

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)	CASE NO. 2025-00045
OF PUBLIC CONVENIENCE AND NECESSITY AND)	
SITE COMPATIBILITY CERTIFICATES)	

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

Dated: September 5, 2025

TABLE OF CONTENTS

I.	Introduction: The Stipulation and Recommendation Satisfies All Applicable Statutory Requirements and Will Help Power a Bright Future for Kentucky’s Economy.	1
II.	The Stipulation Provides Needed Resources, Transparency, and Customer Protections to Power the Enormous Economic Growth Resulting from the Ongoing Efforts of Governor Beshear, the General Assembly, and Local Governments.	5
III.	There Is Ample Evidence Demonstrating that the Stipulation-Recommended Resources Satisfy the CPCN Standards of Need and Lack of Wasteful Duplication.....	11
A.	A Utility Can Satisfy the CPCN Need Standard by Showing a Reasonable Basis to Anticipate Long-Range Demand Sufficient to Make Proposed Facilities Economically Feasible; Satisfying the Standard Does Not Require Signed Contracts or Absolute Certainty.	11
B.	There Is Ample Evidence of Burgeoning Short- and Long-Term Demand for Electric Supply in the Companies’ Service Territories, Fully Satisfying the CPCN Need Standard Concerning an Adequate Consumer Market.	13
C.	The Companies Have Demonstrated Conclusively that their Existing Facilities Are Insufficient to Meet the Enormous Need.	18
D.	The Companies’ Proposed Rate EHLF Helps Satisfy the Economic Feasibility Component of the CPCN Need Standard.....	19
E.	The Companies Have Also Demonstrated Need for the Ghent 2 SCR to Ensure Both Ongoing Compliance with Applicable Environmental Requirements and Ghent 2’s Year-Round Availability to Serve Customers’ Growing Needs.....	20
F.	The Companies Have Also Demonstrated Lack of Wasteful Duplication Concerning the Stipulation-Recommended Resources, which Are Least-Cost Across a Wide Range of Future Scenarios.....	21
IV.	The Commission’s Trimble County 2 Final Order Is a Useful Guide for the Commission in this Case, Showing the Wisdom and Propriety of Granting CPCNs and then Monitoring the Utility’s Prudent Use of that Authority Rather than Denying CPCNs and Forgoing Valuable Resources for Serving Customers.	27
V.	The Commission Can Confidently Approve CPCNs for the Stipulation-Recommended Resources Because Granting CPCNs Does Not Guarantee Cost Recovery and Because the Companies Have Decades of Demonstrated Prudence with CPCN Authority.	29
VI.	Any Delay in Approving the Stipulation-Recommended CPCNs for Brown 12 and Mill Creek 6 Would Be Costly to Customers and the Commonwealth.	31
VII.	The Commission Has the Required Authority to Approve the Stipulation in Full.	33
A.	The Stipulation-Proposed Mill Creek 2 Life Extension and Adjustment Clauses MC2 and MC6 Are Properly before the Commission and Ripe for Decision in this Proceeding.....	33
B.	The Companies Have Authority to Extend the Retirement Date of Mill Creek 2 to the In-Service Date of Mill Creek 6, which the Commission Should Affirm.....	37

VIII.	The Commission Should Approve the Stipulation in Full and Without Modification Because It Provides Cost-Recovery Benefits to Customers; Any Other Rate-Related or Unit-Ownership Issues Can Be Addressed in Subsequent Proceedings	39
IX.	The Decision before the Commission Does Not Concern the Merits of Data Centers; rather, It Is about Kentucky’s Future Economic Vitality.....	40
X.	Conclusion: Approving the Stipulation in Full and Without Modification Would Be Both Consistent with Law and Good for Kentucky.....	42

I. Introduction: The Stipulation and Recommendation Satisfies All Applicable Statutory Requirements and Will Help Power a Bright Future for Kentucky’s Economy.

Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (collectively, “Companies”) respectfully submit that this case is about much more than certificates of public convenience and necessity (“CPCNs”), site compatibility certificates, and cost recovery mechanisms; at its core, it is about the future of Kentucky and its economic vibrancy for decades to come. Governor Beshear has announced historic levels of new investment across a range of industries and other vital uses in the Commonwealth, from advanced manufacturing to healthcare, all driven largely by his efforts and those of his administration, the General Assembly, and local governments to facilitate and attract such investment and growth.¹ The Stipulation and Recommendation (“Stipulation”) supported in this case by the Companies, Kentucky-focused consumer advocates, and representatives of interests ranging from Kentucky coal to renewable energy, will help ensure ample, reliable, and economical energy supply for *all* customers.² It will also help ensure there will be ample locally produced power to support the economic growth Kentucky has invested significant dollars to attract,³ and it will help support new jobs and hundreds of millions of dollars in new state and local tax revenues.⁴ Thus, by approving the proposed

¹ See Companies’ Response to AG-KIUC PHDR 3 (citing Team Kentucky, “Gov. Beshear Highlights 10-Day Economic Win Streak With Over \$6.3 Billion Invested and More Than 1,000 Jobs,” New Kentucky Home (Aug. 20, 2025) (“Today, Gov. Andy Beshear highlighted an economic win streak for Kentucky, with more than \$6.3 billion in new investment and over 1,000 full-time jobs announced by four iconic companies in less than two weeks.”), available at https://newkentuckyhome.ky.gov/Newsroom/NewsPage/20250820_EconomicMomentum (accessed Aug. 21, 2025)); Direct Testimony of John Bevington (“Bevington Direct”) at 2-3 (Feb. 28, 2025) (describing the Commonwealth’s \$400 million commitment to site readiness investments in communities across Kentucky); Companies’ response to AG-KIUC 1-43(c)-(d) (April 17, 2025).

² Joint Stipulation Testimony of Lonnie E. Bellar and Robert M. Conroy (“Stipulation Testimony”) at 3 (July 29, 2025); Stipulation Testimony Exhibit 1 (“Stipulation and Recommendation”) at 1.

³ Bevington Direct at 3; Companies’ Response to AG-KIUC 1-43(c).

⁴ Rebuttal Testimony of John Bevington (“Bevington Rebuttal”) at 8-10 (July 18, 2025) (estimating that a 400 MW data center sited in Jefferson County could generate \$50 million in property tax revenues within a year of coming online and citing Te-Ping Chen, *The Tech Job Paying Six Figures—No College Degree Required*, Wall St. J. (Aug. 14, 2024) to illustrate data center job creation).

Stipulation, the Kentucky Public Service Commission (“Commission”) will satisfy its statutory responsibilities, support reliable and lowest reasonable cost service for existing and new customers, and help power Kentucky’s vital economic growth.

The reasonableness of the Stipulation as a total resolution of all issues in this case is evident in its many benefits, including:

- Providing for two new natural gas combined cycle (“NGCC”) units, Brown 12 and Mill Creek 6, which are least-cost resources across a wide range of future fuel price, load growth, and environmental regulatory scenarios, and will provide low-cost energy to serve all customers;⁵
- Investing in a new selective catalytic reduction facility (“SCR”) to reduce nitrogen oxides (“NOx”) emissions, thereby ensuring ongoing environmental compliance and the year-round availability of the 485 MW Ghent 2 coal-fired unit;⁶
- Extending the life of the coal-fired Mill Creek 2 unit to ensure economic load growth can advance while the new NGCC units are under construction;⁷
- Providing nearly real-time transparency and prudence review through semi-annual in-person construction, load forecasting, and economic development meetings at the Commission, which all intervenors to this proceeding may attend;⁸

⁵ Stipulation and Recommendation at 3 § 1.1(A)-(B); Rebuttal Testimony of Stuart Wilson (“Wilson Rebuttal”) at 7-8. (July 18, 2025).

⁶ Stipulation and Recommendation at 3 § 1.1(C); Wilson Rebuttal at 8 (testifying that Ghent 2 SCR is a part of a least cost resource portfolio across five fuel price scenarios); Rebuttal Testimony of Philip A. Imber (“Imber Rebuttal”) at 3 (July 18, 2025).

⁷ Stipulation and Recommendation at 8 § 4.3; Stipulation Testimony at 11.

⁸ Stipulation and Recommendation at 5 § 1.6; Stipulation Testimony at 5.

- Creating two innovative new cost recovery mechanisms, Adjustment Clauses MC2 and MC6, which are beneficial to customers and ensure recovery only of prudently incurred costs, no more and no less;⁹
- Ensuring the Companies will file with the Commission all retail electric service agreements with customers under the proposed Rate EHLF (Extremely High Load Factor), which is a rate schedule under review in the Companies’ pending base rate cases that provides significant customer protections and helps ensure the economic feasibility of the Stipulation-recommended resources;¹⁰ and
- Allowing the Companies to seek Commission approval for additional resources if and as needed in the future.¹¹

As discussed at length herein, the Stipulation-recommended resources more than satisfy the need and lack-of-wasteful-duplication standards for CPCNs (see Section III below), and the Commission has full authority in this proceeding to consider and approve the proposed Adjustment Clauses MC2 and MC6 (see Section IV.A below), as well as to consider and affirm the Companies’ authority to delay the previously approved retirement of Mill Creek 2 without additional Commission approval (see Section IV.B below).

The depth and breadth of support for the Stipulation also demonstrate its reasonableness. Kentucky’s primary consumer advocate and the sole party with a statutory right and duty to represent all customers in Commission proceedings, namely the Attorney General, supports the Stipulation.¹² Kentucky Industrial Utility Customers, Inc. (“KIUC”), which represents in this case *ten* of Kentucky’s largest energy users, employers, and drivers of economic vibrancy—including

⁹ Stipulation and Recommendation at 5 § 2.1, 8 § 4.4; Stipulation Testimony at 8-9, 13.

¹⁰ Stipulation and Recommendation at 8 § 3.1(B); Stipulation Testimony at 14.

¹¹ Stipulation and Recommendation at 3 § 1.2; Stipulation Testimony at 4.

¹² Stipulation and Recommendation at 17; KRS 367.150(8)(b).

those making headlines with new billion-dollar investments in Kentucky—supports the Stipulation.¹³ Intervenor with interests as diverse as the Kentucky Coal Association, Inc. and the Southern Renewable Energy Association support the Stipulation.¹⁴ The governments of Kentucky’s two largest cities do not oppose the Stipulation.¹⁵ In short, Kentucky’s primary consumer advocate, its largest energy users and drivers of economic vibrancy, and interests ranging from Kentucky coal advocacy to renewable energy advocacy all support the Stipulation and ask the Commission to adopt it in full and without modification as a complete and total resolution of all issues in this case. The Commission should do so and help Kentucky thrive.

Importantly, the Commission should refuse any invitation to delay or defer approval of the Stipulation’s recommended resources. In addition to slowing or stopping the enormous economic expansion poised to happen in Kentucky, delaying these vital resources would result in tremendous cost increases. The cost of Brown 12, for which the Companies first sought approval in their 2022 CPCN case, has increased \$400 million (40%) in just two years.¹⁶ NGCC demand is expected to remain high for the foreseeable future, making it reasonable to expect that any delay in proceeding with Brown 12 or Mill Creek 6 would result in increased costs to customers.¹⁷ Moreover, the time to obtain vital firm gas transportation service, particularly for Mill Creek 6, is limited; failing to obtain it now will likely result in delaying its in-service date for five to eight years and would

¹³ Whereas the Joint Intervenor represents just four entities (Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Coalition, and Mountain Association), in this case KIUC represents *ten* large energy users, employers, and drivers of Kentucky’s economic well-being: AAK; USA K2, LLC; Alliance Coal, LLC; Carbide Industries LLC; Corning Incorporated; Dow Silicones Corporation; Ford Motor Company; JBSSA USA Swift; North American Stainless (“NAS”); and Toyota Motor Manufacturing, Kentucky, Inc.

¹⁴ Stipulation and Recommendation at 20-21.

¹⁵ Stipulation and Recommendation at 18-19.

¹⁶ Rebuttal Testimony of David L. Tummonds (“Tummonds Rebuttal”) at 3 (July 18, 2025); *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas & Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan and Approval of Fossil Fuel-Fired Generating Unit Retirements*, Case No. 2022-00402, Companies’ Response to JI PHDR 4.1(a) fn. 1 (Ky. PSC Sep. 15, 2023).

