

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

In the matter of:

:

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

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**KENTUCKY COAL ASSOCIATION'S INITIAL BRIEF**

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The Kentucky Coal Association (KCA) intervener in this action, respectfully submits the following initial brief in the foregoing matter pursuant to the Order entered on August 11, 2025.

Respectfully submitted,

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## **CONCLUSION**

I. Authority Exists to Extend the Retirement Date of Mill Creek 2.

Extending the life of Mill Creek 2 benefits the Companies' ratepayers. Extending the life of Mill Creek 2 enables the Commission, the Companies, and the intervenors to see how load develops in the near term but also provide flexibility. The Companies have made a prudent decision to delay retirement of Mill Creek 2 in light of potential load growth. Comparably, in other jurisdictions including the PJM RTO serious reliability concerns exist in light of premature coal unit retirements. For example, PJM recently requested Talen Energy delay retirement of 2 coal units (774 MW) outside of Baltimore because it would adversely affect the reliability of the system absent transmission upgrades.<sup>1</sup>

Regarding statutory authority, the relevant Kentucky statute regarding fossil fuel unit retirements, KRS 278.264, does not include a prescribed retirement date for a unit to be retired; instead, it states a utility may not retire a generating unit unless meeting certain criteria.<sup>2</sup> Second, the statute does not prohibit extending the life of a unit approved to be retired – that would be contrary to the statute. The Legislature in fact enacted KRS 278.264 because of the “unprecedented rate” of coal-fired generating unit retirements,<sup>3</sup> and extending the life of a coal-fired unit for which the Commission has granted retirement authority would be consistent with the statute.<sup>4</sup> Third, the Legislature has shown it knows how to place time limits on when a utility may exercise Commission-granted authority when it intends to do so, such as the requirement under

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<sup>1</sup> <https://thecoaltrader.com/pjm-urges-delayed-retirement-of-coal-plant-citing-reliability-impacts/>

<sup>2</sup> 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 ....”).

<sup>3</sup> 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 ....”).

<sup>4</sup> 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.”).

KRS 278.020(1)(e) to begin construction under CPCN authority; such is not the case with coal unit retirements. 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. Therefore, KRS 278.264, as well as the Commission's final order in Case No. 2022-00402, provide authority for the Companies to delay the retirement of Mill Creek 2 which is prudent in light of potential load growth.

II. The Ghent 2 SCR Is Needed And Will Not Result in Wasteful Duplication.

The Ghent 2 SCR project addresses needs on KU/LG&E's system without resulting in wasteful duplication. The Ghent 2 SCR project has the lowest incremental cost option of the generation resources while adding additional operating flexibility throughout the year.<sup>5</sup>

Comparing the revenue requirements per capacity contribution MW related to each project proposed in the Companies' Application demonstrates that Ghent 2 is the lowest cost compared to the new build resources, including the range of possible capacity contributions for the Cane Run BESS project.<sup>6</sup>

Additionally, as indicated by Witness Imber, post-combustion NOx controls are common in the industry, and Ghent 2 would be the only large coal unit projected to operate beyond 2030 without NOx controls in the region, if the SCR is not approved.<sup>7</sup> Accordingly, the Commission should approve a CPCN for the Ghent 2 SCR.

III. 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.

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<sup>5</sup> Wellborn Testimony at 5:15-17.

<sup>6</sup> Wellborn Testimony at 16:1-5.

<sup>7</sup> Wellborn Testimony at 18:12-16:3 (citing Direct Testimony of Philip Imber at 12:1-6).

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 Commission has authority to, and should, approve them.

More specifically, *Ky. Pub. Serv. Comm'n v. Com. ex rel. Conway*, 324 S.W.3d 373 (Ky. 2010), holds: (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;<sup>8</sup> (2) the Commission has full ratemaking authority under KRS 278.030 and 278.040 to approve or adjust a new rate mechanism outside a general rate case, and no hearing is required to do so;<sup>9</sup> (3) nothing in KRS Chapter 278 prohibits establishing cost-recovery mechanisms for particular categories of costs;<sup>10</sup> 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

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<sup>8</sup> *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 ....

<sup>9</sup> *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.

<sup>10</sup> *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’ ....”).

ratemaking issues, the Hope doctrine that ‘[it is] the result reached rather than the method employed which is controlling’ is applicable.”<sup>11</sup>

Since that case, the Commission has also approved a number of cost-recovery mechanisms that first arose in settlement discussions. First, 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.<sup>12</sup> Second, in the Companies’ 2014 base rate cases the Commission approved the Companies’ Off-System Sales adjustment clauses.<sup>13</sup> Simply put, the Commission has previously treated as properly before it and approved rate mechanisms introduced for the first time as parts of stipulations and settlements all of which is entirely proper and permissible pursuant to the Commission’s full ratemaking authority.

Last, the Commission has approved other kinds of proposals that have arisen for the first time in settlements or stipulations, not the applications giving rise to the proceedings or related customer notices. In 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;<sup>14</sup> the Kentucky Court of

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<sup>11</sup> *Id.* at 383 (quoting *National-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 510 (Ky. App. 1990)).

<sup>12</sup> *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).

<sup>13</sup> *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](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](https://psc.ky.gov/trf4/uploadedFiles/500_Louisville_Gas_and_Electric_Company/07302015100646/LGE_Tariff_version2.pdf)).

<sup>14</sup> *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).

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.<sup>15</sup> 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 which had not been part of the Companies' ECR applications or customer notices and arose for the first time during settlement.<sup>16</sup>

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 full ratemaking authority, the Commission may and should approve the Stipulation-proposed Adjustment Clauses MC2 and MC6 in this case.

### **CONCLUSION**

The Stipulation-recommended resources are reasonable lowest cost options. The CPCN 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.

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<sup>15</sup> *Iola Capital v. Ky. Pub. Serv. Comm'n*, 659 S.W.3d 563 (Ky. App. 2022).

<sup>16</sup> *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](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](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](https://psc.ky.gov/trf4/uploadedFiles/22200500_Louisville_Gas_and_Electric_Company/12222011b/LGE_Gas_Tariff.pdf)).

The Stipulation is being supported by the Companies, Attorney General, KIUC, KCA, SREA and the governments of Kentucky's two largest cities do not oppose it.

Notably, beyond the support for it in this case, the Commission should approve the Stipulation for the review opportunities it provides the Commission through semi-annual in-person construction, load, 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.

Reliability should be a paramount concern for the Commission in light of the potential load growth suggested by the Companies. The requests in this CPCN effectively address these potential shortfalls. Delaying Mill Creek 2's retirement appears prudent when compared to PJM's recent efforts to cajole energy producers to not retire certain coal fired units when faced with reliability concerns.<sup>17</sup>

Therefore, for the benefit of all, and for the economic future the Stipulation-recommended resources will provide for Kentucky, the Commission should approve the Stipulation in full and without modification.

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<sup>17</sup> See, fn.1



CERTIFICATE OF SERVICE

I hereby certify that KCA's September 5, 2025 electronic filing is a true and accurate copy of KCA's pleading and Read 1<sup>st</sup> Document to be filed in paper medium; that the electronic filing has been transmitted to the Commission on September 5, 2025; that an original and one copy of the filing will not be mailed to the Commission given the pandemic orders; that there are currently no parties excused from participation by electronic service; and that, on September 5, 2025, electronic mail notification of the electronic filing is provided to all parties of record.

/s/Matt Malone

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