

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 RESPONSE 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 Response Brief pursuant to the Commission’s Order of August 11, 2025, and in Response to the Initial Briefs filed by the other parties on September 5, 2025.

The Initial Brief filed by the Attorney General, as well as those filed by the Companies, Kentucky Industrial Utility Customers, Southern Renewable Energy Association, and the Kentucky Coal Association all aptly identified the many reasons the Stipulation and Recommendation (“Stipulation”) should be approved.

However, other Intervenors, specifically the Sierra Club and the Joint Intervenors suggested that the Stipulation and Recommendation should be disapproved. Many of the arguments articulated by the Sierra Club and the Joint Intervenors purport to discuss what is best for ratepayers.

For example, the Sierra Club speaks at length about the financial risks faced by ratepayers if Data Center load growth does not materialize. “The Companies’ existing customers face significant risk if the proposed gas plants are built but the data centers do not materialize at the

pace or scale the Companies hope.”¹ Contrary to the Sierra Club’s assertions, such a scenario is directly addressed through the cost recovery metrics specified in the Stipulation.

The Joint Intervenors are also critical of the Stipulation. They suggest the negotiated cost recovery review metrics are not beneficial to ratepayers,² the reporting requirements are not meaningful,³ and the EHLF commitments are inappropriate,⁴ among other arguments. And perhaps most perplexingly, the Joint Intervenors even suggest that failure to spend money on the Cane Run BESS will *increase* costs for ratepayers.⁵

To be sure, the Stipulation does not eliminate risk entirely; settlements rarely do. But it does manage risks in the face of competing interests. The Attorney General is the only party allowed, as a matter of law, to intervene in these proceedings to advocate specifically for the interests of the general ratepayer.⁶ The Attorney General, an elected representative of the people of the Commonwealth, after consulting extensively with his experts, entered the Stipulation because he determined that the appropriate balance had been struck. It is worth noting also that the Cities of Lexington and Louisville do not oppose the Stipulation. They too have elected leaders who are subject to the democratic process if voters determine their interests are not being adequately represented.

The other Intervenors cannot say the same, and in fact, represent specific parties who have particular interests. For example, in seeking permissive intervention, the Sierra Club identified one of its objectives. “The Sierra Club and its members have procedural and organizational interests in exercising their rights to participate in this proceeding to advocate for accelerating the

¹ Sierra Club Brief at 7.

² Joint Intervenors Brief at 60.

³ Joint Intervenors Brief at 63.

⁴ Joint Intervenors Brief at 65.

⁵ Joint Intervenors Brief at 58.

⁶ KRS 367.150(8).

electric sector's transition from high-cost, harmful fossil fuel-based generation to cleaner energy sources..."⁷ Thus, it comes as no surprise that the Sierra Club suggests the Commission disapprove new fossil fuel generation.⁸ Based on their stated interests, it also comes as no surprise that the Sierra Club advocates for spending ratepayer dollars on battery storage. They advocate, if the Commission is inclined to "approve some level of generation," it should "approve the CPCN for the Cane Run BESS."⁹

The Joint Intervenors also represent specific interests. For example, one of the Joint Intervenors is Kentucky Solar Energy Society, whose "mission," is to "promote the use of renewable energy resources, energy efficiency, and conservation in Kentucky through education, advocacy, networking, and demonstration of practical applications."¹⁰ So, it also comes as no surprise that the Joint Intervenors would suggest denial of the CPCN for new natural gas resources,¹¹ denial of extension of the operating life of a coal plant,¹² and oppose the withdrawal of the CPCN for the Cane Run BESS.¹³ Those positions are consistent with the mission of that member organization. But, despite representations otherwise, those positions do not necessarily represent what is best for the "wallets of ratepayers."¹⁴

The Sierra Club and the Joint Intervenors are free to hold these opinions and articulate them in this open forum. The Commission has allowed them to intervene and participate in this

⁷ Sierra Club's Motion to Intervene at 5.

⁸ Sierra Club's Brief at 10.

⁹ Also, this statement implies batteries are generating resources. Batteries are not generating resources. Batteries are devices that store energy generated by other generating resources for discharge at a later time. Some could attempt to strain logic to argue that the physical and chemical reactions inside a battery are a form of "generation." But put simply, batteries are incapable of generating energy on their own. To suggest a functional equivalence with other real generating resources could lead to improper cost-benefit comparisons, etc. Functional distinctions between operating technologies are often minimized in order to represent certain resources as being more cost-competitive than they are in fact. Accounting for these functional differences is crucial to any such analysis.

¹⁰ Joint Intervenor's Motion to Intervene at 4.

¹¹ Joint Intervenor's Brief at 3.

¹² Joint Intervenor's Brief at 68.


¹³ Joint Intervenor's Brief at 58.

¹⁴ Joint Intervenor's Brief at 58.

matter, and they have done so robustly. But their arguments should be given the weight they deserve, that of entities seeking to promote a specific agenda to achieve an outcome that benefits their interest. But they are not representative of ratepayers generally, and to the extent the Sierra Club or Joint Intervenors purport to discuss what is best for “existing customers” or “ratepayers” generally, their arguments should be given the limited weight they deserve.

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 17, 2025, and there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

This 17th 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