¹⁷ Tummonds Rebuttal at 2-3. *See also* Companies’ Response to PSC 1-34(a); Companies’ Response to PSC 5-2; Companies’ Response to JI 1-52(d); Companies’ Response to JI 1-73; Companies’ Response to Sierra Club 1-3(d).

require advancing a costlier resource in its place.¹⁸ Therefore, the time to approve the Stipulation in full and without modification is *now*. Doing so will allow Kentucky’s economy to flourish while ensuring safe, reliable, and lowest reasonable cost energy for all the Companies’ customers.

II. The Stipulation Provides Needed Resources, Transparency, and Customer Protections to Power the Enormous Economic Growth Resulting from the Ongoing Efforts of Governor Beshear, the General Assembly, and Local Governments.

Just this summer, Kentucky’s leaders announced and celebrated more than *\$6.3 billion* of new investment in Kentucky across industries as diverse as advanced glass manufacturing, electric vehicle manufacturing, appliance manufacturing, and uranium enrichment, which are expected to create roughly 1,000 full-time jobs in the Commonwealth.¹⁹ Not counting any demand associated with these most recent announcements, the Companies’ economic development pipeline has continued to expand to almost 9,000 MW, including a new 1,400 MW data center project with the potential to generate hundreds of millions of dollars in local and state property tax revenues.²⁰ None of this is an accident; it is the culmination of a statewide effort to create a vibrant economy that spans industries and geography. Governor Beshear has promoted Kentucky around the world as a place for businesses and industries to locate and grow.²¹ He is not working alone; the General Assembly and Governor Beshear’s administration worked together to craft legislation to induce data centers to locate in Kentucky,²² deeming the attraction of data centers and the hundreds of

¹⁸ Rebuttal Testimony of Charles R. Schram (“Schram Rebuttal”) at 4 (July 18, 2025); Companies’ Supplemental Response to KCA 1-4, Supplemental Attachment 1 at 8; Companies’ Response to PSC 3-8(b), Attachment at 5-6.

¹⁹ NEW KENTUCKY HOME, *supra* fn. 1.

²⁰ Companies’ Response to AG-KIUC PHDR 3 (Aug. 13, 2025). *See also* Bevington Rebuttal at 8-10 (estimating \$50 million in first-year property tax revenues for a 400 MW data center in Jefferson County).

²¹ Bevington Direct at 3-4 (Feb. 28, 2025).

²² *Id.* at 14-15, *citing, e.g.*, “Stivers on Tax Incentive for Kentucky’s First Data Center: Incentive will attract major business to Louisville” (Jan. 16, 2025) (“‘I worked closely with Secretary Jeff Noel from the Kentucky Cabinet for Economic Development and top private sector leaders to craft and pass groundbreaking legislation that will spark job creation and expand the tax base, which creates more revenue,’ Stivers said. ‘This project is a game-changer, driving long-term economic growth in our major metropolitan center and boosting Kentucky as a regional business hub.’”), available at <https://kysenaterepublicans.com/press-releases> (accessed Jan. 16, 2025); 2025 Ky. Acts Ch. 98. 2025 Ky. Acts Ch. 98 amended KRS 154.20-220(17), which defines “qualified data center project,” to remove part (c), which effectively limited the scope of the definition to data centers in Jefferson County. AG-KIUC 1-43(c).

millions of dollars in tax revenue each project can generate to be a matter of “paramount importance” to Kentucky’s economic future.²³ In addition to incentivizing data center projects, Kentucky’s leadership is helping communities across the Commonwealth position themselves for opportunities. Governor Beshear, the General Assembly, and local governments have partnered to invest hundreds of millions of dollars in shovel-ready sites to attract new and expanding businesses and industries.²⁴ In short, Kentucky is poised for enormous economic growth; making that possible will require ample, reliable, and economical energy supply.²⁵

Fortunately, that is exactly what the Stipulation provides, as well as enhanced transparency and customer protections so the Commission can confidently approve the Stipulation in full and without modification.

First and foremost, the Stipulation asks the Commission to approve CPCNs and site compatibility certificates for two new baseload 645 MW NGCC units—Brown 12 and Mill Creek 6—that will provide low-cost power to help meet the needs of *all* customers and power Kentucky’s economic growth.²⁶ As discussed at greater length below, the Companies’ numerous analyses demonstrate conclusively that both of these units are least-cost across a wide range of fuel price, load growth, and environmental regulatory scenarios.²⁷

²³ KRS 154.20-222(3) (emphasis added). *See* Bevington Rebuttal at 8-10 (estimating \$50 million in first year property tax revenues for a 400 MW data center in Jefferson County).

²⁴ KRS 154.20-222(3); Bevington Direct at 3, 6; Companies’ Response to AG-KIUC 1-43(c)-(d); 2022 Ky. Acts. 176; Bevington Direct at 3, *citing* “Kentucky Product Development Initiative (KPDI),” available at https://newkentuckyhome.ky.gov/LP/NKY_KPDI (accessed Aug. 20, 2025).

²⁵ Companies’ Response to AG-KIUC PHDR 3.

²⁶ Stipulation and Recommendation at 3, § 1.1(A)-(B); Wilson Rebuttal at 2.

²⁷ This includes the Companies’ analyses from their 2024 Integrated Resource Plan (“IRP”) proceeding, the record of which the Commission incorporated into the record of this case. Direct Testimony of Stuart A. Wilson (“Wilson Direct”) at 21 (Feb. 28, 2025) (“The Companies [IRP] modeling showed that in the high load forecast scenario—which is very similar to the Companies 2025 CPCN Load Forecast—adding at least two NGCCs and at least 400 MW of BESS by 2032 is least-cost across all four environmental scenarios (and all five fuel scenarios in each of the four environmental scenarios).”).

Second, the Stipulation asks the Commission to approve a CPCN for the installation of an SCR for Ghent 2. This environmental control technology is necessary to reduce NOx emissions and thereby ensure ongoing compliance with the applicable National Ambient Air Quality Standards for ozone (“ozone NAAQS”) promulgated under the federal Clean Air Act, keeping Ghent 2 available year-round to help meet all customers’ needs.²⁸

Third, the Stipulation provides for a life extension of Mill Creek 2,²⁹ which will help the Companies serve growing load requirements in the short term while Brown 12 and Mill Creek 6 are under construction and not yet in service.³⁰ This extension is a vital and integral component of the Stipulation. Without it, the Stipulation-provided withdrawal of the Companies’ CPCN request for the Cane Run Battery Energy Storage System (“BESS”) would significantly curtail the Companies’ ability to serve additional load until the new NGCC units come online.³¹ But with the life extension, the Companies and the Commission will have the benefit of additional time to observe how load develops and whether additional tax credits might be available for BESS as needed in the future.³² The Mill Creek 2 extension is contingent upon obtaining necessary environmental approvals and the Commission’s affirmation that the Companies’ existing retirement authority for Mill Creek 2 remains sufficient for a later retirement date (as discussed at length below, the Companies have the requisite authority but ask the Commission to affirm it).³³

²⁸ Stipulation and Recommendation at 3 § 1.1(C); Wilson Rebuttal at 8 (testifying that Ghent 2 SCR is a part of a least cost resource portfolio across five fuel price scenarios); Rebuttal Testimony of Philip A. Imber (“Imber Rebuttal”) at 3 (July 18, 2025).

²⁹ Stipulation and Recommendation at 8, § 4.3; Stipulation Testimony at 11.

³⁰ Supplemental Response to KCA 1-4, Supplemental Attachment at 11 (May 30, 2025).

³¹ Stipulation Testimony at 11.

³² Relatedly, the Stipulation provides that the Companies may re-file a CPCN Application for Cane Run BESS, or a substitute for it, at any time, which would be supported by a competitive procurement process. If the Commission approves the Stipulation without modification, resulting in the withdrawal of the Companies’ Cane Run BESS CPCN request, the Companies’ request for a site compatibility certificate for Cane Run BESS would become moot. Stipulation and Recommendation at 3, § 1.2; Stipulation Testimony at 4.

³³ Stipulation and Recommendation at 8, § 4.3; Stipulation Testimony at 11.

To facilitate cost recovery for this extended operation, the Stipulation proposes a new cost-recovery mechanism, Adjustment Clause MC2, which would allow LG&E to recover incremental stay-open costs not included in base rates.³⁴ This cost-recovery approach is a benefit for customers because it ensures precise recovery of prudent costs and regular reporting and review by the Commission,³⁵ and the costs collected thereunder should tend to decrease over time as the net book value of required capital investments decreases with depreciation.

Fourth, the Stipulation provides for a new Adjustment Clause MC6, which will allow LG&E to recover all non-fuel costs of Mill Creek 6 from its in-service date through its retirement.³⁶ Like Adjustment Clause MC2, this new cost-recovery mechanism will provide benefits to customers by recovering only prudently incurred costs, providing regular reporting to and review by the Commission, and a generally declining net book value, resulting in generally decreasing cost recovery over time.³⁷ The Stipulation provides another valuable customer benefit through Adjustment Clause MC6, namely that from the in-service date of Mill Creek 6 until new base rates take effect following the next rate case after the in-service date, LG&E will credit to customers any incremental revenues generated from data centers served under the proposed Rate EHLF and other eligible data centers.³⁸ In sum, Adjustment Clause MC6 ensures customers will benefit from the economic development enabled by Mill Creek 6 in near-real-time while recovering only the prudent costs of Mill Creek 6, no more and no less.³⁹

³⁴ Stipulation and Recommendation at 8, § 4.4; Stipulation Testimony at 13; Companies' Response to AG-KIUC PHDR 2.

³⁵ Stipulation Testimony at 13-14; Companies' Response to AG-KIUC PHDR 2. *See also* Stipulation Exh. 2.

³⁶ Stipulation and Recommendation at 5, § 2.1; Stipulation Testimony at 8-9.

³⁷ *Id.*; Companies' Response to AG-KIUC PHDR 2.

³⁸ Stipulation and Recommendation at 5-7, §§ 2.1(A)-(E), 2.2(A); Stipulation Testimony at 7-9.

³⁹ Relatedly, the Stipulation further provides that the Companies will establish regulatory asset(s) for the difference between allowance for funds used during construction ("AFUDC") accrued at the Companies' weighted average cost of capital and AFUDC accrued using the methodology approved by the Federal Energy Regulatory Commission during the construction periods of Brown 12 and Mill Creek 6. It also provides that the Companies will withdraw their

Fifth, the Stipulation provides transparency and accountability by requiring the Companies to provide semi-annual in-person construction, load forecasting, and economic development updates at the Commission.⁴⁰ These updates, which will begin in the second quarter of 2026 and continue through the second quarter of 2032, will be open to all intervenors in this proceeding. This will give the Commission nearly real-time review of, and insight into, all the relevant factors showing the prudence of the Companies' activities for the duration of (and a year beyond) the anticipated construction schedule of the resources the Stipulation recommends.

Sixth, the Stipulation provides that the Companies will seek Commission approval for any long-term (i.e., longer than one year) sale of capacity, energy, or both to another Kentucky utility for the purpose of serving one or more Kentucky data centers not in the Companies' service territories.⁴¹ This provision helps ensure that any long-term sale of capacity, energy, or both to another Kentucky utility to serve one or more data centers outside the Companies' service territories is reasonable for all affected parties and customers, and it is a significant benefit of the Stipulation.

Seventh, the Stipulation provides for two items related to the Companies' proposed Rate EHLF, which the Commission is reviewing in the Companies' pending base rate cases.⁴² Specifically, the Stipulation provides that the Companies will seek in their pending base rate cases to apply Rate EHLF only to new customers,⁴³ and the Companies will file all Rate EHLF electric service agreements with the Commission.⁴⁴ This ensures transparency as large data center

request for a regulatory asset for post-in-service carrying costs and other related expenses. Stipulation and Recommendation at 4, § 1.5(A).

