

ATTACHMENT

RESPONSE AS FILED IN DOCKET FOR CASE NO. 2025-00113

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

In the Matter of

ELECTRONIC APPLICATION OF	)	
KENTUCKY UTILITIES COMPANY	)	
FOR AN ADJUSTMENT OF ITS	)	
ELECTRIC RATES AND APPROVAL	)	CASE NO. 2025-00113
OF CERTAIN REGULATORY AND	)	
ACCOUNTING TREATMENTS	)	

In the Matter of:

ELECTRONIC APPLICATION OF	)	
LOUISVILLE GAS AND ELECTRIC	)	
COMPANY FOR AN ADJUSTMENT	)	
OF ITS ELECTRIC AND GAS	)	CASE NO. 2025-00114
RATES AND APPROVAL OF	)	
CERTAIN REGULATORY AND	)	
ACCOUNTING TREATMENTS	)	

**RESPONSE OF JOINT INTERVENORS KENTUCKIANS FOR THE
COMMONWEALTH, KENTUCKY SOLAR ENERGY SOCIETY,
METROPOLITAN HOUSING COALITION, AND MOUNTAIN ASSOCIATION¹ IN
OPPOSITION TO JOINT MOTION FOR LEAVE TO FILE SUPPLEMENTAL
TESTIMONY REGARDING STIPULATION MECHANISMS AND MILL CREEK 2
ADJUSTMENT CLAUSE**

Come now Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Coalition, and Mountain Association (collectively “Joint Intervenor Respondents”), by and through counsel, and respond in opposition to Kentucky Utilities Company’s and Louisville Gas and Electric Company’s (collectively, “the Companies”) Joint Motion for Leave to File Supplemental Testimony Regarding Stipulation

¹ Joint Intervenor Mountain Association has only been granted intervention in Case No. 2025-00113, and Metropolitan Housing Coalition has only been granted intervention in Case No. 2025-00114. Joint Intervenor Kentucky Solar Energy Society have been granted intervention in both cases. All four Joint Intervenor have operated in coordination across both dockets pursuant to a joint representation agreement.

Mechanisms and Mill Creek 2 Adjustment Clause (“the Motion”). The Motion should be denied, as it improperly seeks to inject new testimony and evidence at the eleventh hour causing prejudice to and depriving intervenors of fair and ordinary process.

If the Commission instead grants leave for the Companies to supplement the record at this late date, Joint Intervenors respectfully request that the Commission adjourn the hearing and issue an amended schedule that affords an opportunity to review the Companies’ workpapers, pursue limited discovery, and prepare for hearing. Should the Commission allow the Companies to proceed with seeking approval of a Mill Creek 2 surcharge in these proceedings, the Companies must file an amended application including the incremental stay-open costs proposed to be recovered and provide customer notices as required by statute.

I. Factual Background

On May 30, 2025, the Companies initiated these base rate proceedings. The Companies’ original applications for base rate increases did not include costs related to the operation of Mill Creek 2 beyond its already-approved 2027 retirement date² and did not include costs related to new supply-side resources approved in Case No. 2022-00402, but not yet placed in-service and ripe for a cost recovery investigation.

On July 29, 2025, in a separate proceeding regarding applications for Certificates of Public Necessity and Convenience, Site Compatibility Certificates, ECR surcharge adjustments, and other relief, Case No. 2025-00045, the Companies filed a proposed stipulation including certain terms and provisions related to Mill Creek 2 stay-open costs, using the same cost-allocation methodology used for the ECR surcharge.

² Joint Supplemental Testimony of Robert M. Conroy Vice President, State Regulation and Rates and Christopher M. Garrett Vice President, Financial Strategy and Chief Risk Officer on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company at 12.

