COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

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POSTHEARING BRIEF OF JOINT INTERVENORS KENTUCKIANS FOR THE COMMONWEALTH, KENTUCKY SOLAR ENERGY SOCIETY, METROPOLITAN HOUSING COALITION, AND MOUNTAIN ASSOCIATION

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INTRODUCTION

Since the Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E") (jointly referred to as the "Companies")' last base rate case in 2020, the Companies have paid an average of roughly $400 million per year in stock dividends to PPL Corporation. Ratepayers, meanwhile, have struggled to keep up, with rates rising faster than incomes. The Companies' proposals in these rate cases would place an even more extreme burden on current ratepayers, while eliminating risk for the Companies' shareholders, and institutionalizing the overearning of returns on equity. Such ratemaking is not fair, it is not just, and it is certainly not reasonable, and the Commission should not permit it.[1]

In their initial Application, the Companies proposed an astounding and unjustified 10.95% revenue requirement. Meanwhile, the Companies failed to propose sufficient protections for rate affordability and failed to deliver a net metering proposal in compliance with Commission-approved methodologies for setting all avoided costs. Anticipating significant costs from potential data center customer load growth, the Companies' also proposed a new Extremely High Load Factor Rate ("Rate EHLF"), but failed to conduct and provide analysis demonstrating that its terms are sufficient to protect the existing ratepayers from bearing costs caused by Rate EHLF customers.

On October 20, 2025, the Companies filed a Proposed Stipulation and Recommendation ("Proposed Stipulation"). This Proposed Stipulation threatens to be a Trojan horse. As purported compensation for several overstated concessions by the

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[1] While LG&E's Application and the Stipulation also addresses issues related to LG&E's gas services, throughout this brief, Joint Intervenors will focus primarily on issues related to KU and LG&E's electric services.

Companies, the Proposed Stipulation would introduce a Generation Cost Recovery Surcharge and Sharing Mechanism that would fundamentally alter utility cost recovery in Kentucky. The Generation Cost Recovery Surcharge provision in the Stipulation would allow the Companies to sidestep the standard ratemaking process regarding billions of dollars of cost recovery, which would automatically be recovered from ratepayers on a rolling monthly basis, with only highly limited and largely retroactive review, and no reduction in ROE to reflect the lack of lag and lower risk. The Sharing Mechanism, for its part, would improperly guarantee that the Companies receive at least a certain level of Return on Equity, and would allow the Companies to keep a certain amount of overearnings, conflicting in several ways with core ratemaking principles.

After already upending the scope of their initial Application through the proposed stipulation adjustment clauses, on the Friday evening before the commencement of the hearing in these proceedings, the Companies went even further. Having failed to previously request any relief related to Mill Creek 2 capital and O&M costs, and having recently had a Mill Creek 2 Surcharge proposal denied in the separate Certificate of Public Convenience and Necessity case, the Companies improperly sought to introduce the Mill Creek 2 Surcharge in these rate cases through supplemental testimony filed Halloween night, the Friday before the hearing in this matter was set to begin. As with the Generation Cost Recovery Surcharge, this Mill Creek 2 Surcharge would allow the Companies to pass through more costs to its customers and avoid many of the risks and scrutiny associated with proposed cost recovery in traditional ratemaking, without adequate notice, process, or evidentiary support.

Cumulatively, the Companies' proposals would improperly allow the Companies to continuously increase rates outside of the base rate case process, with no regard for the burdens that are increasingly placed on ratepayers, and with greatly reduced risk for the Companies' shareholders, and with returns that allow overearning on an ROE that was not adjusted downward to reflect the near real-time recovery under the GCR. In order to ensure that the Companies' rates are fair, just, and reasonable, Joint Intervenors ("JI") respectfully request that the Commission grant the following relief:

Affordability: The Commission should reject the Companies' Prepay Program, or alternatively, reduce the charge for it. The Commission should also reject the Companies' requested ROE, as well as the ROE proposed in the stipulation, and keep the Companies' currently-authorized ROE of 9.425%. For time-of-day rates, the Commission should require meaningful notice to customers who would benefit from them. For the Companies' WeCare and demand-side management programs, the Commission should require additional funding as well as outreach to eligible customers, particularly through community partners and require consideration of increased capacity costs. The Commission should also require that performance-based ratemaking be based on "Payment Performance Metrics." The Commission should also require either refunding the $8.7 million savings over the past three years from its office closures, refunding the unauthorized in-person payment fee to all ratepayers who have had to pay it over the past three years, or both.

Rate EHLF: Regarding eligibility for Rate EHLF, all customers that qualify for Rate EHLF should be required to take service under it; the mega-volt-ampere ("MVA") threshold should be lowered to 50 MVA, as the Proposed Stipulation and

Recommendation would do; the 85% load factor threshold should be eliminated or reduced to 75%; and Rate EHLF should apply to data center customers with multiple smaller facilities and to multi-tenant data center customers, even if that requires aggregating load when determining tariff eligibility. Regarding Rate EHLF's substantive provisions, the ramp-up period for Rate EHLF customers should be capped and separated from the 15-year minimum contract term, and the collateral and minimum billing demand provisions should be strengthened. The Renewable Energy Goals provisions for Rate EHLF customers included in the Proposed Stipulation should also be strengthened. Finally, in addition to approving an improved Rate EHLF, the Commission should order the Companies to assess cost allocation methodologies for Rate EHLF customers as soon as possible, and at least within six months of the Commission's Order in this proceeding.

Net Metering: Joint Intervenors continue to oppose the Companies' net-metering methodology. However, Joint Intervenors support maintaining the current NMS-2 rate as a floor for NMS-2 rates and keeping NMS-2 open, as the Proposed Stipulation would do. If the Commission approves the NMS-2 provision contained in the Proposed Stipulation, it should also require the Companies to file an improved NMS-2 proposal by date certain in compliance with Commission-approved methodologies for setting all avoided costs. As part of that filing, the Commission should require a study of potential greater benefits of distributed generation through proper integration and use of already-required smart meters, as well as possibilities for distributed energy management systems ("DERMS").

Other Stipulation Provisions: The Commission should approve the reduced revenue requirement contained in the Proposed Stipulation, along with the removal of the Companies' membership dues. The Commission should deny the proposed Generation Cost Recovery Rider and Sharing Mechanism. The Commission should also set a lower Return on Equity than included in the Proposed Stipulation, particularly for any riders and surcharges.

The Mill Creek 2 Surcharge: The Commission should deny without prejudice the Mill Creek 2 surcharge mechanism as procedurally improper and not appropriate for adjudication in this case. If the Commission reaches the merits, the Mill Creek 2 Surcharge should still be denied as inadequately supported, unjust, and unreasonable.