⁴⁰ Stipulation and Recommendation at 5, § 1.6; Stipulation Testimony at 5-6.

⁴¹ Stipulation and Recommendation at 4, § 1.4; Stipulation Testimony at 10-11.

⁴² Stipulation and Recommendation at 7, § 3.1.

⁴³ *Id.* at 7, § 3.1(A).

⁴⁴ *Id.* at 8, § 3.1(B).

customers commit to take service and will help show the reasonableness of the new resources the Stipulating Parties are asking the Commission to approve.

Eighth, the Stipulation preserves the Companies' flexibility to return to the Commission at any time if additional resources are needed to ensure reliable and economical service for all customers.⁴⁵ Among those resources could be the Cane Run BESS, other BESS, or economical resources that might result from the Stipulation-provided renewable energy and capacity request for proposals the Companies will issue, with input from the intervenors to this proceeding, by mid-2026.⁴⁶

Finally, the Stipulation asks the Commission to approve all other items requested in the Companies' application in this case and KU's application in Case No. 2025-00105,⁴⁷ which the Commission consolidated into this case.⁴⁸ That includes approval of site compatibility certificates for Brown 12 and Mill Creek 6 and cost recovery for the Ghent 2 SCR through KU's Environmental Cost Recovery Surcharge ("ECR") mechanism, no part of which any party to this proceeding has contested and all of which finds abundant support in the record to satisfy the applicable requirements of KRS 278.216 and KRS 278.183, respectively.

In short, the Stipulation provides vitally needed resources to ensure ongoing safe, reliable, and lowest reasonable cost service to *all* customers, both current and future; provides transparency, accountability, and customer benefits; and paves the way to a vibrant future for Kentucky. It has the support of Kentucky-focused important customer advocates and representatives of interests from Kentucky coal to renewable energy, and the Commonwealth's two largest cities do not

⁴⁵ Stipulation and Recommendation at 3, § 1.2; Stipulation Testimony at 4.

⁴⁶ *Id.* at 9-10 §§ 5.1- 5.3.

⁴⁷ Stipulation and Recommendation at 10 § 7.1; Stipulation Testimony at 15.

⁴⁸ *Electronic Application of Kentucky Utilities Company for Approval of Its 2025 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2025-00105, Order (Ky. PSC May 14, 2025).

oppose it. Therefore, the Commission should approve it in full and without condition or modification as a total resolution of all issues in this case.

III. There Is Ample Evidence Demonstrating that the Stipulation-Recommended Resources Satisfy the CPCN Standards of Need and Lack of Wasteful Duplication.

To receive a CPCN, a utility must demonstrate both need and lack of wasteful duplication.⁴⁹ The resources for which the Stipulating Parties ask the Commission to grant the Companies CPCNs (Brown 12, Mill Creek 6, and the Ghent 2 SCR) more than satisfy these requirements.

A. A Utility Can Satisfy the CPCN Need Standard by Showing a Reasonable Basis to Anticipate Long-Range Demand Sufficient to Make Proposed Facilities Economically Feasible; Satisfying the Standard Does Not Require Signed Contracts or Absolute Certainty.

Kentucky's highest court established the CPCN need standard more than fifty years ago:

We think it is obvious that the establishment of convenience and necessity for a new service system or a new service facility requires first a showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed and operated.

Second, the inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.

The above two factors have relation to the *need* of particular consumers for service.⁵⁰

In a later case, the court stated that the relevant inadequacy may result from a need foreseen occurring years into the future—seven years from the date of application in that case—due to “the

⁴⁹ KRS 278.020(1); *Ky. Util. Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885, 890 (Ky. 1952) (“The meaning of ‘public convenience and necessity’ embodies the element of absence of wasteful duplication, as well as a need for service.”).

⁵⁰ *Ky. Util. Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885, 890 (Ky. 1952) (emphasis original).

long range planning necessary in the public utility field.”⁵¹ In that case, the court further clarified that certainty about the future consumer market is *not* required: “[T]he question of whether the consumer market in the immediately foreseeable future will be sufficiently large to make it economically feasible for a proposed system or facility to be constructed ... is not one which must be answered with absolute certainty; it is sufficient that there is a reasonable basis of anticipation.”⁵² In that case, Big Rivers Electric Cooperative had filed an application in 1962 seeking approval to construct a generating unit sized to serve three distribution cooperatives, one of which was under contract with another supplier until 1969.⁵³ At the time of the court’s review it was still uncertain whether the cooperative would be able to take service from Big Rivers.⁵⁴ The court held it was nonetheless reasonable for the Commission to have issued Big Rivers a CPCN for the proposed unit because even if the cooperative were unable to take service from Big Rivers, others would use the power.⁵⁵

In short, the CPCN need standard in Kentucky requires neither an immediate inadequacy of service nor absolute certainty regarding load growth; rather, all the standard requires is showing a reasonable basis for anticipating enough long-range demand to make the proposed facilities economically feasible.

⁵¹ *Ky. Util. Co. v. Pub. Serv. Comm’n*, 390 S.W.2d 168, 172 (Ky. 1965). *See id.* at 170 (“Big Rivers’ application to the Public Service Commission was made in 1962. It sought a certificate of convenience and necessity authorizing: (1) The construction of a steam generating plant with a capability of 75,000 KW, designed to supply the generating needs of Henderson-Union and Green River commencing in 1966, and the needs of Meade County commencing in 1969[.]”); *see id.* at 172 (“And we think that in view of the long range planning necessary in the public utility field, an anticipation in 1966 of the needs of 1969 is not too remote.”).

⁵² *Id.* at 172.

⁵³ *Id.* at 170.

⁵⁴ *Id.* at 172.

⁵⁵ *Id.*

B. There Is Ample Evidence of Burgeoning Short- and Long-Term Demand for Electric Supply in the Companies' Service Territories, Fully Satisfying the CPCN Need Standard Concerning an Adequate Consumer Market.

In this proceeding, there is abundant evidence of “a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed and operated.” The Companies’ economic development pipeline has grown from 41 opportunities and 478 MW of potential load on January 1, 2024,⁵⁶ to 88 opportunities and 6,793 MW of potential load on January 1, 2025,⁵⁷ to an unprecedented 179 opportunities and 8,956 MW of potential load as of August 13, 2025, the latter of which includes more than 2,200 MW of *non*-data-center load potential.⁵⁸ Applying probabilities based on the Companies’ decades of experience in economic development in Kentucky, the expected load value of the projects in the current economic development pipeline is more than 2,500 MW of new data center load and more than 500 MW of new non-data center load.⁵⁹ These expected values exceed the 1,750 MW of data center load and less than 40 MW of new non-data-center economic development load the Companies included in their 2025 CPCN Load Forecast,⁶⁰ and they far exceed the 1,002 MW of incremental load needed for the stipulated resources to be economical.⁶¹ In short, the Companies have demonstrated a reasonable basis for anticipating an “adequate market” for the proposed facilities.⁶²

⁵⁶ Companies’ Response to JI 3-20(a).

⁵⁷ *Id.*

⁵⁸ Companies’ Aug. 13, 2025 Supplemental Response to PSC 2-17(g).

⁵⁹ Companies’ Response to AG-KIUC PHDR 3.

⁶⁰ Direct Testimony of Tim Jones at 8.

⁶¹ Companies’ Response to PSC 5-4(a).

⁶² *Ky. Util. Co. v. Pub. Serv. Comm’n*, 390 S.W.2d 168, 172 (Ky. 1965):

Furthermore, it would appear that even if Big Rivers were not granted authority to serve Meade County, the resulting temporary excess capacity of the Big Rivers generating plant could be utilized by the existing utilities (whose needs will constantly be growing), just as KU now utilizes the excess capacity of the OMU plant. It may be pointed out that the anticipation by OMU, in planning its 1964 plant, of serving Green River and Henderson-Union was not fulfilled but nevertheless there is an adequate market for the power from the 1964 plant.

Concerning data centers, the General Assembly, working with Governor Beshear's administration,⁶³ crafted and enacted legislation in 2024 seeking to attract data centers to Kentucky through sales tax incentives, stating that "the inducement of the location of data center projects within the Commonwealth is of paramount importance to the economic well-being of the Commonwealth."⁶⁴ In 2025, the General Assembly expanded the geographic reach of those sales tax incentives from Jefferson County to all of Kentucky.⁶⁵ And Kentucky's efforts are working: At the beginning of 2023, there was *zero* data center potential in the Companies' economic development pipeline.⁶⁶ Now there is over 6,700 MW of such potential load,⁶⁷ the publicly announced 525 MW Camp Ground Road data center project continues to progress,⁶⁸ and the Companies are in daily communications with hyperscale companies and data center developers about thousands of megawatts of additional data center projects.⁶⁹ This enormous and growing data center interest is a key reason why the Companies believe there is abundant evidence to satisfy the CPCN need standard regarding the Stipulation-recommended resources.

Another compelling reason there is a clear need for the Stipulation-recommended resources is the recent explosion in non-data-center economic development load growth. To cite just a few examples:

⁶³ Bevington Direct at 6-7.

⁶⁴ *Id.* at 8; KRS 154-20.222(3).

⁶⁵ 2025 Ky. Acts Ch. 98.

⁶⁶ Companies' Response to JI 3-20(a).

⁶⁷ Companies' Response to AG-KIUC PHDR 3.

⁶⁸ *See* Companies' Response to PSC 2-14(c).

⁶⁹ August 6, 2025 Hearing, VR 11:08:00 – 11:09:00 a.m.

- In August 2025, Apple and KIUC member Corning announced \$2.5 billion of new investment in Corning’s Harrodsburg, Kentucky plant to manufacture all Gorilla Glass for Apple’s iPhones and Apple Watches;⁷⁰
- Also in August 2025, KIUC member Ford announced \$2 billion in new investment at its Louisville Assembly Plant to manufacture new electric vehicles;⁷¹
- Also in August 2025, General Matter announced \$1.5 billion in investment for a new uranium enrichment facility in Paducah, Kentucky, on the site of the U.S. Department of Energy’s (“DOE”) former gaseous diffusion plant, where DOE is also seeking private investment for AI data centers;⁷²
- In June 2025, GE Appliances announced \$490 million of new investment in Louisville’s Appliance Park for washer and dryer manufacturing;⁷³
- Also in June 2025, Norton Healthcare announced its intention to build a new pediatric hospital as part of a 156-acre pediatric care campus in Jefferson County, which Governor Beshear indicated could attract over \$1 billion in investment and create 1,000 jobs;⁷⁴

⁷⁰ Companies’ Response to AG-KIUC PHDR 3 (citing Apple, *Apple and Corning Partner to Manufacture 100 Percent of iPhone and Apple Watch Cover Glass in Kentucky*, APPLE (Aug. 6, 2025), available at <https://www.apple.com/newsroom/2025/08/apple-corning-to-manufacture-all-iphone-apple-watch-cover-glass-in-kentucky/>).

⁷¹ Companies’ Response to AG-KIUC PHDR 3 (citing Gov. Beshear Joins Ford Motor Co. To Announce Kentucky’s Third-Largest Economic Development Project On Record, OFFICE OF THE GOVERNOR (Aug. 11, 2025), <https://www.kentucky.gov/Pages/Activity-stream.aspx?n=GovernorBeshear&prId=2555>).

⁷² Companies’ Response to AG-KIUC PHDR 3 (citing Gov. Beshear Joins General Matter To Celebrate Milestone for \$1.5 Billion Uranium Enrichment Facility in Paducah, Set To Create 140 Full-Time Jobs, NEW KENTUCKY HOME (Aug. 5, 2025), https://newkentuckyhome.ky.gov/Newsroom/NewsPage/20250805_GeneralMatter).

⁷³ Companies’ Response to AG-KIUC PHDR 3 (citing GE Appliances Pressroom, *GE Appliances Doubles Down on U.S. Manufacturing With \$490 Million Laundry Plant Investment at its Global Headquarters in Louisville, Kentucky*, GE APPLIANCES (June 26, 2025), <https://pressroom.geappliances.com/news/ge-appliances-doubles-down-on-u-s-manufacturing-with-490-million-laundry-plant-investment-at-its-global-headquarters-in-louisville-kentucky>).

