

**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

:

KENTUCKY COAL ASSOCIATION'S SUPPLEMENTAL BRIEF

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

Respectfully submitted,

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This brief responds to the initial briefs by the Sierra Club (SC) and the Joint Intervenors (JI) addressing the Joint Stipulation.

First, notably the two parties are not in agreement regarding whether the Commission has the right to change the retirement date for Mill Creek 2 which a prior proceeding authorized. The SC filing states this reversal is “not supported by testimony or economic analysis in this record ... and should be swiftly rejected”¹ by the Commission. Conversely, the Joint Intervenors (JI) argue that the Commission is well within its rights to do so.² KCA agrees with the JI on this matter.

Second, the two parties agree that it is not appropriate for the Companies to retrofit Selective Catalytic Reduction (SCR) on Ghent. Both parties argue that this need not be done at this time because it is no longer required to meet specific regulations. However, KCA finds these objections somewhat disingenuous as both parties support environmental controls for coal plants if they remain in operation. The Companies believe that this retrofit makes sense now given the likelihood that Ghent will remain in operation for many year to come leaving Ghent vulnerable in the future should regulations be reinstituted. The parties, on the other hand, appear to be concerned that if the investment in the SCR is made, Ghent would not be retired in a timely manner if the environmental requirement are restored which in reality is consistent with their goal to see coal plants retired prematurely.

Joint Intervenors (JI)

In general, the JI do not acknowledge the reality of the current market particularly as it relates to data centers and the simple concept that delays in the construction of needed new generation will come at a cost to ratepayers. While all parties would like certainty in all decisions, that

¹ Sierra Club Brief, page 10,

² Joint Intervenor Brief, pages 54-56 and page 68.

certainty is not currently available as the Companies and other parties have acknowledged. KCA agrees that the specific realities of the current situation, which are as follows, provide support for the Joint Stipulation for the following reasons:

- Strong demand for new gas combined cycle plants has increased costs and extended the timeline³,
- Increasing gas demand is placing pressure on existing pipeline capacity necessitating early commitments to pipeline expansions which like generation has extended the complexity of bringing new gas generating capacity on-line,⁴ and
- Transmission lines also need an early commitment to be upgraded to handle additional demand.⁵

Most importantly, absent the certainty obtained from the Joint Stipulation, the Companies will be challenged to provide sufficient support to counter-parties that they can have the capacity available to support the load growth. Hence, the situation is best described as which comes first, the chicken or the egg. The Companies cannot represent certainty with regard to capacity without the Commission's adoption of the Joint Stipulation.

A component of the Joint Stipulation are the safeguards in the Joint Stipulation for customers in the event that the projected load growth is slow to or does not materialize. Specifically, the Joint Stipulation provides a non-exhaustive list of after-the-fact reasonableness review criteria that can be used by the Commission to examine prudence for Mill Creek 6 cost recovery, including whether at least 500 MW of executed electric service agreement have been executed under proposed Rate

³ [Long lead times are dooming some proposed gas plant projects](#), [Turbine shortage slows new natural gas plant construction](#)

⁴ [Data Center Natural Gas Supply Threatened by Stalled Pipelines, Execs Say](#)

⁵ [2025 Data Center Power Report](#)

Extremely High Load Factor (“EHLF”) by the 2031 in-service date of Mill Creek 6, non-Rate EHLF load growth, an increase in off-system sales, the acquisition of municipal or other load, replacing lost capacity if the Ohio Valley Electric Corporation’s coal plants close, energy and capacity sales to other utilities or data centers outside its service territory but located in Kentucky, or selling a minority interest in Mill Creek 6 to a third party.⁶ The Joint Stipulation also requires KU/LG&E to provide semi-annual in-person construction, economic development, and load forecast updates to the Commission and all intervenors from the second quarter of 2026 through the second quarter of 2032 so that all parties will be regularly and adequately informed regarding KU/LG&E’s progress.

JI finds this provision of “no real consequence”.⁷ KCA, on the other hand, believes the commitment to quarterly meetings, if taken seriously by the Commission and all intervenors, will serve as an early warning system that the Commission can use to adjust the terms of the Joint Stipulation, if market events warrant said adjustment.⁸ While KCA acknowledges that the Commission has at any time the right to raise any issues, KCA believes a formal obligation for the Companies to disclose progress on a quarterly basis will serve to the benefit of all parties.

Finally, with respect to the JI, KCA believes it is important to note that the JI have their own agenda in this matter with respect to the potential for Demand Side Management, Virtual Power Plants, and other matters. The JI do not appear to understand why the extension of Mill Creek 2 (MC2) may be necessary for the Companies to be able to have adequate economic bridge capacity

⁶ Joint Stipulation Testimony of Lonnie E. Bellar and Robert M. Conroy (“Joint Stipulation Testimony”) at 6:10-7:2.

⁷ JI, pages 63-65, initial brief.

