

**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
OF PUBLIC CONVENIENCE AND NECESSITY
AND SITE COMPATIBILITY CERTIFICATES

Case No. 2025-00045

LOUISVILLE METRO AND LFUCG’S POST-HEARING BRIEF

Louisville/Jefferson County Metro Government (“Louisville Metro”) and Lexington-Fayette Urban County Government (“LFUCG”), by counsel, and pursuant to the Public Service Commission’s (“PSC” or “the Commission”) order dated August 11, 2025, submits this post-hearing brief.

Kentucky Utilities Company and Louisville Gas and Electric Company (the “Companies”) jointly filed an Application for Certificates of Public Convenience and Necessity (“CPCN”) and Site Compatibility Certificates (the “Application”) with the Commission. Prior to the evidentiary hearing (the “Hearing”) on August 4, 6, and 7, 2025, the parties participated in settlement negotiations regarding various components of the Application. After two days of deliberation, the Companies, Attorney General, Kentucky Industrial Utilities Customers, Inc., Kentucky Coal Association, Inc., and Southern Renewable Energy Association entered a Stipulation and Recommendation (the “Stipulation”) that was filed as testimony with the Commission in advance of the Hearing. Louisville Metro and LFUCG were present for and participated in the settlement discussions and reviewed the language of the Stipulation prior to its submission to the

Commission. Louisville Metro and LFUCG took no position on the Stipulation and did not oppose the Stipulation at the Hearing.¹

As the two largest cities in the Companies' service territory, Louisville Metro and LFUCG represent their citizens' interests by ensuring the Commission consider the safety, adequacy, and reliability of electricity service to their citizens.² Louisville Metro and LFUCG are keenly focused on limiting any environmental harm and ensuring safeguards exist for consumer base rates.

Louisville Metro and LFUCG support the Stipulation's recognition that no agreement proposed by the parties would "impair, limit, or otherwise interfere with the jurisdiction of the Louisville Metro Air Pollution Control District (the "LMAPCD")."³ The LMAPCD implements federal, state, and local air pollution laws in Jefferson County and issues permits to enforce air pollution laws for sources of air pollution.⁴ All electric generating facilities that emit air pollutants in Jefferson County must receive a permit from the LMAPCD.⁵ The Stipulation's acknowledgment of the LMAPCD recognizes both the risk of pollution that fossil-fuel electric generation poses, and formally affirms the jurisdiction of the body tasked with enforcing regulations to reduce that risk.

The Companies' 2022 CPCN application contained the assumption that Mill Creek 2, a coal-fired plant, would retire after Mill Creek 5 is commissioned in 2027.⁶ The Commission previously approved the retirement of Mill Creek 2 in Case No. 2022-00402 conditioned upon the

¹ Stipulation Testimony, Exhibit 1 at 2 (July 29, 2025).

² Louisville Metro and LFUCG's Joint Motion to Intervene at 2 (March 21, 2025).

³ Stipulation Testimony, Exhibit 1 at 9 (July 29, 2025).

⁴ Air Pollution Control District, "Air Pollution Control District," <https://louisvilleky.gov/government/air-pollution-control-district>.

⁵ Air Pollution Control District, "Air Pollution Permitting in Louisville," <https://louisvilleky.gov/government/air-pollution-control-district/air-pollution-permitting-louisville>.

⁶ Joint Application at 8.

construction of Mill Creek 5.⁷ The signatory parties to the Stipulation agreed that the Commission should approve an extension of the service life of Mill Creek 2 until Mill Creek 6 goes in service, which is projected to be 2031. Any service life extension of Mill Creek 2 through 2031 would require the Companies to seek necessary approvals from the LMAPCD.

Louisville Gas & Electric Company (“LG&E”) has filed an application with the LMAPCD, and received approval for, a construction permit for Mill Creek 5.⁸ Because the LMAPCD-issued construction permit for Mill Creek 5 contains language reflecting the retirement of Mill Creek 2 before Mill Creek 5 becomes operational, the Commission’s approval of the Stipulation would require LG&E to file an amended construction permit application for Mill Creek 2 to remain in operation after Mill Creek 5 goes into service. Additionally, LG&E currently has a construction permit application for Mill Creek 6 pending before LMAPCD. The Mill Creek 6 construction permit application also contains language and emissions calculations that reflect the retirement of Mill Creek 2 before Mill Creek 6 becomes operational. LG&E will need to revise its Mill Creek 6 construction permit application should Mill Creek 2 continue to operate after Mill Creek 6 comes online.⁹ The LMAPCD is an independent body, and Louisville Metro and LFUCG do not have authority to make any assertions on its behalf. However, Louisville Metro and LFUCG believe it would be difficult for Mill Creek 2, with its current environmental control systems, to continue operation after Mill Creek 6 comes online.¹⁰

⁷ *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*, No. 2022-00402, at 178 (November 6, 2023).