⁷⁴ Companies’ Response to AG-KIUC PHDR 3 (citing Matthew Glowicki, *Norton Children’s to build new full-service pediatric hospital in Louisville. What to know*, COURIER J. (June 11, 2025) (“Kentucky Gov. Andy Beshear said Wednesday that the project would draw ‘well over’ \$1 billion in investment across the campus and support 1,000 on-site workers.”), available at <https://www.courier-journal.com/story/news/local/2025/06/11/norton-childrens-to-build-full-service-pediatric-hospital-louisville/84119417007/>).

- In 2024, KIUC member Toyota announced over \$2 billion in new investments in its Georgetown facilities to manufacture a new electric vehicle and build an advanced paint facility;⁷⁵ and
- In April 2024, the University of Kentucky broke ground on its new UK Cancer and Advanced Ambulatory Building, which is scheduled for a 2027 completion.⁷⁶

Importantly, *none* of the load associated with any of these historic investments and expansions is in the 2025 CPCN Load Forecast; it is all additional to the load forecast and shows the accelerating trend of new investments and load growth in the Companies’ Kentucky service territories.

And this burgeoning growth and investment is not occurring by accident: Governor Beshear and the General Assembly have made economic development and growth a top priority, making it entirely reasonable to expect that ample demand to justify the stipulated facilities will indeed materialize. For example:

- The Kentucky General Assembly unanimously passed, and Governor Beshear signed into law, the Kentucky Product Development Initiative (“KPDI”) in 2022. Since its inception, the General Assembly has appropriated more than \$300 million to fund development-ready sites across the Commonwealth.⁷⁷ These appropriations are awarded through a competitive

⁷⁵ Companies’ Response to AG-KIUC PHDR 3 (citing Toyota Newsroom, *A Fresh Coat: Toyota Kentucky Invests \$922 Million to Build Advanced Paint Facility*, TOYOTA (Dec. 12, 2024) (“Transformation continues at Toyota Kentucky with a \$922 million investment to build a new advanced paint facility and further support electrification efforts. ... Scheduled to open in 2027, the facility will add 1 million square-feet of capacity while decreasing carbon emissions by 30 percent and water usage by 1.5 million gallons per year. ... This news follows a \$1.3 billion investment announced earlier this year at the Georgetown site to bring assembly of an all-new, three-row battery electric SUV to the U.S. market in 2026. Toyota’s investment in Kentucky reaches more than \$11 billion since breaking ground in 1986, underscoring the automaker’s promise of stable employment.”), available at <https://pressroom.toyota.com/a-fresh-coat-toyota-kentucky-invests-922-million-to-build-advanced-paint-facility/>).

⁷⁶ Companies’ Response to AG-KIUC PHDR 3 (citing Allison Perry and Elizabeth Chapin, *UK breaks ground on new Cancer and Advanced Ambulatory Building*, UKNOW (Apr. 25, 2024), <https://uknow.uky.edu/uk-healthcare/uk-breaks-ground-new-cancer-and-advanced-ambulatory-building-0>).

⁷⁷ Bevington Direct at 3 (Feb. 28, 2025); 2022 Ky. Acts. 176; Companies’ Response to AG-KIUC 1-43(d) (Apr. 17, 2025).

process that requires corresponding local investments, meaning that KPDI funds will ultimately drive more than \$400 million into site readiness investments across Kentucky.⁷⁸

Communities throughout the Companies' territories are already using KPDI funds to make historic investments.⁷⁹

- Last year, the Kentucky Cabinet for Economic Development and the Kentucky Association for Economic Development drafted the “Collaborative Blueprint created by and for Kentucky’s Economic Developers,” which lays out a plan to spur growth in Kentucky over the next five years.⁸⁰
- Earlier this year, Governor Beshear traveled to the World Economic Forum to promote the “My New Kentucky Home” campaign to further drive economic investment, attract and retain talent, and increase tourism across the Commonwealth.⁸¹ As Governor Beshear wrote upon returning from the forum, “The world is seeing the historic progress we’re making in Kentucky, and they want to invest in us.”⁸²

All of this shows the proper concern is not whether sufficient need exists to justify the stipulated resources, but rather whether the Companies will have enough energy resources to support the diverse and growing development that is eager to locate here. Thus, there is ample evidence to satisfy the portion of the CPCN need standard regarding “a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed and operated.”

⁷⁸ *Id.*

⁷⁹ Companies’ response to AG-KIUC 1-43(d) (Apr. 17, 2025).

⁸⁰ Bevington Direct at 3 (citing New Kentucky Home, *Collaborative Blueprint Created by and for Kentucky’s Economic Developers: Executive Summary*, NEW KENTUCKY HOME, (https://newkentuckyhome.ky.gov/LP/NKY_FuturePlanning (last visited Aug. 28, 2025))).

⁸¹ Bevington Direct at 3-4.

⁸² *Id.*

C. The Companies Have Demonstrated Conclusively that their Existing Facilities Are Insufficient to Meet the Enormous Need.

Just as there is abundant evidence that new and existing customers will require vastly more energy supply beginning in the next few years, there is also ample evidence that the Companies' existing and approved facilities will not suffice to meet the surging need. 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 2027.⁸³ That amount is far too low to serve reasonably expected *non*-data center load of more than 500 MW,⁸⁴ which does not include the load associated with the more than \$6.3 billion of new investment discussed above, which could add 100 MW or more of load to the Companies' system.⁸⁵ And a single large data center, such as the 525 MW Camp Ground Road data center,⁸⁶ would more than consume all of the Companies' available capacity with current and currently approved resources, leaving no capacity for the other valuable economic development load growth already announced in the Companies' service territories, to say nothing of potential additional load growth.⁸⁷ Therefore, there is much more than a reasonable basis to anticipate that the Companies need additional resources to support the historic economic development taking place across their service territories.

There is similarly no reasonable doubt about the need for and economics of the Stipulation-recommended resources. All of the stipulated resources are economical with as little as 1,002 MW of new load by 2031,⁸⁸ when Mill Creek 2 would retire under the life extension proposed in the Stipulation (absent any further life extension shown to be economical following the analysis the

⁸³ Companies' Response to PSC PHDR 4.

⁸⁴ Companies' Response to AG-KIUC PHDR 3.

⁸⁵ Companies' Response to AG-KIUC PHDR 3.

⁸⁶ Companies' Response to PSC 2-14(b); Attachment to Companies' Supplemental Responses to AG-KIUC 2-17(g).

⁸⁷ Companies' Response to PSC PHDR 4.

⁸⁸ Companies' Response to PSC 5-4(a).

Companies will conduct for their 2027 Integrated Resource Plan (“IRP”).⁸⁹ As shown above, a single data center and the expected value of non-data-center load growth would exceed that amount;⁹⁰ again, that does not include the load associated with the more than \$6.3 billion of new investment discussed above, which could add 100 MW or more of load to the Companies’ system.⁹¹ And the stipulated resources would allow the Companies to serve *at most* 1,470 MW of new load,⁹² leaving the Companies 280 MW short of meeting their projected 1,750 MW of data center demand by 2031, much less the more than 500 MW of expected non-data-center load and the additional potential load announced this summer.⁹³ Again, the proper concern in this proceeding is not how the Companies will find enough customers to make productive use of the stipulated resources, but rather how the Companies will be able to serve all the load that wants to locate in their service territories.

D. The Companies’ Proposed Rate EHLF Helps Satisfy the Economic Feasibility Component of the CPCN Need Standard.

Although the Companies’ proposed Rate EHLF is not under review in this proceeding, its terms do provide additional support for demonstrating that the Stipulation’s recommended resources more than satisfy the CPCN need standard regarding economic feasibility. The proposed Rate EHLF protects existing customers and helps ensure economic feasibility by providing: (1) an increased minimum demand charge ratchet set at 80% of contract capacity, which is higher than any similar requirements in the Companies’ other rate schedules; (2) an extended contract term requirement and capacity change and termination provisions that ensure recovery of at least fifteen years of non-fuel revenues based on the original contract capacity requirement; and (3) a collateral

⁸⁹ Stipulation and Recommendation at 8 § 4.1; Stipulation Testimony at 11-12.

⁹⁰ *See also* Jones Rebuttal at 9-10.

⁹¹ Companies’ Response to AG-KIUC PHDR 3.

⁹² Companies’ Response to PSC PHDR 4. This means 1,470 MW of new load beyond BlueOval SK and the less than 40 MW of non-data-center load assumed in the 2025 Load Forecast.

⁹³ *Id.*

posting obligation for at least a full year of non-fuel revenue, which must be posted at the time of service contract signing.⁹⁴ As the Companies noted during the hearing in this proceeding, these protections are comparable to or better than those provided by AEP Ohio’s data center tariff, which certain public commenters identified as the gold standard for consumer protections.⁹⁵ Moreover, these elements provide enhanced financial protections for the Companies and their customers and help ensure the economic feasibility of the Stipulation’s recommended resources by securing fifteen-year revenue streams from Rate EHLF customers, including hyperscale data center customers.

E. The Companies Have Also Demonstrated Need for the Ghent 2 SCR to Ensure Both Ongoing Compliance with Applicable Environmental Requirements and Ghent 2’s Year-Round Availability to Serve Customers’ Growing Needs.

Regarding the Ghent 2 SCR, installing it is necessary to ensure compliance with the federal Clean Air Act, particularly the ozone NAAQS, the most recent version of which is the 2015 Ozone NAAQS.⁹⁶ The EPA is obligated to drive attainment of the 70 parts per billion ozone standard of the 2015 Ozone NAAQS, including any state’s significant contribution to downwind states’ nonattainment or interference with any state’s maintenance of attainment.⁹⁷ Contrary to Sierra Club’s assertions at the hearing,⁹⁸ the agency is legally obligated to enforce these standards regardless of who serves as the EPA Administrator.⁹⁹ Even without the Good Neighbor Plan applying to Kentucky, the EPA must still enforce the statutory “good neighbor” provision by ensuring that emissions from Kentucky do not significantly contribute to downwind ozone problems.¹⁰⁰ Moreover, existing legal mechanisms—such as citizen suits and judicial mandates—

⁹⁴ Rebuttal Testimony of Robert M. Conroy (“Conroy Rebuttal”) at 7-8 (July 18, 2025).

⁹⁵ August 4, 2025 Hearing, VR 10:03:09 – 10:07:00 a.m.; 3:08:44 – 3:10:15 p.m.; Bellar Rebuttal at 10.

⁹⁶ Direct Testimony of Philip A. Imber (“Imber Direct”) at 2 (Feb. 28, 2025); Stipulation Testimony at 14-15.

⁹⁷ Imber Rebuttal at 1-2.

⁹⁸ August 7, 2025 Hearing, VR 10:35:30 – 10:36:55 a.m.

⁹⁹ Imber Rebuttal at 1-2.

¹⁰⁰ *Id.* at 2.

can compel the EPA to act if it fails to do so voluntarily.¹⁰¹ As Mr. Wilson explains in his testimony, having Ghent 2 available year-round, including in the ozone season, is part of a least-cost resource portfolio;¹⁰² because the Ghent 2 SCR is necessary to ensure the Companies' ongoing compliance with the 2015 Ozone NAAQS and thus Ghent 2's continuing year-round availability, the Commission should grant a CPCN for the Ghent 2 SCR.¹⁰³

F. The Companies Have Also Demonstrated Lack of Wasteful Duplication Concerning the Stipulation-Recommended Resources, which Are Least-Cost Across a Wide Range of Future Scenarios.

Regarding the lack of wasteful duplication a utility must show to obtain a CPCN, the Commission articulated the applicable standard in its Final Order in the Companies' 2022 CPCN case:

“Wasteful duplication” is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.” To demonstrate that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed. The fundamental principle of reasonable least-cost alternative is embedded in such an analysis. Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication. All relevant factors must be balanced.¹⁰⁴

¹⁰¹ Imber Direct at 8-9, 12.

¹⁰² *Id.* at 2; Wilson Direct at 26.