After filing the July CPCN Stipulation in Case No. 2025-00045, in these rate case proceedings, intervenors filed supplemental data requests on July 31, 2025; the Companies filed responses to supplemental data requests on August 12, 2025; the Commission convened an Informal Technical Conference on August 19, 2025; and the Companies filed Rebuttal Testimony on September 30, 2025. Although supplemental data requests did include inquiries related to the July CPCN Stipulation and Mill Creek 2 in particular, the Companies' responses and rebuttal did not provide additional information or evidence concerning Mill Creek 2 stay-open costs or the July CPCN Stipulation generally.³

On October 20, 2025, the Companies filed an opposed stipulation, with supporting testimony and exhibits, purporting to resolve all matters at issue in these rate case proceedings. The October 20, 2025 Stipulation and supporting evidence introduced a proposed Generation Cost Recovery ("GCR") Rider and Sharing Mechanism ("SM") Rider. The October 20, 2025 Stipulation did not include terms or provisions related to Mill Creek 2 stay-open costs.

Filed after the close of business on the eve of the evidentiary hearing in these proceedings, the Companies' Motion seeks leave to file further testimony and exhibits "with additional information regarding" the proposed GCR, SM, and for the first time in this proceeding seeks approval of the Mill Creek 2 cost recovery surcharges. The late-offered exhibits include files purporting to estimate the GCR and Mill Creek 2 surcharge impacts and proposing standardized reporting forms for the GCR, SM, and Mill Creek 2 monthly surcharge adjustments.

II. The Motion should be denied as untimely and without good cause.

³ LG&E/KU Response to AG/KIUC Request 2.55.

The Motion is untimely, without good cause, and should be denied in its entirety. The Commission has repeatedly recognized the need for parties to have sufficient time to review testimony and other evidence. For example, the Commission has refused to decide issues where the relevant information was entered into the record the day before the hearing, leaving neither Commission staff nor other parties opportunity to issue requests for information.⁴ Likewise, the Commission has refused to modify procedural schedules in manners that would prevent other parties from having sufficient time to review testimony before hearing, including refusing to grant parties only four days between the filing of rebuttal testimony and hearing.⁵

The timing of the Companies' filing in this case left intervenors a categorically insufficient *zero* business days to review and consult with their experts regarding the Companies' supplemental testimony and evidence. And importantly, it is not only other parties who are prejudiced by the Companies' late-filed evidence. The public as a whole is prejudiced as well, since the Companies' October 31st filing occurred after all four of the Commission-ordered public comment sessions.⁶

⁴ *In re Petition & Complaint of Kentucky Power Co. for A Declaration of Its Exclusive Right Pursuant to Krs 278.018(1) to Serve Those Portions of the Sand Gap Ests. in Greenup Cnty., Kentucky Lying Within Its Certified Territory in Lieu of Grayson Rural Elec. Coop. Corp.*, Case No. 2012-00224, Order (Apr. 1, 2014), at 9-10.

⁵ *In re Complaint of Sprint Commc'ns Co. Lp Against Brandenburg Tel. Co. & Request for Expedited Relief*, Case No. 2008-00135, Order (July 30, 2009), at 1-2 ("As grounds for its objection [to a motion to amend the procedural schedule], Sprint states that a filing deadline of August 7, 2009 would not leave Sprint's counsel with sufficient time to review the rebuttal testimony in time for the hearing scheduled for August 11, 2009. . . . The Commission finds that good cause exists to extend the deadline for filing prefiled rebuttal testimony. However, the Commission will only extend the deadline to August 5, 2009 in order to allow sufficient time for the parties to review the rebuttal testimony before the August 11, 2009 hearing."); see also *In Re Louisville Gas & Elec. Co.*, Case No. 2005-00142, Order (July 19, 2005), at 2 ("The Commission does believe Intervenors should have additional time to file testimony, given the difficulty in finding an expert who does not have conflicts. Nevertheless, the Commission recognizes Applicants' need for sufficient time to review any testimony before the hearing.").

⁶ See Case Nos. 2025-00113 and 2025-00114, Order (July 31, 2025) (scheduling public comment meetings on September 8, October 13, October 14, and October 16); Case Nos. 2025-00113 and 2025-00114, Order (October 8, 2025) (rescheduling the October 13 meeting for October 30).