⁸ VR 8/7/25, 1:48:49-1:49:08.

⁹ VR 8/7/25, 1:49:16-1:51:03.

¹⁰ *Kentucky Utils. and Louisville Gas and Electric Co.*, No. 2022-00402, at 36-37 (November 6, 2023).

Regardless of air permitting, the Commission has the plenary authority to accept the service life extension of Mill Creek 2 to 2031, as the Stipulation proposes. In *Kentucky Pub. Serv. Comm'n v. Com. ex rel. Conway*, 324 S.W.3d 373 (Ky. 2010), the Kentucky Supreme Court affirmed the Commission's plenary authority. In that case, Duke Energy Kentucky, Inc. proposed a cost recovery surcharge for costs incurred after the rate case associated with a program to replace gas distribution mains. The Attorney General opposed this mechanism contending the Commission lacked the authority to permit the rider because the statutory scheme governing rates prohibited single-issue ratemaking.¹¹ On review, the Kentucky Supreme Court held that the Commission has "plenary authority to regulate and investigate utilities..."¹² and the Commission had the authority to approve the rider because "there was no statutory authority forbidding it to do so."¹³

The principle in the Duke Energy case is applicable to the present matter. The Commission has plenary authority to regulate the Companies. The Commission previously exercised this authority when it approved the retirement of Mill Creek 2.¹⁴ The Commission only conditioned the retirement of Mill Creek 2 on the operation of Mill Creek 5 – it never provided a date certain for the retirement of Mill Creek 2.¹⁵ An order without a specific deadline for the retirement of a facility should not later be interpreted to contain a deadline. Moreover, KRS 278.264 details the criteria for the Commission to consider when retiring an electric generation facility, and it lacks any mention of a requirement that the Commission issue a date certain for retirement.¹⁶ If both the

¹¹ *Kentucky Pub. Serv. Comm'n v. Com. ex rel. Conway*, 324 S.W.3d 373, 375-76 (Ky. 2010).

¹² *Id.* at 383.

¹³ *Id.*

¹⁴ *Kentucky Utils. and Louisville Gas and Electric Co.*, No. 2022-00402, at 78 (November 6, 2023).

¹⁵ *Id.* at 178-181.

¹⁶ The language of KRS 278.264 is notably different from that in KRS 278.020(12) that requires the Commission may approve an application for a CPCN "no earlier than ninety (90) days from the date of the commission's acceptance of the application for filing, unless the commission finds it necessary for good cause to act upon the application earlier." The CPCN statute details clear time parameters for the Commission's action in a CPCN application. It is a stark contrast to the silence of KRS 278.264 as to the timeframe for retirement.

Commission’s previous order and the relevant statute lack criteria or a specific date of retirement, the Commission may extend the life of Mill Creek 2 because there is nothing “forbidding it to do so.”

The Commission’s plenary power to regulate utilities’ rates to ensure they are fair, just, and reasonable also allows the Commission to consider non-traditional cost recovery surcharges like that the Stipulation proposed for the Mill Creek 6 Cost Recovery Mechanism.¹⁷ Mill Creek 6 will be a gas combined cycle combustion turbine that the Companies propose to be constructed to provide electric load for a proposed data center in Jefferson County.¹⁸ The mechanism will temporarily offset cost recovery from the construction of Mill Creek 6 until the plant is in-service,¹⁹ which means that 500 MW of load has been sold²⁰ by eligible data centers²¹ or acquired by the Companies’ other new or current customers.²²

The Commission has the plenary authority to accept the Mill Creek 6 Cost Recovery Mechanism. No statute prevents the Commission from approving this mechanism. In fact, the mechanism is fair, just, and reasonable because it will protect ratepayers from bearing the financial burden associated with the new facility prior to its in-service date. If the Stipulation is approved, the Companies will be able to seek a change in base rates for cost recovery only after Mill Creek 6 is in service in 2031 .

The Commission ultimately has plenary authority to approve all parts of the Application – those included in the initial Application and those contained in the Stipulation. Louisville Metro

¹⁷ Stipulation Testimony, Exhibit 1 at 5 (July 29, 2025).

¹⁸ Joint Application at 10.

¹⁹ Stipulation Testimony, Exhibit 1 at 6 (July 29, 2025).

²⁰ Stipulation Testimony at 6 (July 29, 2025).

²¹ Stipulation Testimony, Exhibit 1 at 7 (July 29, 2025).

²² Stipulation Testimony at 6-7 (July 29, 2025).

and LFUCG take no stance in support or opposition to the Application or the proposed Stipulation. Should the Commission approve the Stipulation or the Companies' Application as filed, Louisville Metro and LFUCG encourage the Commission to expressly recognize the permitting authority of the LMAPCD and ensure cost-recovery safeguards for ratepayers in its decision.

Respectfully submitted,

/s/ 

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