¹⁰³ Note that granting a CPCN in this case would also be consistent with the Commission's prior approval of a CPCN for a Ghent 2 SCR. *Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity to Construct a Selective Catalytic Reduction System and Approval of Its 2006 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2006-00206, Order (Ky. PSC Feb. 28, 2008).

¹⁰⁴ Case No. 2022-00402, Order at 11 (Ky. PSC Nov. 6, 2023). Other relevant factors include timely constructability and economic impacts. *See, e.g. Electronic Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity to Construct a 161 kV Transmission Line in Henderson County, Kentucky*, 2022-00012, Order (Ky. PSC June 6, 2022); *Electronic Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Hardin County, Kentucky*, Case No. 2022-00066, Order (Ky. PSC July 28, 2022); *Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity to Construct a 161 kV Transmission Line in Ohio County, Kentucky*, Case No. 2007-00177, Order (Oct. 30, 2007).

The Companies' thorough and wide-ranging analyses in the record of this case show the stipulated facilities for which the Companies are seeking CPCNs are in no way wastefully duplicative; rather, they are lowest-reasonable-cost resources that are robust across a wide range of possible future scenarios.

First, the analyses conducted in and for this case considered five different fuel price scenarios, four different tax credit and trade tariff scenarios, and numerous load scenarios,¹⁰⁵ and they evaluated a wide array of renewable energy proposals offered to the Companies,¹⁰⁶ as well as the Companies' own NGCC and BESS proposals, additional Curtailable Service Rider resources, and additional dispatchable demand-side management ("DSM") measures.¹⁰⁷ The Companies also evaluated possible unit retirements, gas retrofits for coal-fired units, and landfill constraints.¹⁰⁸ Those analyses showed the Brown 12 and Mill Creek 6 NGCCs are least-cost with as little as 1,002 MW of new economic development load,¹⁰⁹ and they are mainstays of least-cost resource portfolios for incremental economic development load ranging from 1,470 MW to 2,030 MW.¹¹⁰

Second, the analyses the Companies conducted for their 2024 IRP, which the Commission incorporated into the record of this proceeding, show the stipulated NGCC resources are also economical resources across more restrictive environmental regulatory scenarios.¹¹¹ Indeed, they show the NGCC resources are least-cost even with *zero* incremental economic development load growth in an environmental regulatory scenario in which the current Clean Air Act 111(b) and (d) greenhouse gas regulations (or their equivalent) are in effect; in that scenario, *five* new NGCCs are

¹⁰⁵ Wilson Direct at 20-21.

¹⁰⁶ Wilson Direct, Ex. SAW-1 at 20-24.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 22, 24, 25, 62.

¹⁰⁹ See, e.g., Companies' Response to PSC 5-4(a). Note that 2025 CPCN Load Forecast also assumes BOSK and approximately 40 MW of non-data-center load in all cases analyzed.

¹¹⁰ See, e.g., Companies' Response to PSC 3-8(b), Attachment 1 at 14, Table 7. 2,030 MW was the highest amount of new economic development load modeled as part of this proceeding.

¹¹¹ Wilson Direct at 20-21, 29.

least-cost in 2032, not just the two included in the Stipulation.¹¹² Notably, the Companies' IRP analyses considered resource types beyond those offered to the Companies in their 2024 renewable energy request for proposals, including small modular reactors.¹¹³ Therefore, the consistent selection of two or more NGCC units across a wide range of possible future scenarios shows how robust the stipulated Brown 12 and Mill Creek 6 NGCC units are as least-cost resources.

Third, the Companies' analyses also demonstrate that adding the Ghent 2 SCR is least-cost across incremental economic development load ranging from 1,470 MW to 2,030 MW and under a variety of tax credit and trade tariff scenarios.¹¹⁴

Fourth, there is no reason to believe adding transmission capacity or new DSM-EE programs could realistically or economically satisfy the load growth poised to happen in Kentucky.¹¹⁵ The Companies' neighboring regional transmission organizations ("RTOs") are already potentially resource deficient under peak conditions, and it appears the Midcontinent Independent System Operator ("MISO") will become potentially resource deficient under *ordinary* load conditions in the next few years;¹¹⁶ building additional transmission capacity to neighboring regions lacking excess generation capacity would serve no purpose. Likewise, 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

¹¹² 2024 IRP Vol. III, 2024 IRP Resource Assessment at 48, Table 28, Low Load column.

¹¹³ *Id.* at 15-17; Tummonds Rebuttal at 5.

¹¹⁴ Companies' Response to PSC 3-8 Attachment 1 at 14, Table 7.

¹¹⁵ Wilson Rebuttal at 9-13; Rebuttal Testimony of Lana Isaacson ("Isaacson Rebuttal") at 10 (July 18, 2025).

¹¹⁶ Bellar Rebuttal at 8, (citing "2024 Long-Term Reliability Assessment" at 6 (Dec. 2024), available at https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Long%20Term%20Reliability%20Assessment_2024.pdf (accessed June 29, 2025)); NERC, "Statement on NERC's 2024 Long-Term Reliability Assessment" (June 17, 2025), available at <https://www.nerc.com/news/Pages/Statement-on-NERC%E2%80%99s-2024-Long-Term-Reliability-Assessment.aspx> (accessed June 29, 2025)). *See also* U.S. Department of Energy, "Resource Adequacy Report: Evaluating the Reliability and Security of the United States Electric Grid" at 1-9 (July 7, 2025), available at [https://www.energy.gov/sites/default/files/2025-07/DOE Final EO Report %28FINAL JULY 7%29.pdf](https://www.energy.gov/sites/default/files/2025-07/DOE%20Final%20EO%20Report%20FINAL%20JULY%207%29.pdf) (accessed July 8, 2025)).

region to the Companies' system, would only drive up the cost of a new resource the Companies could just as easily build in their own service territories. With regard to DSM and energy efficiency ("DSM-EE") resources, the Companies already have a robust, cost-effective portfolio of DSM-EE programs and measures the Commission approved less than two years ago,¹¹⁷ which the Companies are currently deploying, and they modeled additional dispatchable DSM measures as part of their resource assessment in this case.¹¹⁸ Notably, the non-Stipulating parties have provided no evidence to show there are cost-effective DSM-EE programs or measures the Companies have overlooked or would have any effect at all on the need for or cost-effectiveness of the stipulated resources; rather, they offer only vague suggestions and generalities, not actionable (or even analyzable) proposals.¹¹⁹

Fifth and relatedly, the General Assembly has both anticipated the need for additional generation resulting from economic development and declared it is in Kentucky's interest to be able to meet its own energy needs with resources *located in Kentucky*. Regarding the need for abundant reliable energy to support economic growth, the General Assembly declared in 2024:

The current economy and future economic development of the Commonwealth requires reliable, resilient, dependable, and abundant supplies of electrical power.¹²⁰

...

The demand for reliable, resilient, dispatchable electrical power is anticipated to significantly increase in the coming decades as the Commonwealth becomes home to additional manufacturing and

¹¹⁷ Isaacson Rebuttal at 2-5. This existing plan anticipates \$341 million in total DSM investments. *See also 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 Demand side management plan and Approval of Fossil Fuel-Fired Generating Unit Retirements*, Case No. 2022-00402, Direct Testimony of Lana Isaacson at 16 (Dec. 15, 2022).

¹¹⁸ Wilson Direct, Ex. SAW-1 at 20; Rebuttal Testimony of Tim A. Jones ("Jones Rebuttal") at 13-16 (July 18, 2025) (demonstrating that "the 2025 CPCN Load Forecast's assumed levels of distributed solar should be *lower*, not higher").

¹¹⁹ Jones Rebuttal at 12; Isaacson Rebuttal at 5-6.

¹²⁰ KRS 164.2807(1)(d).

other economic development projects which increase demand for electrical power.¹²¹

...

Local economic development is essential to the health, happiness, safety, and general welfare of the citizens of the Commonwealth.¹²²

...

Local economic development requires an adequate supply of electricity to support new and expanding industries¹²³

In addition to explicitly anticipating the need for “abundant supplies of electrical power” to enable the growth and development of “new and expanding industries,”¹²⁴ the General Assembly declared that Kentucky’s interests are best served by locating energy supply in Kentucky, not importing energy supply from elsewhere: “It is in the interest of the Commonwealth that it be able to generate sufficient electricity *within its borders* to serve its own industrial, residential, and commercial demand and to power its own economy[.]”¹²⁵ In short, the stated policy of the Commonwealth is to have abundant supplies of energy generated by “reliable, resilient, dispatchable” resources *in Kentucky* available to meet the reasonably projected needs of all customers and to empower economic growth.¹²⁶

¹²¹ KRS 164.2807(1)(e).

¹²² KRS 164.2807(1)(n).

¹²³ KRS 164.2807(1)(o).

¹²⁴ See also KRS 164.2807(1)(j) (“It is the policy of the Commonwealth to maintain adequate capacity of available, reliable, dispatchable, and resilient electric generation to provide for the existing and reasonably projected future energy consumption needs of *all* wholesale, retail, and other consumers of electricity in the Commonwealth[.]”) (emphasis added).

¹²⁵ KRS 164.2807(1)(f) (emphasis added).

¹²⁶ Note that the General Assembly’s policy is consistent with the Commission’s orders on the same topic, though the General Assembly is clear that “steel in the ground” resources to serve customers should be located in Kentucky. See, e.g., *Electronic Application of East Kentucky Power Cooperative, Inc. for 1) A Certificate of Public Convenience and Necessity to Construct a New Generation Resource; 2) A Site Compatibility Certificate; and 3) Other General Relief*, Case No. 2024-00310, Order at 31 (Ky. PSC May 20, 2025) (“The Commission has previously emphasized the importance of utilities maintaining sufficient owned capacity rather than relying on market purchases. The Commission continues to value ‘steel in the ground’ investments as a prudent and reliable means to serve native load.”); *Electronic Application of Duke Energy, Inc. to Become a Full Participant in the PJM Interconnection LLC, Base Residual and Incremental Auction Construct for the 2027/2028 Delivery Year and for Necessary Accounting and*

Sixth, as the Companies’ witnesses have testified,¹²⁷ as the capacity shortages in neighboring regions discussed above show, and as the Stipulation provides,¹²⁸ 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. For example, just as the Companies do today, they could use available capacity to make off-system sales when it is economical to do so, providing nearly real-time benefits to customers through the Companies’ Off-System Sales Adjustment Clauses.¹²⁹ The Companies could also sell energy, capacity, or both to other utilities in Kentucky or purchasers elsewhere; certainly neighboring RTOs need additional capacity and will continue to be in such a state as they too face growing energy demands.¹³⁰ In short, the Companies are confident they will be able to make productive use of all the stipulated resources, and they fully expect that, other than making off-system sales occasionally as they do today, the stipulated facilities’ capacity will be fully dedicated to serving the needs of existing and new customers.

Therefore, the record of evidence in this case shows the resources for which the Stipulating Parties ask the Commission to approve CPCNs are not wastefully duplicative. Rather, the stipulated resources are necessary and cost-effective means of meeting the enormous economic development load growth poised to happen in the Companies’ service territories. The Commission

Tariff Changes, Case No. 2024-00285, Order at 25 (Ky. PSC May 16, 2025) (“The strain on the broader PJM footprint is evidence that the Commission’s long-standing preference for steel-in-the-ground generation is prudent and necessary to protect ratepayers.”). *See also 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 Demand side management plan and Approval of Fossil Fuel-Fired Generating Unit Retirements*, Case No. 2022-00402, Order at 95 (Ky. PSC Nov. 6, 2023) (“[A] capacity market is not a replacement for a vertically integrated utility having sufficient generation capacity owned or contracted for to serve their retail customers.”).

¹²⁷ Bellar Rebuttal at 8.

¹²⁸ Stipulation and Recommendation at 4, § 1.4; Stipulation Testimony at 10-11.

¹²⁹ *See, e.g.*, Stipulation and Recommendation at 4, § 1.3; Stipulation Testimony at 6-7.

¹³⁰ Bellar Rebuttal at 8; Companies’ Response to AG-KIUC PHDR 4.

should therefore approve the Stipulation in full and without modification, including granting requested CPCNs and site compatibility certificates for the stipulated resources.