The Motion fails to explain good cause for the Companies' delayed filing of information in support of the opposed Stipulation, and there does not appear to be any factor that prevented the Companies from acting earlier. The "additional information" offered on the eve of hearing could have been offered on October 20, 2025, as part of the Companies' original testimony and evidence in support of stipulation. The Stipulation terms and provisions have not changed since October 20, 2025, effectively making the "additional information" surrebuttal testimony without even intervening rebuttal testimony from other parties. The Companies chose what to include in their October 20, 2025 filing, and a second bite at the apple is procedurally improper.

Finally, denying the Motion will not prejudice the Companies or deny the Companies a full and fair process. As noted, the Companies already filed testimony and evidence in support of a proposed Stipulation, and a second pass would be undue. Further, the Companies remain free to pursue investigation, review, and approval of new costs and surcharges in a separate proceeding where the public, intervenors, and the Commission have an opportunity to thoroughly review the proposal.⁷ Also, the Companies could seek to amend and re-notice the rate increase applications initiating these proceedings to include matters pertaining to Mill Creek 2 stay-open costs and future rates for new generation cost recovery. With legitimate procedural avenues available, the Companies will not be prejudiced by denying the Motion.

The Motion should be denied in its entirety as coming too late, without good cause, and with great prejudice to the parties and public. Doing otherwise could jeopardize the finality of the Commission's decisions in these rate case proceedings,

⁷ 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, Order at 154 (Ky. PSC Oct. 28, 2025).

causing great inefficiencies and potentially greater risks to and instability of the Companies' financial position.

III. The Companies' Attempt to Introduce Mill Creek 2 Stay-Open Costs and a Mill Creek 2 Surcharge on the Eve of Hearing is Improper.

While the Motion in its entirety comes too late without adequate cause, the Companies' attempt to introduce Mill Creek 2 stay-open costs and a Mill Creek 2 surcharge on the eve of hearing is particularly improper. The Companies could have filed supplemental testimony and evidence concerning Mill Creek 2 stay-open costs in these proceedings after reaching a stipulation in Case No. 2025-00045, on July 29, 2025. Any matters arising from that July CPCN Stipulation could have been addressed in the Companies' September 30, 2025 Rebuttal Testimony in this proceeding, if not earlier.⁸

Apparently, the Companies' only reason for providing "additional information" on the eve of hearing is the denial of Mill Creek 2 stipulation provisions in the CPCN proceeding.⁹ Respectfully, one sentence of dicta in a separate proceeding cannot eviscerate fundamental fairness and the orderly development of the record in these base rate cases.

Further, the Commission's denial of a Mill Creek 2 surcharge in the CPCN proceeding did not "encourage" the Companies to introduce the MC2 mechanism into these proceedings on the eve of hearing. Rather, the Commission "encourage[d]" the

⁸ The Companies further had opportunities to provide information or evidence related to Mill Creek 2 stay open costs and the July CPCN Stipulation in response to supplemental data requests in this proceeding, on July 31, 2025. For example, the Attorney General and Kentucky Industrial Utility Customers supplemental request number 55 sought confirmation that Mill Creek 2 settlement terms had been reached in the CPCN proceeding. The Companies confirmed in response, but declined to offer any information or evidence into the record of this proceeding related to Mill Creek 2 stay-open costs that otherwise had not been at issue in these rate case proceedings.

⁹ Motion for Leave to File Supplemental Testimony at 2.

Companies to better support their failed CPCN proposals “in a separate proceeding,”¹⁰ and noted that *if* a stipulating party attempted to raise in these proceedings, more support is encouraged. This in no way indicates that it would be proper to try to introduce the mechanism into the rate cases through supplemental testimony on the eve of the hearing.