LEGAL STANDARD

Utilities are granted a monopoly status normally disfavored in our system of governance and economics, under the "regulatory bargain" where the exclusive right to serve is predicated on an obligation to provide safe and reliable services without discrimination under tariffs that are fair, just, and reasonable.. That oversight is a legislative function, which the legislature may either carry out directly or delegate to an agency.[2] The Kentucky General Assembly has delegated that oversight, including over ratemaking, to this Commission.[3]

a. Fair, Just, and Reasonable

The guiding principle set by the Kentucky legislature as to rates, common with many jurisdictions, is that utilities are entitled to "demand, collect and receive fair, just

[2] Ky. Indus. Util. Customers, Inc. v. Ky. Utils. Co., 983 S.W.2d 493, 495 (Ky. 1998).
[3] KRS 278.040.

and reasonable rates."[4] Utilities must act in accordance with the requirements of the statutes and Commission regulations in setting and charging rates.[5] It is the burden of the utility to demonstrate to the satisfaction of the Commission that proposed rates are fair, just, and reasonable.[6] It is for the Commission, though, to determine the approved rates to be fair, just, and reasonable. As the Supreme Court of Kentucky has stated, "[t]he accountants for the Utility do not establish the rates for the consuming public. Only the regulatory commission has that responsibility."[7]

Since at least *Fed. Power Com. v. Hope Nat. Gas Co.* was decided by the United States Supreme Court in 1944, what constitutes fair, just, and reasonable rates are the ***lowest*** reasonable rates that would not be confiscatory under the Constitutions of the United States and the Commonwealth of Kentucky while enabling successful operation, maintaining financial integrity, and providing a return commensurate with the risks of the investment even if meager.[8]

According to the Kentucky Supreme Court:

> A confiscatory rate is one that is unjust and unreasonable. Rates are non-confiscatory, just and reasonable so long as they enable the utility to operate successfully, to maintain its financial integrity, to attract capital and to compensate its investors for the risks assumed even though they might produce only a meager return on the so-called 'fair value' rate base.[9]

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[4] KRS 278.030(1).
[5] KRS 278.180.
[6] KRS 278.190(3).
[7] Ky. Indus. Util. Customers, Inc. v. Ky. Utils. Co., 983 S.W.2d 493, 501 (Ky. 1998).
[8] *Commonwealth ex rel. Stephens v. S. Cent. Bell Tel. Co.*, 545 S.W.2d 927, 930-31 (Ky. 1976) (citing *Fed. Power Com. v. Hope Nat. Gas Co.*, 320 U.S. 591, 64 S. Ct. 281 (1944); *FPC v. Nat. Gas Pipeline Co.*, 315 U.S. 575, 62 S. Ct. 736 (1942)).
[9] Commonwealth ex rel. Stephens v. S. Cent. Bell Tel. Co., 545 S.W.2d 927, 930-31 (Ky. 1976).

Utilities, therefore, have a constitutional right to rates that afford an opportunity to keep doing business.[10] However, ratepayers also have "a right to expect reasonable utility rates."[11] The Commission, therefore, must balance its responsibility "to protect consumers against exploitation," and ensure that utilities have the opportunity to recover revenue through rates sufficient to ensure their "financial integrity."[12] However, the setting of fair, just, and reasonable rates do not *guarantee* net revenues, but rather the opportunity to earn such revenue.[13] To the extent that there is a "zone of reasonableness" within which rates may fall without being confiscatory, the Commission is free "to decrease any rate which is not the 'lowest reasonable rate.'"[14]

The Commission has broad discretion in the weighing of factors it may consider in doing this balancing to determine the lowest reasonable rate.[15] In setting value for property for rate base, the Commission is required to give "due consideration" to a number of factors, including "other elements of value recognized by the law of the land for rate-making purposes."[16] This includes such factors as capital structure, the

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[10] *Fed. Power Com. v. Hope Nat. Gas Co.*, 320 U.S. 591, 603, 64 S. Ct. 281, 288 (1944) ("Rates which enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed certainly cannot be condemned as invalid, even though they might produce only a meager return on the so-called "fair value" rate base.")

[11] *Ky. Indus. Util. Customers, Inc. v. Ky. Utils. Co.*, 983 S.W.2d 493, 495 (Ky. 1998). Indeed, the Commission can investigate rates upon complaint by a ratepayer, or "upon its own motion." KRS 278.270; *see also* KRS 278.260(1).

[12] *Fed. Power Comm'n v. Memphis Light, Gas & Water Div.*, 411 U.S. 458, 465-66, 93 S.Ct. 1723, 1728 (1973) (citing *Hope* at 610, 603).

[13] *Hope Nat. Gas Co.* 320 U.S. at 603 (quoting, *Fed. Power Comm'n v. Nat. Gas Pipeline*, 315 U.S. 575, 590, 62 S.Ct 736 (1942) ("Thus we stated in the Natural Gas Pipeline Co. case that 'regulation does not insure that the business shall produce net revenues.'").

[14] FPC v. Nat. Gas Pipeline Co., 315 U.S. 575, 585-86, 62 S. Ct. 736, 743 (1942); see also Commonwealth ex rel. Stephens v. S. Cent. Bell Tel. Co., 545 S.W.2d 927, 931 (Ky. 1976).

[15] Nat'l-Southwire Aluminum Co. v. Big Rivers Elec. Corp., 785 S.W.2d 503, 512 (Ky. App. 1990).

[16] KRS 278.290(1).

prudency of investments, and “whether a particular utility is investor owned or a cooperative operation.”[17] Within that, as noted above, consideration is given to the financial health of the utility, including (if it is investor-owned), such metrics as the utilities’ valuation and history of dividend payouts.[18]

b. Ratemaking Process

The Commission’s responsibility to establish the rates for the consuming (and captive) ratepaying public is exercised through the ratemaking process. Like limits to the lowest reasonable rate, the process must at a minimum meet the requirements of both procedural and substantive due process.[19] For instance, “a party is entitled to know the issues on which the decision will turn,” and “unreasonable inconsistencies or unlawful arbitrariness” in decisions could be cause for a violation of due process.[20] The usual regulatory process involves an application from a utility with at least thirty (30) days notice to the Commission,[21] the ability of the Commission to suspend rates for up to six (6) months for investigation and hearing,[22] and up to ten (10) months for the Commission to reach an ultimate decision.[23] This is a “lengthy procedure in which a new base rate is approved only after thorough examination of all operations and costs by the

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[17] Nat'l-Southwire Aluminum Co. v. Big Rivers Elec. Corp., 785 S.W.2d 503, 512 (Ky. App. 1990).
[18] *See*, *e.g.*, 807 KAR 5:001 §§ 12(2), 16(7)(h), (j), (l), (p), (r); *Commonwealth ex rel. Stephens v. S. Cent. Bell Tel. Co.*, 545 S.W.2d 927, 930-31 (Ky. 1976); *Hope Nat. Gas Co. at 603-04*.
[19] Ky. Indus. Util. Customers, Inc. v. Ky. Utils. Co., 983 S.W.2d 493, 498 (Ky. 1998).
[20] Nat'l-Southwire Aluminum Co. v. Big Rivers Elec. Corp., 785 S.W.2d 503, 516 (Ky. App. 1990).
[21] KRS 278.180.
[22] KRS 278.190(2); a shorter period of five (5) months is prescribed if a historical test period is used by the utility in filing changes to rates. The Companies used a forward-looking test period, for which the six month suspension period is applicable.
[23] KRS 278.190(3). When rates are put into effect after the six month review period, but before a decision at the ten month mark, any amount over that which the Commission determines is reasonable may be ordered to be refunded. KRS 278.190(2).

