyond that which is necessary to facilitate an orderly retirement of the unit is economical, then the Stipulation and Recommendation requires the Companies to seek the necessary approvals to allow the operations. The Stipulation and Recommendation acknowledges that one of the required approvals concerns the extension of retirement authority, a decisional matter vested solely with the Commission. The burden of proof remains upon the Companies for all such questions. The Stipulation and Recommendation does not suggest any reduction in the Commission's jurisdiction.

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<sup>40</sup> While the Stipulation and Recommendation can bind the signatories to the agreement (if accepted) including, in some instances, courses of action for future proceedings, the Commission cannot be tasked with deciding an application that has not been docketed and which may never be submitted.



Resolution of the questions concerning Companies' retirement authority upon a decision by the Companies that Mill Creek 2's continued operation is economical is properly deferred to await their coming into existence with specific facts and circumstances. For purposes of the instant proceeding, it is sufficient to demonstrate that the Stipulation and Recommendation, on its face, does not present any facts or circumstances requiring or supporting the divestment of the Companies' existing retirement authority. The Stipulation and Recommendation is, on its face, lawful. Under the current set of facts and circumstances, Section 4.5 does not present any change in the Companies' existing retirement authority for Mill Creek 2.

**Topic 2 - An analysis of need and absence of wasteful duplication for Brown 12, Mill Creek 6, and the Ghent 2 SCR.**

SREA did not present testimony upon these issues. Nonetheless, during and as part of its participation in the instant case SREA considered the evidence placed into the record by the Companies and the remaining parties. SREA also participated in settlement negotiations. SREA believes that the proposed Stipulation and Recommendation is based upon credible evidence in the record and supports the issuance of CPCNs for these facilities. SREA will defer to the analysis of the record supplied by the Companies and the remaining parties to the Stipulation and Recommendation and support the result of their arguments that the CPCN's should be issued because the applications meet the requirements of KRS 278.020.

**Topic 3 - Whether new proposals, such as the life extension for Mill Creek 2; and the Mill Creek 2 and 6 Adjustment Clauses are properly before the Commission and ripe for decision.**

With regard to the Mill Creek 2 proposals, consistent with the prior arguments in this Brief (and incorporated by reference for this discussion), matters pertaining to Mill

Creek 2 are properly before the Commission (to the extent that they are ripe) because KRS 278.020 necessarily requires a comprehensive rather than myopic examination of the condition of the utility and its ability to meet its service requirements.

The Commission's jurisdiction to review the role that Mill Creek 2 plays in determining whether CPCNs should be granted and the conditions pertaining to the CPCNs is without question. In terms of the Commission entering an Order affecting Mill Creek 2, the Companies have affirmatively placed Mill Creek 2 before the Commission, been given a formal public hearing, and had the opportunity to present and examine evidence. The Commission is fully empowered to act upon and decide all proposals relating to Mill Creek 2 that are ripe for the Commission's decision.<sup>41</sup>

With regard to the Mill Creek 6 Adjustment Clause, the Commission has the plenary authority to attach conditions to a CPCN as a means to modify it so that the certificate will satisfy and fulfill the purposes of KRS Chapter 278.<sup>42</sup> The Commission's authority to implement the provisions of KRS Chapter 278 is plenary, and the facts and circumstances of the instant case support and demonstrate the reasonableness of the Stipulation and Recommendation's proposed conditions for the Mill Creek 6 CPCN.

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<sup>41</sup> If the matter is not ripe, then it is a matter, if at all, for a future proceeding.

<sup>42</sup> Per KRS 278.030(1)(b), the Commission may not modify an application submitted under KRS 278.023, but that prohibition is not relevant to this case.

### **III. CONCLUSION**

For the foregoing reasons, SREA respectfully urges the acceptance of the Stipulation and Recommendation.

Respectfully submitted,

/s/ David E. Spenard

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### **NOTICE AND CERTIFICATION FOR FILING**

Undersigned counsel provides notices that the electronic version of the paper has been submitted to the Commission by uploading it using the Commission's E-Filing System on this 5th day of September 2025. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), the paper, in paper medium, is not required to be filed.

/s/ David E. Spenard

### **NOTICE CONCERNING SERVICE**

The Commission has not yet excused any party from electronic filing procedures for this case.

/s/ David E. Spenard