Fundamentally, supplemental testimony on the eve of hearing is a procedurally defective way to introduce a rate adjustment mechanism such as the Mill Creek 2 surcharge into a base rate case. The Mill Creek 2 surcharge was not included in the Companies’ initial Applications for authority to adjust their electric rates and for approval of certain regulatory and accounting treatments. Furthermore, 807 KAR 5:001 Section 17 requires that, when seeking a general rate adjustment, utilities must provide notice to the public and to each of their customers that contains the proposed rates. The Mill Creek 2 surcharge falls under the broad definition of “rate” in this context,¹¹ yet it was not included in the Companies’ Customer Notices of Rate Adjustment.¹² As a result, the Companies have not provided the public with the legal notice required by 807 KAR 5:001 Section 17, and the Companies’ late-sought approval of the mechanism in these dockets is procedurally improper.¹³

¹⁰ 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, Order at 154 (Ky. PSC Oct. 28, 2025) (“The Commission encourages LG&E/KU to provide more evidence in support of the Mill Creek 6 Mechanism and Mill Creek 2 Mechanism in a separate proceeding, allowing the Commission an opportunity to thoroughly investigate the proposals.”).

¹¹ See KRS 278.010(12) (broadly defining “rate” as “any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof”); see also Case Nos. 2025-00113 and 2025-00114, Order (June 16, 2025), at 2 n. 4 (applying the KRS 278.010(12) definition of “rate” in the context of Section 17 notice requirements).

¹² See Case Nos. 2025-00113 & 2025-00114, Certificate of Completed Notice (July 14, 2025), Exhibit A.

¹³ Unlike the ECR mechanism that the proposed MC2 and GCR surcharges mimic, there is no statutory authority allowing recovery of capital investments in new generation outside of base rates for any extended period of time. The proposed surcharge mechanisms further would not satisfy the statutory

Nor was the Mill Creek 2 surcharge included in the proposed Stipulation and Recommendation filed by the Companies on October 20, 2025, of which the Companies are currently seeking Commission approval. Per the terms of that proposed Stipulation and Recommendation, the Companies have sworn that “counsel for all Parties [to the proposed Stipulation and Recommendation] will represent to the Commission that the Stipulation is a fair, just, and reasonable means of resolving *all* issues in this proceeding,”¹⁴ yet the Companies now improperly seek to introduce new issues nowhere contemplated in their proposed Stipulation and Recommendation, contradicting the very terms of which they seek approval.¹⁵

Finally, the Stipulation and Recommendation in Case No. 2025-0045 provides no legal basis for introducing the Mill Creek 2 surcharge in proceedings such as the present one. That Stipulation and Recommendation—to which the Companies were party—states that “[t]he Parties agree that neither the Stipulation *nor any of its terms* shall be admissible in any court or commission except insofar as such court or commission is addressing litigation arising out of the implementation of the terms herein, the approval of this Stipulation, or a Party’s compliance with this Stipulation. This Stipulation shall not have any precedential value in this or any other jurisdiction.”¹⁶ The Companies relied on this provision in discovery when Joint Intervenors requested the Companies to reconcile terms in the 2025-00045 Stipulation and in their rate case

notice requirements for ECR recovery provided in KRS 278.183. Customers are due at least the same amount of statutory notice as the Companies recently provided in Case Nos. 2025-00045 and 2025-00105 for ECR surcharge rate adjustments.

¹⁴ Proposed Stipulation and Recommendation § 10.4 (emphasis added).

¹⁵ Joint Intervenors do not concede the propriety of any issues or mechanisms introduced in the proposed Stipulation and Recommendation, which are not at issue in this Motion for Leave to File Supplemental Testimony.

¹⁶ Case No. 2025-00045, Order (October 28, 2025), Appendix A at 12 (emphasis added).

applications.¹⁷ But the Companies now attempt to disregard this language, asking the Commission to approve a tariff mechanism that “[t]he Companies . . . proposed as part of the Stipulation and Recommendation in Case No. 2025-00045.”¹⁸ The Companies cannot have it both ways.

IV. The Companies’ Attempt to Bolster their Deficient Evidence in Support of the Proposed Generation Cost Recovery Rider and Sharing Mechanism Is Improper.