Public Service Commission,"[24] and for good reason, utility ratemaking can be a very complex undertaking[25] involving the balancing of different interests to reach an overall result for which the "total effect" is just and reasonable.[26]

The process also involves the right of the ratepaying public to be provided adequate advance notice of potential changes to rates,[27] as well as the Commission and the Attorney General's Office of Rate Intervention.[28] That notice typically takes several forms intended to broadly reach those most affected by rate proposals - in bill inserts, in newspaper advertisements, and other means. The Commission also is required to conduct a hearing upon request unless it is not required by statute, waived, "or unnecessary for protection of substantial rights or not in the public interest."[29] Further public notice is required between seven and twenty-one days before a hearing is held.[30] Any person who has not formally requested or been granted intervention in a case may provide comment.[31] While the usual regulatory process is initiated by an

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[24] Ky. Indus. Util. Customers, Inc. v. Ky. Utils. Co., 983 S.W.2d 493, 495 (Ky. 1998).
[25] See, e.g., Id.; Smith v. S. Bell Tel. & Tel. Co., 268 Ky. 421, 424, 104 S.W.2d 961, 962 (1937); Nat'l-Southwire Aluminum Co. v. Big Rivers Elec. Corp., 785 S.W.2d 503, 508 (Ky. App. 1990); Ky. PSC v. Commonwealth ex rel. Conway, 324 S.W.3d 373, 380 (Ky. 2010). The initial application in these cases alone runs into the thousands of pages.
[26] *Hope Nat. Gas Co.* 320 U.S. at 602.
[27] KRS 278.180; 807 KAR 5:001 § 17. *See also Union Light, Heat & Power Co. v. Pub. Serv. Comm'n*, 271 S.W.2d 361 (Ky. 1954), which found a previous version of the requirement in 807 KAR 5:001 § 17 invalid because it was not authorized by statute. KRS 278.180(1) now explicitly states that "[t]he commission may order the utility to give notice of its proposed rate increase to that utility's customers in the manner set forth in its regulations," and the Commission requires notice mailed with bills, mailed written notice to each customer, publication once a week for three consecutive weeks in a newspaper of general circulation in the area, and publication in a trade publication or newsletter delivered to all customers, each *before* and application is submitted to the Commission.
[28] 807 KAR 5:001 § 16(2).
[29] 807 KAR 5:001 § 9(1).
[30] 807 KAR 5:001 § 9(2).
[31] 807 KAR 5:001 § 4(11)(e).

application from a utility for an increase in base rates, the commission can, "upon its own motion or upon complaint …, and after a hearing had upon reasonable notice, find[] that any rate is unjust, unreasonable, insufficient, unjustly discriminatory or otherwise in violation of any of the provisions of this chapter," and thereafter "by order prescribe a just and reasonable rate to be followed in the future."[32] Additionally, a public complaint process exists to allow a ratepayer to request Commission scrutiny. In either situation, procedural due process must of course be provided, including adequate notice and a meaningful opportunity to be heard. With respect to parties in a Commission proceeding, due process includes reasonable notice of the evidence to be considered, and an opportunity to "test, explain and/or refute that evidence."[33] For due process "requires, at a minimum, that persons forced to settle their claims of right and duty through the judicial process be given a meaningful opportunity to be heard."[34] And while it has been observed from the 1937 decision in *Smith v. Southern Bell Tel. & Tel. Co.*,[35] that the right to utility service is not an "inherent property right" or "natural right," the right to be free from arbitrary governmental action, including denial of due process, *is* a fundamental right possessed by Kentuckians and grounded in Ky. Constitution Article 2.

c. Affordability and "discrimination"

In order to set fair, just, and the lowest reasonable rates, the Commission must balance an investor-owned utility's interests and the interests of ratepayers. The minimum rates necessary to ensure rates are not confiscatory tend to garner much

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[32] KRS 278.270.
[33] Kentucky American Water Company v. Commonwealth, 847 S.W.2d 737, 741 (Ky. 1993).
[34] Utility Regulatory Commission v. Kentucky Water Service Company, Inc., 642 S.W.2d 591, 593 (Ky. App. 1982).
[35] 268 Ky. 421.

more discussion than the other side of the equation. However, the Commission has considered the financial health of ratepayers in setting rates.

In *Nat'l-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*,[36] the Court of Appeals reviewed and approved the Commission's balance of the interests of Big Rivers Electric Cooperative *as well as* the financial health of its two largest customers (two large aluminum smelters), and the interests of residential and other ratepayers, setting rates that would also allow the aluminum smelters to keep operating successfully.[37] The Commission went so far as to set a variable rate based on the market price of aluminum, originally suggested by the aluminum companies in the case.[38] The Court's only concern regarding the rates set was that "it would be good to see more clear concern for the consumer, a clearer burden of proof on the producer to show that the excess capacity was a prudent investment, and a clear finding of just how much excess exists…."[39]

In *Nat'l Southwire*, the Court also considered a claim from the aluminum companies that the variable rates set were "discriminatory" in violation of KRS 278.170. The Court determined:

> Even if some discrimination actually exists, Kentucky law does not prohibit it per se. According to KRS 278.170(1), we only prohibit "unreasonable prejudice or disadvantage" or an "unreasonable difference." KRS 278.030(3) allows reasonable classifications for service, patrons, and rates by considering the "nature of the use, the quality used, the quantity used, the time when used . . . and any other reasonable consideration."[40]

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[36] Nat'l-Southwire Aluminum Co. v. Big Rivers Elec. Corp., 785 S.W.2d 503 (Ky. App. 1990).
[37] Id. at 508.
[38] Id. at 507.
[39] *Id.* at 513-14.
[40] *Id.* at 514.