IV. The Commission's Trimble County 2 Final Order Is a Useful Guide for the Commission in this Case, Showing the Wisdom and Propriety of Granting CPCNs and then Monitoring the Utility's Prudent Use of that Authority Rather than Denying CPCNs and Forgoing Valuable Resources for Serving Customers.

The Commission's final order approving a CPCN for Trimble County 2 provides a useful guide for the Commission in this case and provides another reason the Commission should approve the stipulated CPCNs and site compatibility certificates.¹³¹ The same primary concern certain intervenors and public commenters have raised in this proceeding—the Companies' proposed construction would result in excess capacity for which existing customers would have to pay—was the primary objection the Attorney General raised in the Trimble County 2 CPCN proceeding more than 20 years ago.¹³² (Importantly, the Attorney General supports the Stipulation in this case.) In its final order concerning the requested CPCN for Trimble County 2, the Commission clearly stated the risks and costs of granting—and not granting—the requested CPCN:

The risk of granting a CPCN when one will not be required is that customers will pay for the new plant in the utility's rate base before it is needed; the risk of denying a CPCN when one is needed is that a utility will have to run high-price peaking units or buy high-price peaking power to meet the baseload requirements of its customers.¹³³

The Commission went on to note that *denying* the CPCN created too great a risk, whereas the risk associated with granting the CPCN could be mitigated with a simple monitoring requirement (indeed, with a monitoring requirement that was less proactive and robust than the

¹³¹ *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, Order (Ky. PSC Nov. 1, 2005).

¹³² *Id.* at 3-4.

¹³³ *Id.* at 5.

semi-annual construction, load forecasting, and economic development updates proposed in the Stipulation in this case):

The Commission believes the risk of the latter is of such significance that it should be avoided, if at all possible. We also believe the risk of the former can be managed by monitoring the accuracy of the Companies' energy forecasts in the coming years. By examining whether actual energy sales are consistent with the Companies' energy forecasts, the Commission, the intervenors, and especially the Companies can judge whether they may need to speed up, slow down, or cancel construction before too much has been invested in the project.¹³⁴

In that case, the Commission chose to take the risk it could relatively easily mitigate by granting the Trimble County 2 CPCN.¹³⁵ As a result, Trimble County 2 has provided low-cost energy to the Companies' customers for almost fifteen years.¹³⁶

The Commission's 2005 order concerning Trimble County 2 can and should serve as an example the Commission can follow here. In that case, the question was whether energy needs would increase as the Companies' load forecast indicated; here, the question is whether data centers and other new economic development loads will eventuate as the Companies' forecast indicates. In that case, the Attorney General argued the Companies were already in and would exacerbate a 1,000 MW over-capacity situation by adding 570 MW of new capacity, which would harm customers; in this case, certain intervenors and public commenters are making similar arguments (though again, the Attorney General has joined the Stipulation in this case). In that case, the risk of denying the requested CPCN was that energy needs would indeed increase and would require the Companies to incur higher energy costs than necessary, all to customers' detriment; here, the risk of denying the CPCN is effectively closing the door to economic

¹³⁴ *Id.* at 5-6.

¹³⁵ *Id.* at 6-7.

¹³⁶ Conroy Rebuttal at 16.

development in the Companies' service territories, including to the very data center customers the General Assembly has said it is of "paramount importance" to attract to the Commonwealth. Finally and most importantly, the Commission's choice in that case was to grant the CPCN and require the Companies to monitor their energy needs and report any significant deviations that might suggest Trimble County 2 would not be needed; here, the Commission can protect customers and open the door to economic development in Kentucky by doing the very same thing: approving the Stipulation in full, including granting the stipulated CPCNs and site compatibility certificates, approving the stipulated semi-annual review meetings, and approving the proposed monthly form filing and annual review process for the proposed adjustment clauses.¹³⁷ All of this will ensure the Companies have the necessary authority to advance these projects, which are necessary to serve existing and future customers and to enable and power Kentucky's future economic growth, while also providing the Commission transparency, ongoing review authority, and the ability to evaluate the prudence of any and all expenditures made under the CPCN authority granted in this case. For all these reasons, the Commission should follow its Trimble County 2 precedent and approve the Stipulation in full.

V. The Commission Can Confidently Approve CPCNs for the Stipulation-Recommended Resources Because Granting CPCNs Does Not Guarantee Cost Recovery and Because the Companies Have Decades of Demonstrated Prudence with CPCN Authority.

One of the many reasons the Commission may confidently grant the Stipulation-recommended CPCNs is that receiving a CPCN does not constitute Commission approval for cost recovery; it does not require the Commission to find all CPCN-related expenditures to be reasonable or prudent. Indeed, the Commission has demonstrated it can and will disallow costs

¹³⁷ Companies' Response to AG-KIUC PHDR 2.

for CPCN-approved resources if the Commission later determines proceeding to completion with a project was imprudent, at least in part.¹³⁸

The Companies expect and welcome prudence review. Indeed, one of the many benefits of the Stipulation is its requirement for the Companies to conduct semi-annual in-person construction, load forecasting, and economic development updates at the Commission beginning in the second quarter of 2026 and continuing through the second quarter of 2032.¹³⁹ This will provide regular, nearly real-time transparency and review of the Companies' decision-making regarding the approved projects. Moreover, the Companies have stated they anticipate filing monthly cost recovery forms for the Stipulation-proposed adjustment clauses for Mill Creek 2 and Mill Creek 6, as well as annual reviews of the operation of each cost-recovery mechanism for the Commission to evaluate the prudence of the costs recovered through them.¹⁴⁰

In addition to these prudence review opportunities, the Commission can confidently grant the stipulated CPCNs and site compatibility certificates because for at least two decades the Companies have proven their prudence by *not* building CPCN-approved facilities when it was not least-cost to do so. For example, concerning the CPCN authority the Commission granted the Companies in Case No. 2000-00112 to build up to seven SCRs as needed, the Companies ultimately determined only six SCRs were needed at that time and did not build the approved SCR for Brown 3 for about a decade (after obtaining a new CPCN), creating savings for customers in the interim.¹⁴¹ Similarly, the Companies did not construct the Ghent 2 SCR for which they

¹³⁸ See, e.g., *A Formal Review of the Current Status of Trimble County Unit No. 1*, Case No. 9934, Order at 35 (July 1, 1988) (ordering a disallowance of 25 percent of Trimble County Unit No. 1, accomplished through a ratemaking alternative, "which will assure the ratepayers of LG&E that they will receive the benefits of a reduced revenue requirement").

¹³⁹ Stipulation and Recommendation at 5, § 1.6.

¹⁴⁰ Companies' Response to AG-KIUC PHDR 2.

¹⁴¹ Nine years later, KU sought and obtained Commission approval to construct the Brown 3 SCR to comply with an EPA consent decree. See *Application of Kentucky Utilities Company for Certificates of Public Convenience and*

received a CPCN in Case No. 2006-00206 after they determined they could comply with the relevant regulations by over-controlling for NOx at other units;¹⁴² delaying the Ghent 2 SCR has saved customers \$273 million in 2025 dollars.¹⁴³ Based on this proven record of prudence, the Commission can confidently grant the stipulated CPCNs and site compatibility certificates.

VI. Any Delay in Approving the Stipulation-Recommended CPCNs for Brown 12 and Mill Creek 6 Would Be Costly to Customers and the Commonwealth.

A vital reason the Commission should approve the Stipulation in full and without modification is that delay would be costly. First, it would jeopardize the Companies' ability to serve the enormous economic development load growth that is poised to happen in Kentucky; as the General Assembly has recognized, new and expanding industries, businesses, and even hospitals cannot locate and grow where abundant and reliable power is lacking.¹⁴⁴ Second, there is every reason to expect that delay will increase costs for the Stipulation-recommended resources. For example, the cost of the Brown 12 NGCC has increased by \$400 million solely due to delaying its in-service date from 2028 (as requested in the 2022 CPCN case) to 2030.¹⁴⁵ And the pricing for new NGCC units and their associated costs continues to increase.¹⁴⁶ Therefore, there is ample reason to expect that further delaying Brown 12 would result in increased costs and that delaying Mill Creek 6 would result in increased costs.

Necessity to Construct Selective Catalytic Reduction (SCR) NOx Control Technologies, Order, (Ky. PSC June 22, 2000); *Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2009 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2009-00197, Order (Ky. PSC Dec. 23, 2009).

¹⁴² See *Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity to Construct a Selective Catalytic Reduction System and Approval of Its 2006 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2006-00206, Order (Ky. PSC Feb. 28, 2008).

¹⁴³ Companies' Response to PSC 3-24(a).

¹⁴⁴ See KRS 164.2807(1)(a), (d)-(f), (j), and (n)-(o).

¹⁴⁵ Tummonds Rebuttal at 3.

¹⁴⁶ *Id.* at 3-4.

In the meantime, although firm gas transportation service is still available for Brown 12, it is not the same firm gas transportation service that was available two years ago.¹⁴⁷ Transportation options to supply basins from which the Companies could have drawn two years ago to serve Brown 12 are no longer available, and there is no guarantee the firm gas transportation service available today will continue to be available a matter of months from now.¹⁴⁸

Similarly, in addition to the NGCC cost increases delaying Mill Creek 6 would cause, there is a narrow timeframe for obtaining firm gas transportation service for Mill Creek 6; any delay in obtaining such service would likely render operation of Mill Creek 6 impracticable until 2036 or later. Indeed, no such service is available today, but Texas Gas Transmission (“TGT”), the pipeline provider that serves the Mill Creek Generating Station, will conduct an open season, likely during the fourth quarter this year, for its new Project Borealis to expand pipeline capacity along its existing rights-of-way.¹⁴⁹ *Crucially, Project Borealis will be TGT’s last opportunity for significant capacity additions on its existing rights-of-way within a five- to eight-year horizon.*¹⁵⁰ If the Companies are not able to advance Mill Creek 6 following this case but require an additional NGCC unit after Brown 12 between 2031 and 2041, which is all but certain, the Companies will likely have to advance Green River 5 instead of Mill Creek 6 at an additional cost of almost \$300 million because firm gas transportation service for Mill Creek 6 will not be available until TGT is able to move forward with another significant pipeline expansion project.¹⁵¹ (As the Companies

¹⁴⁷ August 6, 2025 Hearing, VR 4:37:13 – 4:38:20 p.m.

¹⁴⁸ *Id.*

¹⁴⁹ See Companies’ Supplemental Response to KCA 1-4, Supplemental Attachment 1 at 8 (May 30, 2025).

¹⁵⁰ See Schram Rebuttal at 3-4; Companies’ Supplemental Response to KCA 1-4, Supplemental Attachment 1 at 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.”).

¹⁵¹ Companies’ Response to PSC 3-8(b) Attachment at 5-6.

have previously stated, Green River 5 is a viable NGCC option, but it is most economical for customers to advance that project *after*, not *before*, the more economical Mill Creek 6.)¹⁵² In the interim, Mill Creek 6 costs will likely rise as demand for NGCC units continues to increase. Therefore, it is vitally important to grant CPCNs for all the Stipulated-recommended resources to ensure the Companies can move forward with these economical resources, including being able to obtain firm gas transportation service for them when it will briefly be available for purchase.

VII. The Commission Has the Required Authority to Approve the Stipulation in Full.

A. The Stipulation-Proposed Mill Creek 2 Life Extension and Adjustment Clauses MC2 and MC6 Are Properly before the Commission and Ripe for Decision in this Proceeding.

The Stipulation’s proposed Mill Creek 2 life extension and Adjustment Clauses MC2 and MC6 are properly before the Commission and ripe for decision in this proceeding; the Commission therefore has authority to, and should, approve them. The Kentucky Supreme Court’s seminal opinion in *Ky. Pub. Serv. Comm’n v. Com. ex rel. Conway*, 324 S.W.3d 373 (Ky. 2010), articulates several 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: (1) neither KRS 278.180 nor 278.190 requires any particular process when a utility proposes a change in rates or a new rate, including a new cost recovery mechanism;¹⁵³ (2) the Commission has plenary ratemaking authority under KRS 278.030 and 278.040 to approve or

¹⁵² *Id.* at 5.