⁸ See, e.g., examples of other state utility commissions taking common sense approaches in delaying coal fired power plant retirements in light of needing reliable power with data centers going in service. <https://www.azcc.gov/kevin-thompson/news/2024/10/09/commissioners-thompson-and-myers-require-aps-to-demonstrate-dependable-and-dispatchable-generation-capacity-to-replace-loss-of-power-from-anticipated-four-corners-power-plant-closure>; <https://www.alliantenergy.com/news/news-center/2024/12/120424-columbia-energy-center>

to meet the timing of expected load growth. Further, as KCA has testified, the cost of continuing MC2 on coal was exaggerated by the coal cost assumptions used by the Companies in their analyses.

Sierra Club (SC)

The SC filing makes clear that two of its strongest objections relates to the potential continued operation the MC2 and the retrofit of the SCR on Ghent. With respect to the first matter MC2, the plan to continue its operation until Mill Creek 6 is completed (most likely 2031) is objectionable due to the additional costs required to do so. Even more objectionable to the SC (SC uses the term “Worse still”), the Joint Stipulation provides a commitment to consider keeping MC2 beyond 2031.

The SC is officially committed to the retirement of coal.⁹ In 2009/2010, the SC launched its “Beyond Coal” campaign. This is not meant to disparage the SC, it is simply a fact. To this end, it is not surprising that SC has been an active participant not only in Kentucky but other jurisdictions as well. Absent the SC’s standard arguments, there are no meaningful arguments related to MC2 and the SCR.

Procedural Arguments Raised – Mill Creek 2 is Properly Before the Commission

Previous stipulations in base rate and CPCN cases before the Commission have included items of consideration for intervenors not contemplated in any form by the Companies in their initial request however being ultimately approved by the Commission. By way of example, Lexington and Louisville previously negotiated a collaborative agreement to study LED lighting and electric bus infrastructure within a stipulation of a 2016 KU and LG&E base rate/CPCN case:

LED Lighting and Electric Bus Study Collaboratives

⁹ https://coal.sierraclub.org/campaign?utm_source=chatgpt.com

“Pursuant to the provisions of the First Stipulation, LG&E commits to engage in good faith with Louisville Metro, LFUCG, and any other interested parties to this proceeding and the KU rate proceeding in a collaborative to discuss issues related to LED lighting and electric bus infrastructure and rates. While the provisions limit participation to only those parties to the instant rate proceeding and the KU rate proceeding, the Commission finds that the collaboratives should also include the Kentucky Department of Energy Development and Independence, whose mission includes creating efficient, sustainable energy solutions and strategies.”¹⁰

The Companies cited other more prescient examples of items first arising in stipulations in their initial brief in this matter¹¹ however the above highlights that Commission approved consideration items occasionally can even include matters questionably related to rates and services in the scope of base rate or CPCN matter.

Within the scope of this CPCN, the Commission’s initial procedural order on March 13, 2025 incorporated the record for Case No. 2022-00402.¹² That 2022 CPCN previously granted the Companies the authority to retire Mill Creek 2. Inasmuch, as opposed to the questionable example of Commission authority above, the Commission squarely incorporated Mill Creek 2’s retirement into this CPCN matter. MC2 is unquestionably before the Commission in this matter.

Additionally, the Companies did not need to seek a petition for declaration of rights to provide a substantive decision on whether or not Mill Creek 2 or its adjustment clause is properly before the Commission. A petition for declaration of rights remains a discretionary option, rather than a mandatory requirement, available to a party before the Commission directing that, [t]he

¹⁰ https://psc.ky.gov/pscscf/2016%20Cases/2016-00371//20170622_PSC_ORDER.pdf (p. 24)

¹¹ *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)(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).

¹² https://psc.ky.gov/pscscf/2025%20Cases/2025-00045//20250313_PSC_ORDER.pdf Case No. 2022-00402, *Electronic Joint Application of Kentucky Utilities Company And Louisville Gas and Electric Company For Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan and Approval of Fossil Fuel-Fired Generating Unit Retirements* (filed. Jan. 6, 2023).

Commission...may issue a declaratory order...however the Companies were not required to use 807 KAR 5:001 Section 19¹³ to get to the same solution. Said another way, the Commission has full authority to determine whether rates are fair, just and reasonable including ruling on cost recovery mechanisms, among other items, that first arose in settlement agreements.¹⁴

Conclusion

The briefs filed by JI and SC fail to acknowledge the “gordian knot” facing utilities across the U.S. With utility load effectively flat for the last decade, utilities and utility commissions are grappling with how to help their jurisdictions benefit from the increase in data centers across the country without compromising historical practices. The parties to the Joint Stipulation reflected a large diverse share of the Companies’ customers trying to deal with how to benefit from increased load while at the same time minimizing harm to traditional customers. KCA urges the Commission to grant the Joint Stipulation in its entirety.

¹³ <https://apps.legislature.ky.gov/law/kar/titles/807/005/001/>

¹⁴ *Ky. Pub. Serv. Comm’n v. Com. ex rel. Conway*, 324 S.W.3d 373 (Ky. 2010); *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).

CERTIFICATE OF SERVICE

I hereby certify that KCA's September 17, 2025 electronic filing is a true and accurate copy of KCA's pleading and Read 1st Document to be filed in paper medium; that the electronic filing has been transmitted to the Commission on September 17, 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 17, 2025, electronic mail notification of the electronic filing is provided to all parties of record.

/s/Matt Malone

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