That particular statement was later quoted with approval by the Kentucky Supreme Court in considering the issue of discrimination in the context of economic development rates.[41] In that case, the Court determined that although *unreasonable* discrimination as to rates was not allowed:

> The Kentucky General Assembly has used plain language which, logically interpreted, leaves no doubt that while utilities are statutorily entitled to offer reduced rates to the persons and entities identified in KRS 278.170(2) and (3), those utilities may also offer other customers reduced rates subject to PSC approval and compliance with general statutory guidelines regarding reasonableness.[42]

Ultimately, the cornerstone of reasonableness, and the Commission's power to make "'suitable and reasonable classifications of … rates' specifically provided for in KRS 278.030(3)" combined with the lack of any limiting language as to what classes of customers may receive reduced rates in KRS 278.170, allows the Commission broad discretion in setting or allowing discounted or variable rates for classes of customers, or even individual customers, including taking into consideration the economic health of those customers or classes of customers.[43]

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[41] Ky. Pub. Serv. Comm'n *v. Commonwealth*, 320 S.W.3d 660, 667 (Ky. 2010).
[42] Id.
[43] Ky. Pub. Serv. Comm'n. v. Commonwealth, 320 S.W.3d 660, 668 (Ky. 2010); Nat'l Southwire Aluminum Co. v. Big Rivers Elec. Corp., 785 S.W.2d at 514.

DISCUSSION

I. The Companies' rates are becoming increasingly unaffordable, and solutions must be explored.

As discussed above, the Commission must balance its responsibility "to protect consumers against exploitation," and ensure that utilities may recover rates sufficient to ensure their "financial integrity."[44] In determining that proper balance, the Commission must consider not only the "financial integrity" of the Companies, but also the economic health of their ratepayers.[45] It has been clear that there exists an affordability crisis in the Companies' territory, and the rate increases proposed in these cases, either in the original application or in the proposed settlement, will only exacerbate the problem.

The Companies boldly claim that "the U.S. Supreme Court has stated that affordability is not a proper concern of utility regulators…."[46] This is at best a stretch of both the Commission decision citing the Supreme Court, and the Supreme Court decision underlying it. As the Supreme Court put it:

> focus on the willingness or *ability* of the purchaser to pay for a service is the concern of the monopolist, not of a governmental agency charged both with assuring the industry a fair return and with assuring the public reliable and efficient service, *at a reasonable price*.[47]

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[44] *Fed. Power Comm'n v. Memphis Light, Gas & Water Div.*, 411 U.S. 458, 465-66, 93 S. Ct. 1723, 1728 (1973) (citing *Hope Nat. Gas Co.* 320 U.S. at 610, 603).
[45] Ky. Pub. Serv. Comm'n v. Commonwealth, 320 S.W.3d 660, 668 (Ky. 2010); Nat'l-Southwire Aluminum Co. v. Big Rivers Elec. Corp., 785 S.W.2d 503, 514 (Ky. App. 1990).
[46] Rebuttal Testimony of Robert M. Conroy Vice President, State Regulation and Rates on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company at 17, Docket Nos. 2025-00113, 1015-00114 (Sep. 30, 2025) ("Conroy Rebuttal").
[47] *Gainesville Utils. Dep't v. Fla. Power Corp.*, 402 U.S. 515, 528, 91 S. Ct. 1592, 1599 (1971) (emphasis added).

That case dealt with proper allocation of costs *as between two utilities*, not a utility and individual ratepayers.[48] Furthermore, it spoke of the *ability* of the smaller utility to pay for service from the larger utility *which the smaller utility had requested*.[49] The Commission Order citing that decision was on the motion of Lexington-Fayette Urban County Government ("LFUCG") and the Community Action Council for Lexington-Fayette, Bourbon, Harrison, and Nicholas counties, Inc. ("CAC") for intervention in a rate case for Kentucky-American Water Company, stating that it could not "establish an unreasonable preference between classes of service for doing a like service under the same or substantially the same conditions."[50] That single piece of dicta from an order granting intervention to Community Action Agencies runs contrary to a much larger vein of Court Decisions discussed above regarding affordability and the ratepayer interest in reasonable rates. Further, as pointed out in the CAC's motion to intervene, it is contrary to Commission precedent regarding consideration of affordability:

> the Commission stated: "If the Commission is to properly review and assess the affordability of Kentucky-American's rates, we must have accurate and reliable information regarding customer payment." As requested by CAC, the Commission ordered Kentucky-American to develop and implement a plan to record the number of late payments, frequency of late payments by each customer, terminations for nonpayment for each customer account, and other data.[51]

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[48] *Id.* at 520-21, 527-28.
[49] *Id.* at 520-21.
[50] Order, Electronic Application of Kentucky-American Water Company for an Adjustment of Rates, Case No. 2018-00358 (Jan. 03, 2019).
[51] Community Action Council for Lexington-Fayette, Bourbon, Harrison, and Nicholas Counties, Inc.'s Motion to Intervene at 5, *Electronic Application of Kentucky American Water Company for an Adjustment of Rates*, Case No. 2018-00358 (Dec. 27, 2018) (*citing* Order at 74, *Application of Kentucky-American Water Company for an Adjustment of Rates Supported by a Fully Forecasted Test Year*, Case No. 2010-00036 (Dec. 14, 2010).

The Commission's ultimate responsibility is to balance the interests of ratepayers with those of the utility, as made clear above. Any assertion to the contrary is without merit.

A. The Problem

On one side of the balancing equation in determining fair, just, and reasonable rates, of course, must be the financial integrity of the Companies. With regard to that it can hardly be said that the Companies are struggling. In 2025 PPL Corporation ("PPL"), parent Company of LG&E and KU, paid $1.09 in dividends per share to each of its approximately 739 million shares, or roughly $805 million in dividends.[52] That amount has apparently been growing, with dividends in 2023 and 2024 being significant but somewhat lower, at approximately $709 million, and $761 million, respectively.[53] The majority of that appears to be paid to PPL stockholders from dividends paid by LG&E