¹⁵³ *Ky. Pub. Serv. Comm’n v. Com. ex rel. Conway*, 324 S.W.3d 373, 377-78 (Ky. 2010):

KRS 278.180 does not require any particular process to allow a utility to change its rates other than complying with notice requirements.

...

[T]he plain language of KRS 278.190 does not actually require that the PSC proceed with a general rate case or other particular process every time some new rate or change in rates is requested. To the contrary, the statute simply provides that upon filing of a schedule of new rates, the PSC “may” conduct a “hearing concerning the reasonableness of the new rates” on its own motion

adjust a new rate mechanism outside a general rate case, and no hearing is required to do so;¹⁵⁴ (3) nothing in KRS Chapter 278 prohibits establishing cost-recovery mechanisms for particular categories of costs;¹⁵⁵ and (4) “because the statutes generally recognize a duty to establish ‘fair, just, and reasonable’ rates without necessarily requiring a particular procedure to deal with isolated ratemaking issues, the Hope doctrine that ‘[it is] the result reached rather than the method employed which is controlling’ is applicable.”¹⁵⁶ Since the court issued its seminal opinion in that case, the Commission has approved a number of cost-recovery mechanisms that were not part of a published notice and first arose in settlement discussions. For example, in the Companies’ 2020 base rate cases, the Commission approved the Companies’ Retired Asset Recovery Riders, which were first introduced in those cases as part of the stipulation.¹⁵⁷ Likewise, in the Companies’ 2014 base rate cases the Commission approved and placed into effect on July 1, 2015, i.e., at the same time as all other rates approved in those cases, the Companies’ Off-System Sales adjustment

¹⁵⁴ *Id.* at 380-81:

[W]e, nonetheless, conclude that the PSC has the power to allow such a rider [in that case, Duke Kentucky’s Accelerated Main Replacement Rider] based upon (1) its plenary ratemaking authority derived from KRS 278.030 and KRS 278.040, which essentially require that the PSC act to ensure that rates are “fair, just and reasonable” and (2) the absence of any statutes specifically requiring a particular procedure when determining if rates are fair, just, and reasonable.

...

[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. ... KRS 278.190(1) states simply that the PSC “may” hold a hearing “concerning the reasonableness of the new rates” when a utility files a schedule setting new rates. So the statute does not command such a hearing upon the filing of new rates.

¹⁵⁵ *Id.* at 382 (“[W]e simply find nothing in other statutes in KRS Chapter 278 that would forbid the PSC from allowing a rider or surcharge for the costs at issue here In fact, we find nothing in the statutes that would prohibit ‘single-issue ratemaking’”).

¹⁵⁶ *Id.* at 383 (quoting *National-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 510 (Ky. App. 1990)).

¹⁵⁷ *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Case No. 2020-00349, Order at 18-19 (Ky. PSC June 30, 2021); *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, Order at 21 (Ky. PSC June 30, 2021).

clauses, which were first introduced in those cases as part of the stipulation.¹⁵⁸ Even before the seminal *Conway* opinion, the Commission itself created and allowed the Companies to choose to adopt solely by filing new tariff sheets an Earnings Sharing Mechanism the Companies had not proposed in their 1998 alternative rate methodology applications.¹⁵⁹ In sum, the Commission has previously treated as properly before it and approved—including items having an effect on customers’ bills without customer notice—rate mechanisms introduced for the first time as parts of stipulations and settlements, or introduced for the first time by the Commission itself, all of which was and is entirely proper and permissible pursuant to the Commission’s plenary ratemaking authority as interpreted by the Kentucky Supreme Court.

Similarly, the Commission has approved other kinds of proposals that have arisen for the first time in settlements or stipulations or at other points during the pendency of the proceedings, not the applications giving rise to the proceedings or related customer notices. For example, in

¹⁵⁸ *Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2014-00371, Order at 11-12 and Appx. A at 7 (Ky. PSC June 30, 2015); *Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates*, Case No. 2014-00372, Order at 12 and Appx. A at 7 (Ky. PSC June 30, 2015). The related tariff filings showing stamped tariff pages placing Adjustment Clause OSS in effect as of July 1, 2015, are available for KU under tariff filing ID TFS2015-00427 (https://psc.ky.gov/trf4/uploadedFiles/400_Kentucky_Utilities_Company/07302015100201/KU_Tariff_version2.pdf), and for LG&E under tariff filing ID number TFS2015-00428 (https://psc.ky.gov/trf4/uploadedFiles/500_Louisville_Gas_and_Electric_Company/07302015100646/LGE_Tariff_version2.pdf).

¹⁵⁹ *Application of Louisville Gas and Electric Company for Approval of an Alternative Method of Regulation of Its Rates and Service*, Case No. 98-426, Order at 48 (Ky. PSC Jan. 7, 2000) (“[T]he Commission will now offer LG&E an alternative to traditional regulation in the form of an optional ESM plan. The Commission encourages LG&E to take advantage of this optional ESM [W]e now propose an optional ESM for LG&E, recognizing that LG&E’s full support and commitment is essential to make this incentive plan work.”); *id.* at 48-50; *id.* at 112 (“1. LG&E’s proposed PBR plan ... should be denied. ... 3. The Commission’s optional ESM plan constitutes a reasonable form of alternative regulation for LG&E and will result in fair, just, and reasonable rates. 4. Within 30 days of the date of this Order, LG&E should file with the Commission either a tariff adopting the Commission’s optional ESM plan or a written notice rejecting such plan.”); *Application of Kentucky Utilities Company for Approval of an Alternative Method of Regulation of Its Rates and Service*, Case No. 98-474, Order at 45 (Ky. PSC Jan. 7, 2000) (“[T]he Commission will now offer KU an alternative to traditional regulation in the form of an optional ESM plan. The Commission encourages KU to take advantage of this optional ESM [W]e now propose an optional ESM for KU, recognizing that KU’s full support and commitment is essential to make this incentive plan work.”); *id.* at 45-48; *id.* at 112 (“KU’s proposed PBR plan and tariff flexibility provision are denied. 2. Within 30 days of the date of this Order, KU shall file either a tariff adopting the Commission’s optional ESM or a written notice that the optional ESM is rejected. 3. If KU adopts the Commission’s optional ESM plan, KU shall file within 60 days thereafter draft schedules for annual filings, pursuant to the findings herein[.]”).

LG&E’s 2016 base rate case, the Commission granted a CPCN for a gas pipeline for which LG&E had not requested a CPCN in its application;¹⁶⁰ the Kentucky Court of Appeals later upheld a challenge to that CPCN, rejecting arguments from non-parties to the rate case that the lack of notice had deprived them of their ability to seek intervention and oppose the CPCN.¹⁶¹ Also, in the Companies’ 2011 Environmental Cost Recovery (“ECR”) application proceedings, the Companies entered into a settlement, which the Commission approved, increasing the Companies’ Home Energy Assistance (“HEA”) charges—including for LG&E’s gas customers—which had not been part of the Companies’ ECR applications or customer notices and arose for the first time during settlement.¹⁶²

Therefore, the Stipulation-proposed Mill Creek 2 life extension and Adjustment Clauses MC2 and MC6 are properly before the Commission and ripe for decision. Moreover, consistent with its longstanding practice and plenary ratemaking authority, the Commission may and should approve the Stipulation-proposed Adjustment Clauses MC2 and MC6 in this case.

¹⁶⁰ *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, Order at 31-34 (Ky. PSC June 22, 2017).

¹⁶¹ *Iola Capital v. Ky. Pub. Serv. Comm’n*, 659 S.W.3d 563 (Ky. App. 2022).

¹⁶² *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, Order at 18, 28, and Appx. A at 10-11 (Ky. PSC Dec. 15, 2011); *Application of Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge* Case No. 2011-00162, Order at 13, 22, and Appx. A at 10-11 (Ky. PSC Dec. 15, 2011). The related tariff filings showing stamped tariff pages placing the increased HEA charges in effect as of Jan. 1, 2012, are available for KU under tariff filing ID TFS2011-00847 (https://psc.ky.gov/trf4/uploadedFiles/400_Kentucky_Utilities_Company/12222011b/KU_Tariff.pdf), and for LG&E under tariff filing ID numbers TFS2011-00848 (electric) (https://psc.ky.gov/trf4/uploadedFiles/500_Louisville_Gas_and_Electric_Company/12222011b/LGE_Electric_Tariff.pdf) and TFS2011-00849 (gas) (https://psc.ky.gov/trf4/uploadedFiles/22200500_Louisville_Gas_and_Electric_Company/12222011b/LGE_Gas_Tariff.pdf).

B. The Companies Have Authority to Extend the Retirement Date of Mill Creek 2 to the In-Service Date of Mill Creek 6, which the Commission Should Affirm.

Extending the life of Mill Creek 2 is an important part of the Stipulation; it is linked to the Companies' withdrawal of their CPCN and site compatibility requests for the Cane Run BESS.¹⁶³ Extending the life of Mill Creek 2 to the in-service date of Mill Creek 6 will enable the Companies to serve additional load growth prior to the in-service date of Mill Creek 6,¹⁶⁴ and it will enable the Commission, the Companies, and the intervenors to see how load develops in the near term. That will allow additional time to determine whether it is necessary for the Companies to seek Commission approval to make additional investments in new facilities, and it may allow for additional domestic battery production to become available and increase the tax credit for a later battery investment.¹⁶⁵ Thus, Mill Creek 2 life extension is an important and valuable component of the Stipulation.

But for extending the life of Mill Creek 2 to be beneficial, it must not interfere with the timely addition of Mill Creek 6. That is why, under the Stipulation, a key (but not the only) prerequisite to extending the life of Mill Creek 2 is receiving Commission affirmation in its final order in this proceeding that the Companies' existing authority to retire Mill Creek 2 would extend from its current expected retirement date of mid-2027 (i.e., the expected in-service date of Mill Creek 5) to mid-2031 (the proposed in-service date for Mill Creek 6).¹⁶⁶ The Companies believe their existing retirement authority is sufficient for such a Mill Creek 2 life extension, but they ask the Commission to confirm it precisely because having that clear authority is an absolute prerequisite to any such life extension, which again must not interfere with Mill Creek 6.¹⁶⁷

¹⁶³ Stipulation and Recommendation at 3, § 1.1.

¹⁶⁴ Companies' Response to PSC PHDR 4.

¹⁶⁵ August 4, 2025 Hearing, VR 2:09:45 - 2:11:30 p.m. ("Our current selected vendor... doesn't have a U.S. source at this time. Our conversations suggest that later in time they would.").

¹⁶⁶ Stipulation and Recommendation at 8-9, Art. IV.

¹⁶⁷ Stipulation Testimony at 11-13.

The Companies believe their existing retirement authority is sufficient to extend the retirement date of Mill Creek 2 from the in-service date of Mill Creek 5 to the in-service date of Mill Creek 6 for several reasons. First, the relevant statute, KRS 278.264, did not require at the time the Commission granted retirement authority for Mill Creek 2, and does not now require, a prescribed retirement date by which a unit to be retired; rather, it states a utility may not retire a generating unit *before* meeting certain criteria.¹⁶⁸ Second, the statute did not then and does not now prohibit extending the life of a unit approved to be retired; indeed, because the General Assembly’s stated concern motivating the enactment of KRS 278.264 was the “unprecedented rate” of coal-fired generating unit retirements,¹⁶⁹ temporarily extending the life of a coal-fired unit for which the Commission has granted retirement authority would be consistent with both the letter and spirit of the statute.¹⁷⁰ Third, the General Assembly has shown it knows how to place temporal limits on when a utility may exercise Commission-granted authority when it intends to do so, such as the requirement under KRS 278.020(1)(e) to begin construction under CPCN authority. Fourth, the Commission’s order granting the Companies authority to retire Mill Creek 2 did not state the unit must retire upon the in-service date of Mill Creek 5; rather, it stated the Companies should not proceed with retiring Mill Creek 2 until Mill Creek 5 (or other “sufficient replacement”) was in service,¹⁷¹ which does not preclude operating Mill Creek 2 after Mill Creek 5’s in-service date

¹⁶⁸ See, e.g., 2023 Ky. Acts Ch. 118 Sec. 2; KRS 278.264(2)(d) (“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”).