Notably, to the extent that the Companies attempt to rely on the Commissions’ Order in Case No. 2025-00045 as cause for introducing Mill Creek 2 Adjustment Clause-related evidence the Friday evening before hearing,¹⁹ that Order bears no relevance to the Companies’ improper attempt to bolster their evidence for the GCR and SM surcharges. The Companies claim that “because of the Commission’s holding regarding mechanisms in the CPCN Case, the Supplemental Testimony provides additional information regarding the mechanisms proposed in the Stipulation in these rate proceedings.”²⁰ For the reasons explained above, this additional information comes too late and is procedurally improper.

With respect to the GCR surcharge, the Companies’ newly-introduced claim that it would provide \$400 million in savings to ratepayers compared to base rate recovery is especially egregious.²¹ The proposed supplemental testimony provides no indication of how the Companies derived the \$400 million in savings, except for claiming that they reflect an unidentified “declining capital balance due to depreciation,” and that “[t]hese savings assume base rate cases every three years with the first test year being

¹⁷ Case Nos. 2025-00113 and 2025-00114, Companies’ Resp. to Joint Intervenor Data Request 3-1 (Sept. 23, 2025).

¹⁸ Motion for Leave to File Supplemental Testimony at 2.

¹⁹ Motion for Leave to File Supplemental Testimony at 3.

²⁰ Motion for Leave to File Supplemental Testimony at 3.

²¹ Proposed Joint Supplemental Testimony at 3, 7.

calendar year 2027.”²² Such a claim demands interrogation through the standard discovery process in order to inform parties and the Commission of any alleged basis *prior* to hearing, so that parties and the Commission can ask sufficiently informed questions on cross-examination. Otherwise, intervenors and the Commission cannot determine whether the Companies have met their burden of proof. The Commission should not allow the Companies to circumvent this process by introducing new, unsupported claims into the record on the eve of hearing.

The Companies’ attempt to introduce the GCR surcharge preliminary bill analysis included in Supplemental Testimony Exhibit 1 is similarly improper. With zero business days between the filing of these analyses and the start of hearing, it is not practical for parties’ experts and counsel to examine this analysis with sufficient time and attention. Admitting this analysis at such a late hour would subvert the purpose of the Commission-ordered procedural schedule, and would in no way provide “opportunity to thoroughly investigate” the Generation Cost Recovery Rider for which the Companies now seek approval.²³

WHEREFORE, for the foregoing reasons, Joint Intervenors respectfully ask the Commission to deny the Motion in its entirety as the Companies’ last minute attempt to bolster the record regarding the bill impacts and purported ratepayer benefits of the proposed GCR, and to for the first time introduce a Mill Creek 2 stay-open cost recovery mechanism into this proceeding is procedurally improper, deprives the parties of a fair opportunity to evaluate and address the issues at hearing, and jeopardizes the finality of the Commission’s decision in this proceeding

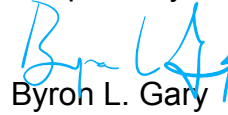
²² Proposed Joint Supplemental Testimony at 6, 7 n. 6.

²³ Motion for Leave to File Supplemental Testimony at 2 (quoting Case No. 2025-00045, Order at 153-54 (Ky. PSC Oct. 28, 2025)).

If the Commission allows any portion of the late-filed testimony and exhibits into the record of these proceedings, Joint Intervenors respectfully request that the Commission promptly adjourn the hearing and amend the procedural schedule to provide reasonable process for an investigation of the Companies' late-filed testimony, evidence, and cost recovery mechanism proposal.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully Submitted,

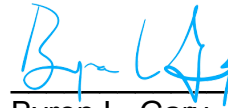


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CERTIFICATE OF SERVICE

In accordance with the Commission's July 22, 2021 Order in Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, this is to certify that the electronic filing was submitted to the Commission on November 02, 2025; that the documents in this electronic filing are a true representation of the materials prepared for the filing; and that the Commission has not excused any party from electronic filing procedures for this case at this time.



Byron L. Gary