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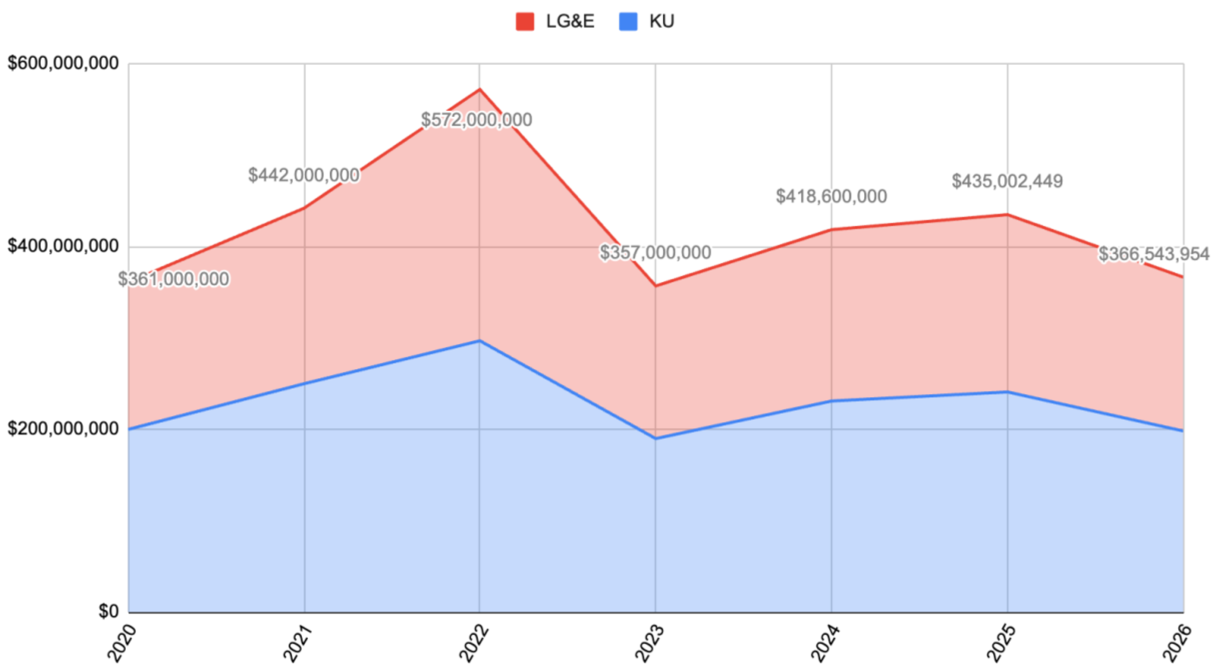
[52] Response of Companies to JI at Response 4-4, Case Nos. 2025-00113, 2025-00114 (Nov. 25, 2025).
[53] *Id.* The Companies' response states that PPL had 739.7 million outstanding shares as of October 31, 2025, but does not provide information on whether that amount has changed. The approximate dividends above assume a similar amount of outstanding shares in 2023 and 2024. If anything, the trend in dividend payouts may have been growing slightly more. According to its 2024 Form 10-K PPL Corp had between approximately 737.8 million and 738.3 million outstanding shares in June 2024 and January 2025, respectively, which would mean approximately $759.9 million to $760 million in dividends paid in 2024 using the $1.03/share from Companies' Resp. to JI 4.4 for 2024. Form 10-K Annual Report Pursuant to Section 13 or 15(D) of the Securities Exchange Act of 1934 for the Fiscal Year Ended December 31, 2024 for PPL Corporation, PPL Electric Utilities Corporation, Louisville Gas and Electric Company, and Kentucky Utilities Company (Feb. 13, 2025), https://www.sec.gov/Archives/edgar/data/922224/000092222425000009/ppl-20241231.htm. In 2023 outstanding shares went from 737 million in June to 737.6 million in January 2024, meaning dividend payouts were likely between $707.5 to $708.1 million. Response of Companies to JI at Response 4-4, Case Nos. 2025-00113, 2025-00114 (Nov. 25, 2025); Form 10-K Annual Report Pursuant to Section 13 or 15(D) of the Securities Exchange Act of 1934 for the Fiscal Year Ended December 31, 2023 for PPL Corporation, PPL Electric Utilities Corporation, Louisville Gas and Electric Company, and Kentucky Utilities Company (Feb. 16, 2024), https://www.sec.gov/ix?doc=/Archives/edgar/data/0000922224/000092222424000008/ppl-20231231.htm. Information presented above is based solely on the information from JI 4-4. Form 10-K information in this footnote is not a part of the record, and only presented for completeness.

and KU to their parent company, which has also been growing of late. Total combined dividend paid by the Companies to PPL has gone from a low of $357 million in 2023 to a projected $435 million in 2025, as shown in figure JI-1.[54]

Figure JI- 1 - Stock Dividends to PPL Corporation from LG&E and KU



The Companies are far from struggling to compensate equity holders. Further evidence of this, with a currently-authorized return on equity ("ROE") of 9.425%,[55] KU

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[54] Amounts and data in chart are from Response of Kentucky Utilities Company to the United States Department of Defense and All Other Federal Executive Agencies' Initial Data Request and Response of Louisville Gas and Electric Company to the United States Department of Defense and All Other Federal Executive Agencies' Initial Data Request at Response 7, Case No. 2025-00114 (Jul. 16, 2025) ("DOD 1.7").

[55] Order at 23, 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 (Jun. 30, 2021) ("June 2021 KU Order"); Order at 25, 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 Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit, Case No. 2020-00350 (Jun. 30, 2021) ("June 2021 LG&E Order").

has consistently earned above an 8.8% return,[56] with LG&E earning a 10.40% return last year, and not earning below 9.6% in the last five years.[57]

Nor can they be said to be unable to attract top talent for executive positions with current compensation. The Companies paid nearly $6.6 million in executive compensation to 11 officers in 2024.[58] It appears that amount has [redacted] in 2025. Nor does it apparently include pay to officers *only* of PPL Corp, PPL Services Corp, or other parent, sister, or subsidiary Companies other than LG&E-KU Services Corp. For instance, the Companies do not appear to have provided the salaries for the Executive VP, Engineering, Construction and Generation, PPL Services Corporation or the Vice President - Financial Strategy and Chief Risk Officer, PPL Services Corporation, two lead witnesses in this case.[60] [redacted]

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[56] KU's Resp. to Dep't of Defense Request 1-8, Attachment, Case No. 2025-00113 (July 17, 2025).
[57] LG&E's Resp. to Dep't of Defense Request 1-8, Attachment, Case No. 2025-00114 (July 17, 2025). .
[58] Response of LG&E to the Commission Staff's First Request for Information at Response 41, attachment 3, Case No. 2025-00114 (Jun. 13, 2025).
[59] Response of Companies to the Commission Staff's Post-Hearing Request for Information, Response to Question No. 52, Confidential Attachment, Case Nos. 2025-00113, 2025-00114 (Nov. 25, 2025) ("Staff PH-52, Confidential Attachment").
[60] *Compare* Response of LG&E to the Commission Staff's First Request for Information at Response 41, attachment 3, Case No. 2025-00113 (June 13, 2025) *with* Direct Testimony of Lonnie E. Bellar Executive Vice President, Engineering, Construction and Generation for PPL Services Corporation [sic] on Behalf of KU and LG&E, Case Nos. 2025-00113, 2025-00114 (May 30, 2025) *and* Direct Testimony of Christopher M. Garrett Vice President, Financial Strategy and Chief Risk Officer on Behalf of KU and LG&E, Case Nos. 2025-00113, 2025-00114 (May 30, 2025).
[61] Staff PH-52, Confidential Attachment at tab "Allocation from REG Accounting."
[62] Staff PH-52, Confidential Attachment at tabs "LKS 2025-00114 Officers," "LGE 2025-00114," and "KU 2025-00113;" and Companies' Response to Commission Staff's First Request for Information, Response to Question No. 41, attachment 3, Case Nos. 2025-00113, 2025-00114 (June 13, 2025).

