

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.
OF PUBLIC CONVENIENCE AND NECESSITY)	2025-00045
AND SITE COMPATIBILITY CERTIFICATES)	

POST-HEARING INITIAL BRIEF OF ATTORNEY GENERAL

The Attorney General of the Commonwealth of Kentucky, by his Office of Rate Intervention (“Attorney General”), provides the following Post-Hearing Initial Brief pursuant to the Commission’s Order of August 11, 2025, and related to the Hearing held by the Commission on August 4-7, 2025.

The Commission encouraged parties to brief “topics they believe relevant to... this matter,” as well as, “LG&E/KU’s existing authority, or lack thereof, to delay or extend Mill Creek 2’s retirement until Mill Creek 6’s in-service date or beyond; an analysis of need and absence of wasteful duplication for Brown 12, Mill Creek 6, and the Ghent 2 SCR; and whether new proposals, such as the life extension for Mill Creek 2; and the Mill Creek 2 and 6 Adjustment Clauses are properly before the Commission and ripe for decision.”

Stipulation and Recommendation

Prior to the Hearing, the Companies filed a Stipulation and Recommendation (“Stipulation”) with the Commission for consideration and approval on July 29, 2025. As reflected in the Commission’s solicitation, the Commission must now consider whether to approve the

Stipulation entered by Louisville Gas & Electric and Kentucky Utilities (“the Companies”) and several of the Intervenors. The Stipulation resolves the Companies’ requests for CPCNs to build needed generation resources, specifically Natural Gas Combined Cycle Plants (“NGCC”) at the Mill Creek and Brown Generating Stations. The Stipulation contains other agreements which extend the life of units at the Ghent and Mill Creek Generating Stations, which in turn reduces the need for the expensive and wasteful Battery Energy Storage System (“BESS”) that the Companies proposed to be installed at the Cane Run Generating Station.

Attorney General’s Comments on the Stipulation

The Commission should approve the Stipulation because it is a good deal for ratepayers. Specifically, (1) the financial terms of the Stipulation are a good deal for existing ratepayers, and (2) the elimination of the BESS avoids wasteful spending on the part of the Companies.

First, the Stipulation is a good deal for ratepayers because it allows for new economic development load to be served on reasonable terms while protecting existing ratepayers from the potential harms caused by that new load. The Stipulation contains several provisions which benefit existing ratepayers; a few key ones are the addition of a cost recovery metric, Adjustment Clause recovery with an offset for data center revenues, and new tariffs for certain data center load.

Under the Stipulation, the Companies agreed that procuring 500 MW of executed electric service agreements under the new Extremely High Load Factor (“EHLF”) Tariff will constitute one sufficient cost recovery metric for Mill Creek 6 cost recovery. This is important because it is an acknowledgement that Mill Creek 6 is being built to serve new EHLF load and whether the Companies may recover costs for Mill Creek 6 should in large part be influenced by whether that load materializes.

Also, under the Stipulation, the Companies agreed that they should recover costs for Mill Creek 6 through a new Adjustment Clause. This methodology for cost recovery allows ratepayers to pay less as time goes on, riding down the cost curve. This avoids the potential for ratepayers to overpay through “sticky” rates. Further, the Companies agreed that the costs recovered through the Adjustment Clause should be temporarily offset by certain new EHLF and other data center load revenues. This offset reflects a recognition that, until the Companies come back in for a rate adjustment, ratepayers have no way to benefit from new load that has been added to the system because that new revenue has not been factored into rates. Therefore, the temporary offset is a way for ratepayers to benefit immediately from this new load.

Finally, the new EHLF Tariff, which is not specifically being approved here, contains important ratepayer protections. At the Hearing and in comments, a common refrain was that Kentucky should be cognizant of the example set by data center development in Ohio and Virginia. The proposed EHLF Tariff is reflection of just that. Under the EHLF Tariff, hyperscale data centers will be subject to heightened requirements, including financial security and contracting requirements targeted at ensuring that existing ratepayers are insulated from the impacts of serving that load. Importantly, any business that wants to locate in Kentucky is entitled to pay for and receive electric service at Tariffed rates. It is better for that business to be served under a Tariff specifically tailored to its operations, which protects other ratepayers by increasing the likelihood that the business pays its full cost-of-service. These valuable terms should be approved by the Commission at the first opportunity.

Therefore, these financial terms of the Stipulation are valuable and worthy of Commission approval.

Second, the Stipulation is a good deal for ratepayers because it eliminates the expensive and wasteful spending proposed for BESS.

In general, BESS do not make sense from a cost-benefit perspective. The BESS system proposed here has an estimated cost of \$775 million.¹ The substantial cost does not support the limited benefits BESS would have provided to the Companies' system. If constructed, the BESS would have consisted of 400 MW of 4-hour lithium-ion batteries. So, the Companies would use existing resources, burning natural gas or coal to charge the BESS, and then would discharge the installation at an opportune moment, up to a maximum duration of 4 hours. As a point of comparison, the proposed NGCC unit at Brown is estimated to cost \$1.38 billion and can provide 645 MW of power on a 24/7 basis, 365 days per year. It makes little sense to pay more than half the cost of such a consistent and reliable unit for a unit that is only capable of discharging 60% of the power in intermittent 4-hour stretches and which is wholly dependent on other generating resources for charging. Furthermore, the life of BESS is approximately 20 years compared to a natural gas plant that can last up to 50 years.

Further, BESS present new safety and environmental challenges that have yet to fully resolved in the public debate over their utilization. The Environmental Protection Agency has confirmed that BESS pose legitimate safety concerns.² It is increasingly common to see headlines documenting massive battery fires lasting days or weeks, prompting evacuations of homes and

¹ This \$775 million is admittedly reduced by tax subsidies. However, any argument regarding the cost savings from tax subsidies must be tempered by the fact that ratepayers are taxpayers too.