¹⁶⁹ 2023 Ky. Acts Ch. 118 Sec. 3 (“Whereas the United States is retiring coal-fired electric generating units at an unprecedented rate, with retirements potentially affecting employment rates, tax revenues, and utility rates, and compromising the reliability of electric power service and resilience of the electric grid, an emergency is declared to exist”).

¹⁷⁰ KRS 446.080(1) (“All statutes of this state shall be construed liberally with a view to promote their objects and carry out the intent of the legislature...[.]”). See also *Commonwealth v. Plowman*, 86 S.W.3d 47, 49 (“The seminal duty of a court in construing a statute is to effectuate the intent of the legislature.”).

¹⁷¹ Case No. 2022-00402, Order at 114 (“LG&E/KU should also not proceed with the retirement of Mill Creek 2 until construction of Mill Creek 5 is completed.”)(emphasis original); *id.* at 171 (“LG&E/KU’s request to retire Mill Creek 1 and Mill Creek 2 should be granted, with the retirement of Mill Creek 2 conditioned on LG&E/KU constructing

and later retiring it. Therefore, the Companies believe their existing authority to retire Mill Creek 2 upon Mill Creek 6's retirement date rather than Mill Creek 5's retirement date finds ample support in the text and purpose of KRS 278.264, as well as the Commission's final order in Case No. 2022-00402, which granted the retirement authority.

Nonetheless, barring circumstances changing in ways the Companies do not currently anticipate, the Companies *must* retire Mill Creek 2 when Mill Creek 6 goes in service or Mill Creek 6 will not be able to operate; they therefore ask the Commission to affirm in its final order in this proceeding that the Companies may retire Mill Creek 2 when Mill Creek 6 goes in service.

VIII. The Commission Should Approve the Stipulation in Full and Without Modification Because It Provides Cost-Recovery Benefits to Customers; Any Other Rate-Related or Unit-Ownership Issues Can Be Addressed in Subsequent Proceedings

In addition to satisfying all relevant CPCN, site compatibility certificate, and environmental cost recovery legal requirements, the Commission should approve the Stipulation in full and without modification because it provides important cost-recovery benefits to customers through the Stipulation-proposed Adjustment Clauses MC2 and MC6. Because both are near-real-time mechanisms designed to recover non-fuel costs of generating units, the charges will 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. Also, Adjustment Clause MC6 has a unique feature to ensure customers receive the benefit of incremental data center demand-charge revenues between its in-service date and the effective date

Mill Creek 5."); *id.* at 174 ("This Order gives defined retirement dates for Mill Creek 1 and 2, as long as certain conditions are met"); *id.* at 175-76 ("Regardless, in the event LG&E/KU have trouble timely constructing Mill Creek 5, the Commission finds that given their need for adequate generation, LG&E/KU should not retire Mill Creek 2 without sufficient replacement."); *id.* at 178 ("LG&E/KU's request to retire Mill Creek 1 and Mill Creek 2 is approved, with the retirement of Mill Creek 2 conditioned on LG&E/KU constructing Mill Creek 5.").

of new base rates going into effect after the Companies' first base rate case following the unit's in-service date, which ensures customers receive the benefit of those incremental revenues.¹⁷² Thus, these Stipulation-recommended mechanisms provide valuable cost-recovery benefits, and they are another important reason the Commission should approve the Stipulation in full and without modification.

These Stipulation benefits notwithstanding, the Companies recognize there are other issues that could affect customers' rates concerning these resources in the future, but they do not have to be resolved now and should not dissuade the Commission from approving the Stipulation. For example, whether future data center customers or other large-load customers should pay average embedded cost rates, which have been a pillar of Kentucky ratemaking from its inception, or rates determined in another way, is an issue the Commission may review and address in future base rate or other proceedings. Likewise, the Commission may review ownership shares of the stipulated resources in future proceedings as new and expanded loads locate. But such issues, which would be better and more appropriately addressed in future proceedings, should not deter the Commission from approving the Stipulation in full and without modification in this proceeding.

IX. The Decision before the Commission Does Not Concern the Merits of Data Centers; rather, It Is about Kentucky's Future Economic Vitality.

The Companies appreciate that the Commission has heard and received a number of public comments opposing data centers during this proceeding, many of which do not concern the Companies' service or rates and would be better addressed to other forums and decisionmakers. Regardless, this proceeding is *not* a referendum on data centers or any other type of customer, all of whom the Companies have the obligation and privilege to serve. Moreover, the Commission should consider that the opposition it heard from a handful of vocal activists—not all of whom are

¹⁷² Stipulation and Recommendation at 5-7, Art. II; *id.* at 5-6, § 2.1(A).

the Companies’ customers—is not necessarily indicative of what the vast majority of the Companies’ hundreds of thousands of customers think. And there is nothing new about opposition to change, even highly beneficial change; consider, for example, that there was opposition to Toyota locating in Georgetown, Kentucky,¹⁷³ yet Toyota has become a pillar of Kentucky’s economy, continuing to invest billions of dollars in the Commonwealth, providing jobs to thousands of Kentuckians, and supporting many related businesses and jobs.

In addition, the views of such activists are contrary to the efforts of Governor Beshear’s administration and the General Assembly, which, recognizing that attracting data centers is of “paramount importance” to Kentucky’s economic future, crafted the tax incentive legislation that seeks to induce data centers to locate in Kentucky.¹⁷⁴ Earlier this year, the General Assembly reaffirmed and strengthened that position by expanding data center tax incentives statewide.¹⁷⁵ If these efforts succeed in making data centers a part of Kentucky’s dynamic economy, the high-paying jobs and hundreds of millions of dollars in tax revenues each data center is expected to generate will be transformative for Kentucky communities.¹⁷⁶ Thus, although a small but vocal minority oppose data centers, Kentucky’s elected officials recognize the importance of attracting data centers to the Commonwealth and bringing their tax revenues and job benefits with them.

Finally, it is important to reiterate that the Stipulation-recommended resources will enable the Companies to continue to serve *all* customers, both existing and new, safely, reliably, and at

¹⁷³ August 6, 2025 Hearing, VR 9:30:00 – 9:31:30 a.m.

¹⁷⁴ KRS 154.20-222(3); Bevington Direct at 14-15, (citing, e.g., “Stivers on Tax Incentive for Kentucky’s First Data Center: Incentive will attract major business to Louisville” (Jan. 16, 2025) (“‘I worked closely with Secretary Jeff Noel from the Kentucky Cabinet for Economic Development and top private sector leaders to craft and pass groundbreaking legislation that will spark job creation and expand the tax base, which creates more revenue,’ Stivers said. ‘This project is a game-changer, driving long-term economic growth in our major metropolitan center and boosting Kentucky as a regional business hub.’”), available at <https://kysenaterepublicans.com/press-releases> (accessed Jan. 16, 2025)).

¹⁷⁵ 2025 Ky. Acts Ch. 98 (expanding data center incentives statewide).

¹⁷⁶ KRS 154.20-222(3) (emphasis added). See Bevington Rebuttal at 8-10 (estimating \$50 million in first-year property tax revenues for a 400 MW data center in Jefferson County).

the lowest reasonable cost. This certainly includes the future needs of data centers, but it also includes the needs of the enormous amount of *non*-data-center economic development and investment poised to happen in Kentucky right now, ranging from advanced manufacturing to uranium enrichment to new children’s hospitals and cancer centers. Much of this growth is being driven by the Companies’ *existing* customers—mostly KIUC members—and it is the policy of the General Assembly that Kentucky should have ample reliable energy *located in Kentucky* to serve them. Moreover, as Governor Beshear stated when discussing the recent surge of investment in Kentucky, “There isn’t anything political about a good job or a strong economy, and Kentucky is seeing incredible success as we prioritize what’s right and create more opportunity than ever before for our people[.]”¹⁷⁷ Thus, this case is not about the merits of data centers; it is about serving *all* customers and powering Kentucky’s bright economic future. Approving the Stipulation in full and without modification is a vital and necessary step toward making that possible.

X. Conclusion: Approving the Stipulation in Full and Without Modification Would Be Both Consistent with Law and Good for Kentucky.

There is ample evidence in the record to support the Commission’s approval of the Stipulation in full and without modification: data center load *and* non-data-center load—advanced manufacturing, uranium enrichment, healthcare, and more—are poised for enormous growth, as existing and new businesses and industries pour billions of dollars of new investment into Kentucky, bringing economic vitality and thousands of new jobs with them. None of it is accidental or merely fortuitous; it is by design, the fruit of years of effort by Governor Beshear, his administration, the General Assembly, and local governments to attract both data centers as a matter of paramount importance and all the other growth that has been in the headlines throughout the summer. In short, the Companies’ need for additional reliable energy supply is real and

¹⁷⁷ NEW KENTUCKY HOME, *supra* note 1.

pressing, and it far exceeds what the Companies could serve with their existing and approved resources. That is why approval of the Stipulation in full and without modification is vital to Kentucky's economic future; the resources it provides will provide the abundant *local* energy supply the General Assembly has recognized is necessary for economic growth and the well-being of the Commonwealth.

That the Stipulation-recommended resources are reasonable lowest cost options is also clear. The Companies' numerous analyses have shown Brown 12, Mill Creek 6, and the Ghent 2 SCR are least-cost across a wide range of fuel-price, load, and environmental regulatory scenarios. Those analyses also considered all reasonable alternatives, fully satisfying the CPCN lack-of-wasteful-duplication standard.

The Stipulation finds further support in the company it keeps, being supported by the Attorney General, KIUC, KCA, and SREA—some of Kentucky's most important consumer advocates and a broad range of interests, from coal to renewable energy; the governments of Kentucky's two largest cities do not oppose it. These important customer representatives and interest advocates know how to oppose the Companies' proposals and have done so before; it is therefore noteworthy and telling that they have united to support the Stipulation as a total resolution of all the issues in this case.

Beyond the breadth of support for it in this case, the Commission should approve the Stipulation for the ongoing transparency and review opportunities it provides the Commission through semi-annual in-person construction, load forecasting, and economic development updates, as well as for the cost-recovery benefits for customers it provides through Adjustment Clauses MC2 and MC6, which the Commission has full authority to consider and approve in this proceeding. It further provides a life extension for Mill Creek 2 to support load growth in the near

term and allow additional time to observe how load develops before making additional resource decisions; as shown herein, the Commission has full authority to address the Stipulation's Mill Creek 2 life-extension-related requests.

In contrast to the abundant and compelling reasons *to* approve the Stipulation, there are no convincing reasons *not* to do so. For example, nothing about approving the Stipulation would deprive the Commission of prudence review authority or opportunities; rather, it would enhance them. Likewise, nothing in the Stipulation would prevent the Commission from reviewing ratemaking for data centers or unit ownership allocations in future proceedings. Thus, whatever concerns the Commission might have about how to address particular issues that might result from moving forward with the Stipulation-recommended resources, there is nothing in the Stipulation to prevent the Commission from addressing them as needed in the future, and there are elements of the Stipulation that enhance the Commission's ability to do so.

Therefore, for the benefit of all the Companies' customers, present and future, and for the vibrant economic future the Stipulation-recommended resources will enable for Kentucky, the Commission can and should approve the Stipulation in full and without modification.

Dated: September 5, 2025

Respectfully submitted,



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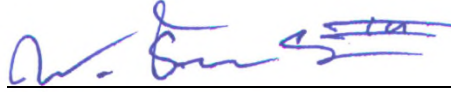
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CERTIFICATE OF COMPLIANCE

In accordance with 807 KAR 5:001, Section 8 as modified by the Commission's Order of July 22, 2021 in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), this is to certify that the electronic filing has been transmitted to the Commission on September 5, 2025; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.

A handwritten signature in blue ink, appearing to read "A. B. Smith", is positioned above a horizontal line.

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and Louisville Gas and Electric Company*