[redacted]

Finally, it is also not entirely clear if that includes other forms of compensation such as preferred stock. When asked specifically by Commission staff for "[t]he stock options for each individual corporate officer;"[65] the Companies' response was "[t]he company no longer grants stock options. The Company does grant equity-based compensation that are not stock options. For example, the Company grants restricted stock units and performance units. The performance units are only granted to executives."[66] No amounts of such equity-based compensation are given in response.[67] It is therefore not

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[63] Staff PH-52, Confidential Attachment at tab "Allocation from REG Accounting."

[64] Staff PH-52, Confidential Attachment at tab "LKS 2025-00114 Officers." It also bears noting that [redacted]. *See* Staff PH-52, Confidential Attachment at tabs "LKS 2025-00114 Officers," "LGE 2025-00114," and "KU 2025-00113."

[65] Companies' Response to Commission Staff's Post-Hearing Request, Question No. 52(c), Cases No. 2025-00113, 2025-00114 (Nov. 25, 2025).

[66] Response of LG&E to the Commission Staff's Post-Hearing Request for Information, Response to Question 2 at 2, Docket No. 2025-00114 (Nov. 12, 2025). It is possible equity-based compensation is included in the "Bonus and Incentive Pay" listed in the response, but it is not entirely clear from the response whether that is the case, and the lack of specification as requested by Staff in their original request 1-41(f), would seem to indicate it may not be. *See also* Staff PH-52(d), Confidential Attachment.

[67] Mr. Conroy, in his rebuttal, provides further support for the fact that restricted stock units are provided as part of the Companies' long-term incentive ("LTI") plan, but the point remains that without any specificity as to the amount of stock provided *as requested by the Commission Staff*, it is not possible to determine how much, if any, is included in the column "Bonus and Incentive Pay (e)". Rebuttal Testimony of Robert M. Conroy Vice President, State Regulation and Rates on Behalf Companies at 8-11, Case Nos. 2025-00113, 2025-00114 (Sep. 30, 2025) ("Conroy Rebuttal"). Pursuant to Section 16 of the Securities and Exchange Act, senior executives, directors, and certain shareholders are required to report their company stock *transactions* to the SEC. Insider stock transactions and holdings reported to the SEC are available to the public at https://www.sec.gov/data-research/sec-markets-data/insider-transactions-data-sets. These records are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, and therefore appropriate for administrative notice, at the

possible to determine to what extent executives providing testimony in this case make in equity-based compensation, or therefore how much they stand to gain from the economic wellbeing of their employer.

On the other side of the equation, Joint Intervenors do not here reiterate the expansive analysis of their expert, Roger Colton, regarding the state of electric and gas rate affordability in the Companies' territory.[68] Suffice to say that even prior to the proposed increases at issue in these cases, rates have been rising faster than incomes, particularly for the lowest income ratepayers, with rates for LG&E electric and KU rising 20.1% and 23.53% over the past 5 years, respectively, and incomes for the lowest quintile rising only 9.4% and 13.4%, for Jefferson County and Kentucky at large, respectively, over the same time period.[69]

This has led to an increasing deficit compared to an affordable energy burden for low-income ratepayers, with average lowest quintile ("Q1") income in Jefferson County $18,371 short of that needed to make an average LG&E electric bill affordable (defined as 4% of income for electric alone) in 2023.[70] Comparing statewide Q1 income to an average KU bill is even starker, with income $24,865 short of that needed for an affordable energy burden.[71] LG&E gas bills would require an income of $29,640 more than the average Jefferson County Q1 income to be affordable at 2% of income for gas

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Commission's discretion. Reported insider stock transactions provides some perspective. For example, according to SEC data from Q3 of 2025, Witness Crockett reported the sale of PPL stock at $36.56/share, yielding $577,319 from a single transaction; and Witness Crockett and Witness Bellar reported holding 23,650 and 29,753 shares of PPL stock, respectively.

[68] Direct Testimony of Roger Colton On Behalf of JI at 8-34, Case Nos. 2025-00113, 2025-00114 (Aug. 29, 2025) ("Colton Direct").

[69] *Id.* at 8-10, figures 1 & 2.

[70] *Id.* at 11-13, table 1.

[71] *Id.* at table 1.

energy burden.[72] More moderate income ratepayers statewide are not immune to the struggles of the current affordability crisis, either, with 28% of Kentuckians making between $100,000 to $149,999 finding paying household expenses somewhat to very difficult.[73] At the same time our collective social safety nets have come under fire, and now have an uncertain future, most notably the Low-Income Home Energy Assistance Program ("LIHEAP") facing either direct cuts, or cuts to its administering agency.[74]

Unsurprisingly, low-income households are more likely to fall behind in their bill payments.[75] Even accounting for this disparity, the Companies pursue a disproportionate number of collection interventions and activities in low-income zip codes.[76] The Companies also disconnect households in low-income zip codes for non-payment more quickly than those in higher-income households.[77] Deferred payment arrangements currently offered by the Companies do not offer an effective solution, as they are both less used than disconnection for collection, and likely to lead to default particularly in low-income zip codes.[78]

B. The Solutions

Multiple viable solutions to the affordability issue have been proposed in this proceeding. The Companies acknowledge that low-income programs are a key part of their rates, and a part of making their rates fair, just, and reasonable.[79] In order to

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[72] Id.
[73] *Id.* 21-28, table 4.
[74] *Id.* at 28-34.
[75] *Id.* at 37.
[76] *Id.* at 37-38.
[77] *Id.* at 38.
[78] *Id.* at 38-39.
[79] Direct Testimony of John R. Crockett III President of LG&E and KU Energy LLC and Senior Vice President and Chief Development Officer, PPL Services Corporation on Behalf of Companies at 2, Case

balance the economic health of ratepayers, and in particular residential and especially low-income ratepayers, the Commission should adopt or require study and proposal of several mitigation measures.

1. *<u>The Companies' proposed Prepay program would primarily benefit the Companies, and should be rejected.</u>*

Despite acknowledging that low-income programs are a part of making rates fair, just, and reasonable, the only proposed remedy in the Companies' application is a prepayment program, a false solution that does nothing to make bills more affordable and in fact, as the name says, requires ratepayers to pay *in advance* for their electricity usage, with more immediate disconnections when funds run out.[80] This program would disproportionately burden low-income households,[81] with no benefit to them either in matching their income flow,[82] or in reduced rates to recognize the benefits to the Companies.[83] When energy costs jump in the hottest or coldest months, as they tend to do, and a prepay customer's income doesn't, more customers ***will*** "self-disconnect",[84] but ***they will no longer be protected by the Companies' "policy" preventing disconnections during extreme weather***.[85] Low-income customers in particular have little to no ability to "take action to reduce bills" or control their usage as asserted by the

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Nos. 2025-00113, 2025-00114 (May 30, 2025) ("Crockett Direct"); Nov. 5, 2025 HVT at 11:08 to 11:11 a.m.