² Administrator Lee Zeldin Hosts Press Conference with Long Island Residents Concerned About Safety and Siting Related to New York's Push for Battery Energy Storage Systems (BESS), <https://www.epa.gov/newsreleases/administrator-lee-zeldin-hosts-press-conference-long-island-residents-concerned-about> (accessed August 25, 2025).

causing environmental impacts.³ The safety issues surrounding BESS only add to the reasons that it is not a good value proposition for ratepayers.

Therefore, the Companies' forbearance with respect to the BESS is a valuable part of the Stipulation for ratepayers.

For these reasons, the Commission should approve the Stipulation.

Attorney General's Response to Commission's Questions

Additionally, the Commission solicited input on three specific issues: (1) the Companies' authority to delay retirement of Mill Creek 2, (2) the need for new resources, and (3) the Commission's authority to approve the adjustment clauses reflected in the Stipulation.

First, the Companies have the authority to delay Mill Creek 2's retirement. In Case No. 2022-00402, the Attorney General argued that, due to the looming reliability crisis, retirement of existing coal units would not be wise. The Commission nonetheless granted the Companies the authority to retire Mill Creek 2 and three other units. The Commission's authority to approve or deny the retirement of an electric generating unit is found in KRS 278.264. Notably, no provision of KRS 278.264 requires a unit to be retired within a specified timeframe after the Commission has approved the retirement. In fact, the retirements as approved were to take place at a forecasted date in the future, 2027 in the case of Mill Creek 2.⁴ No provision requires a retirement to occur at precisely the time it was forecasted to retire. Therefore, the utilities have the authority to adapt to changing circumstances. Importantly, the Commission retains the ability to protect ratepayers

³ Vistra's battery storage facility goes up in flames, spurs evacuation orders, <https://www.cnbc.com/2025/01/17/battery-facility-fire-at-california-power-plant-site-spurs-evacuation-orders.html> (accessed August 25, 2025); EPA Orders Cleanup Following Battery Fire at Gateway Energy Storage Facility in San Diego, <https://www.epa.gov/newsreleases/epa-orders-cleanup-following-battery-fire-gateway-energy-storage-facility-san-diego> (accessed August 25, 2025).

⁴ See Order of November 6, 2023 in Case No. 2024-00402 at Page 13.

by denying recovery of costs it deems imprudent, unjust, or unreasonable related to operation of any unit. Thus, the authority of the utilities to select a retirement date is not altogether unchecked.

Second, the Companies have demonstrated a need for new resources with Brown 12, Mill Creek 6, and the Ghent 2 SCR. AG-KIUC placed testimony in the record which concluded that the load forecast presented by the Companies justified the construction of Brown 12 and the Ghent SCR.⁵ AG-KIUC suggested approval of Mill Creek 6 should be conditional based on the speculative nature of the data center load.⁶ The Stipulation is consistent with that interpretation of the forecasted load and provides valuable ratepayer protections in the event those forecasts prove to be erroneous. This Commission has wisely stated in the past that utilities should have “steel in the ground” in Kentucky to serve native load.⁷ The Attorney General agrees and believes this policy to be even more critical today given the capacity demands facing our Country. States with sufficient generation will be at an advantage over those states without it. This Stipulation ensures that Kentucky will not be left behind.

Third, the Commission has the authority to approve the Adjustment Clauses reflected in the Stipulation. The Companies currently have rate cases pending before the Commission.⁸ AG-KIUC plan to file expert testimony in those cases which will propose Adjustment Clauses which mirror those reflected in the Stipulation. Even if the Commission is reluctant approve the Adjustment Clauses here, it could certainly take notice of the Stipulation in those dockets and approve them there. But it is important that the Commission articulate support for the Adjustment

⁵ See Direct Testimony of Leah Wellborn at 5 and 25-27.

⁶ See *id.* at 27, *et seq.*

⁷ Case No. 2023-00102, Order of January 25, 2024 at 9.; See also Case No. 2019-00443, Order of June 4, 2021 at 5, “Advocating to explicitly not have enough generation to satisfy retail demand, and using the remaining PJM members as a backstop is contrary to the FRR construct and Kentucky Power’s obligation of service under Kentucky law.”

⁸ Case No. 2025-00113 and Case No.2025-00114.

Clauses and the Temporary Offset. Those mechanisms are important protections that were negotiated specifically for the benefit of ratepayers.⁹

Conclusion


In closing, the Attorney General recognizes that it is the General Assembly that sets policy for the Commonwealth. And, the General Assembly has determined that the location of data centers within the Commonwealth should be encouraged.¹⁰ Having sufficient generation to attract data centers or any new industry to the Commonwealth or encourage the expansion of existing ones is vital to Kentucky's future. Without available generating resources, economic growth simply will not occur. If LG&E/KU do build new generation, new customers may come to Kentucky and existing customers may expand. If they do not build it, new customers/expansion cannot come, ensuring that economic opportunities will be lost. Thus, the Commission should take steps consistent with the policy decisions of the General Assembly by approving the Stipulation which allows for these resources to be developed.

⁹ Importantly, Section 8.6 of the Stipulation allows parties to withdraw from the Stipulation, which could trigger requests for the case to be reheard.

¹⁰ KRS 154.20-222.

Respectfully submitted,

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Certificate of Service and Filing

Pursuant to the Commission's Orders and in accord with all other applicable law, Counsel certifies that the foregoing electronic filing was transmitted to the Commission on September 5, 2025, and there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

This 5th day of September, 2025.

A handwritten signature in blue ink, appearing to read "J. Michael New", is positioned above a horizontal line.

Assistant Attorney General