[80] Direct Testimony of Shannon L. Montgomery Vice President, Customer Services on Behalf of Companies at 27-28, Case Nos. 2025-00113, 2025-00114 (May 30, 2025) ("Montgomery Direct"); Colton Direct at 65-68.

[81] Colton Direct at 56-57.

[82] Colton Direct at 57-61.

[83] Montgomery Direct at 27; Colton Direct at 62-65.

[84] Colton Direct at 58-59.

[85] Response of Companies to JI, Response to Question No 4-12, Case Nos. 2025-00113, 2025-00114 (Nov. 25, 2025).

Companies.[86] Nor will they receive the standard notice, late bill, and opportunity to catch up.[87] These disconnections may no longer even show up in reporting as disconnections for nonpayment, hiding the true scale of the potential increase from routine scrutiny.[88] Ratepayers would get a stricter payment requirement, less payment flexibility,[89] and no disconnection protection,[90] while the Companies would be the primary beneficiaries with lower customer arrearages, and reduced write-offs and bad debt risk.[91]

The Commission should reject the Companies' Prepay Program as proposed for these reasons. If there is benefit to be had in such a program, it would be through lesser costs for the lesser service, and the Commission should order that any future application analyze and account for the savings to the Companies to be had through the program.[92] Furthermore, the Commission should require the Companies to comply ***in full*** with the order in the last base rate case regarding recovery for the advanced metering infrastructure that would make a Prepay Program possible prior to approving any such program. Specifically, the Commission ordered the Companies to "develop and implement a pre-pay program ***as well as develop DSM programs, including those that specifically target low-income customers.***"[93]

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[86] Montgomery Direct at 26-27; Colton Direct at 57-61.
[87] Colton Direct at 65-68.
[88] Colton Direct at 61-62.
[89] Colton Direct at 63.
[90] Response of Companies to JI, Response to Question No 4-12, Case Nos. 2025-00113, 2025-00114 (Nov. 25, 2025).
[91] Montgomery Direct at 27.
[92] Colton Direct at 63.
[93] Order at 16, Electronic Application of KU for an Adjustment of Its Electric Rates, Case No. 2020-00349 (Ky. PSC. June 30, 2021); Order at 17, Electronic Application of LG&E for an Adjustment of Rates, Case No. 2020-00350 (Ky. PSC June 30, 2021).

2. *<u>The Proposed Settlement would only ensure that rates keep rising</u>*

As explained further below in Section V.A., the proposed settlement agreement offers only further illusory solutions. Under the settlement, existing and non-data center customers will be paying the costs for new generating unit capital expenses caused by the Companies' decision to build new generation for hypothetical new large load data center customers.[94] While it would reduce the overall revenue requirement from the application, rate increases are guaranteed year-to-year for at least the next six years as the units covered by the Generation Cost Recovery ("GCR") surcharge come online.[95] Ratepayers may even experience additional month-to-month volatility and rate increases as expenses are incorporated, which may sometimes correspond to peak usage months. Furthermore, as discussed later in Section V.A.1, many of the revenue requirement concessions in the settlement such as the Companies' membership dues, terminal net salvage recovery, and the proper level of return on equity, are items well within the Commission's discretion and jurisprudence to disapprove regardless of the settlement. Regardless, even a lesser increase would mean an even greater burden for households across the lower-to-mid income spectrum already struggling to keep up.

3. *<u>The Commission should contemplate the balance of interests in determining each aspect of the revenue requirement.</u>*

As mentioned above, and discussed further below in Section V.A., the settlement offers only an illusory solution, with many items well-based in recent Commission

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[94] Nov. 4, 2025 HVT at 9:49 a.m. ("we do not build specific generating units to serve a specific customer").

[95] Joint Supplemental Testimony of Robert M. Conroy Vice President, State Regulations 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, Exhibit 1, Case Nos. 2025-00113, 2025-00114 (Oct. 31, 2025).

decisions. The Commission is well within its rights to make such determinations regarding the Companies' requested revenue requirement on its own, and should do so with an eye to the balance of interests discussed above, and an aim "to decrease any rate which is not the 'lowest reasonable rate.' "[96]

One easy example of where there exists a clear "zone of reasonableness"[97] within which the Commission would be able to further decrease rates to the lowest reasonable is to adjust authorized ROE downward within the range supported by the evidence of record. In its application, the Companies' expert Dylan W. D'Ascendis, recommended an ROE of 10.95%.[98] Additional evidence has been presented that this amount, and many of the "adjustments" made by D'Ascendis, were inflated. On behalf of the Attorney General and Kentucky Industrial Utility Customers, Richard A. Baudino recommended an ROE of 9.6%, and suggested a reasonable range of 9.0 to 10.0%.[99] Michael P. Gorman, for the Department of Defense and all other Federal Executive Agencies, proposed an ROE of 9.5%, with a reasonable range from 9.20 to 9.85%.[100] The witness for Walmart, Lisa V. Perry, surveyed other authorized ROEs and found the Companies' request would put it near the top of authorized ROEs for regulated utilities

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[96] Fed. Power Comm'n v. Nat. Gas Pipeline Co., 315 U.S. 575, 585–86, 62 S. Ct. 736, 743 (1942); see also Commonwealth ex rel. Stephens v. S. Cent. Bell Tel. Co., 545 S.W.2d 927, 931 (Ky. 1976).
[97] *Fed. Power Comm'n v. Nat. Gas Pipeline Co.*, 315 U.S. 575, 585–86, 62 S. Ct. 736, 743 (1942).
[98] Direct Testimony of Dylan W. D'Ascendis at 68-69, Case Nos. 2025-00113, 2025-00114 (May 30, 2025).
[99] Direct Testimony and Exhibits of Richard A. Baudino on Behalf of the Office of the Attorney General of the Commonwealth of Kentucky and Kentucky Industrial Utility Customers at 34, Case Nos. 2025-00113, 2025-00114 (Sep. 2, 2025).
[100] Direct Testimony and Exhibits of Michael P. Gorman On behalf of United States Department of Defense and all other Federal Executive Agencies at 65-66, Case Nos. 2025-00113, 2025-00114 (Aug. 29, 2025).

nationally,[101] and recommended the Commission keep the Companies' currently-authorized ROE of 9.425%, unless there has been a change in circumstances, citing in particular the customer impact.[102] Aside from the direct impact on residential, and particular low-income ratepayers discussed above, Ms. Perry points out the impact on affordability more generally, as costs would be passed on from commercial users and retailers to consumers on the prices they pay for other goods.[103] Finally, while the Joint Intervenors oppose the Sharing Mechanism ("SM") surcharge, as discussed more fully below in Section V.C., it is worth noting that the lower bound of the mechanism as proposed by the Companies to "ensure that the Companies' financial position is not unduly eroded during the stay-out period," beyond which they would apparently need to potentially file "a comprehensive base rate case analysis and its associated contested adjustments," is an ROE of 9.4%.[104]

The Company has apparently been performing well enough to ensure significant stock dividends of several hundred of millions of dollars per year during the period since its last base rate case, which found that a return of 9.425% was fair, just, and reasonable,[105] while ratepayers have been struggling to keep up.[106] In addition, there is

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[101] Direct Testimony and Exhibits of Lisa V. Perry on Behalf of Walmart Inc. at 12-14, Case Nos. 2025-00113, 2025-00114 (Aug. 29, 2025) ("Perry Direct").
[102] Id.
[103] Id.
[104] Joint Stipulation 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 8-9, Case Nos. 2025-00113, 2025-00114 (Oct. 20, 2025); Stipulation Testimony Exhibit 1: Stipulation and Recommendation at ¶¶ 7.2-7.3, Case Nos. 2025-00113, 2025-00114 (Oct. 20, 2025).
[105] Order at 23, Case No. 2020-00349 (Ky. PSC June 30, 2021); Order at 25, Case No. 2020-00350 (Ky. PSC June 30, 2021).
[106] Colton Direct at 8-56.

expert testimony of three separate witnesses suggesting a reasonable range as low as 9.0% for the Companies' authorized ROE, as well as the Companies' *own testimony* that a range as low as 9.4% would apparently be sufficient for it to operate without "unduly erod[ing]" the Companies' financial position. For these reasons, and balancing the equities to ensure against exploitation of ratepayers, the Commission should deny an increase to the currently-authorized ROE of 9.425%. Furthermore, the Commission should contemplate further reductions to the ROE for any authorized surcharges representing a more certain return for the Companies.

4. *The Commission should order refund of improperly-collected fees for paying in person.*

A bedrock principle of ratemaking for monopoly utilities is the requirement that changes to rates must be filed with and approved by the Commission.[107] KRS 278.010(12) defines "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;

By closing its offices in 2022, the Companies have managed to save $8.7 million in operations and maintenance expenses per year, expenses currently embedded in base rates and still being collected from ratepayers.[108] Yet ratepayers with no option other than to pay with cash, in person, have had no option *but* to pay an additional $1.95 per payment since that time.[109] That additional fee has acted as a de

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[107] KRS 278.180.
[108] Montgomery Direct at 11-12
[109] *Id. See also* Nov. 06, 2025 HVT at 11:17:49 to 11:19:00 a.m.

facto increase to rates to such ratepayers for over three years, and one which has facilitated a substantial annual savings to the Companies. Utilities should not be allowed to reap profit by cutting services essentially affecting a rate increase on ratepayers. The Companies' revenue requirement should be reduced to effectively reverse the unauthorized rate increase by either refunding the $8.7 million savings over the past three years, refunding the unauthorized fee to all ratepayers who have had to pay it over the past three years, or both.

5. *The Commission should order adoption or study and proposal of a number of other measures to mitigate the impact of rate increases.*

The Joint Intervenors' witness Roger D. Colton recommended a variety of common sense measures that could help alleviate the impacts and burden associated with both current rates and any increase, each of which the Commission should consider, including:

- The Companies "should be directed to implement a means-tested Arrearage Management Program (AMP)".[110]
- The Companies "should be directed to engage in a two-year pilot project that focuses on enlisting community-based organizations in the provision of outreach for the Company's time-of-day rates initiative in particular" and "[t]he availability of the LGE/KU Time-of-Day rates should be expanded to deliver financial benefits to low-income customers."[111]
- The Commission should adopt a series of outcome metrics to measure the Company's performance with respect to its credit and collection outcomes.[112]
- "At a minimum, the Companies should increase their annual WeCare spending," and should file an updated DSM plan within 12 months after consultation and collaboration with interested stakeholders.[113]
- "The proposed increases in the electric and natural gas fixed Basic Service Charges should be found to be unjust and unreasonable."[114]

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[110] Colton Direct at 6.
[111] *Id.* at 5
[112] *Id.* at 6–7.
[113] *Id.* at 7.
[114] *Id.* at 7.

- Late payment and disconnection/reconnection fee exemptions/waivers should be expanded to additional low-income customers, particularly "if the customer has received an energy assistance grant from an 'authorized agency' within the current or immediately preceding two LIHEAP program years."[115]
- The Companies should retain an independent firm, and in consultation with interested stakeholders, conduct a customer segmentation study to determine the root causes of nonpayment.[116]
- The Companies "should be directed by the "Commission to work with stakeholders to develop a ten-year solarization plan directed toward low-income households."[117]
- "The Companies should be required to develop, and present to the Commission for approval, a program of fleet and public transportation incentives to entities situated in or that primarily service Environmental Justice (EJ) communities."[118]

The Joint Intervenors recommend the Commission contemplate adoption, or required study and report to the Commission, for each of these proposed measures. More explanation is given as to the first several below.

i. The Commission should order the Companies to study and propose an appropriate Arrearage Management Program

For those who have already fallen behind on bills, it often seems there is no way to reestablish their financial stability. An appropriately-structured Arrearage Management Program ("AMP") could be beneficial to both ratepayers and the Companies, and is within the Commission's authority to authorize. The Commission should, therefore, at a minimum require the Companies to study the potential for such a program and either propose an AMP or explain why one is neither necessary nor beneficial.

As explained by Mr. Colton in his testimony, an AMP essentially allows qualified low-income ratepayers to "reduce pre-program arrears over an extended period of time

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[115] *Id.* at 5.
[116] *Id.* at 6.
[117] *Id.* at 6.
[118] *Id.* at 6.

in exchange for a customer's continuing payment of bills for current service."[119] Mr. Colton extensively describes a suggested Program structure,[120] however the essential components are:

- Arrears are to be retired through pro rata credits over a two-year period, with 1/24th of the pre-existing balance forgiven for each complete payment;
- Customers are to make minimum, but meaningful, copayments toward their arrears ($7.50/month);
- One implication of a $7.50/month copayment is that only customers with a pre-existing arrearage balance exceeding $180 will be eligible to receive arrearage forgiveness.
- No pre-condition is established for participation in the arrearage management program component. The arrearage management program should be made available both to customers who are active and to customers who have had service disconnected and are currently off-system;
- Arrearage management credits are to be made for each full and timely payment made toward a current bill. <u>*In addition*</u>, retroactive credits should be made in the instance of a missed or incomplete payment when participant bill balances are brought current;
- The appropriate response to continuing nonpayment is to place the program participant in the same collection process as any other residential customer; and
- Program participants are not removed from the program as a consequence of nonpayment. Instead, program participants are subject to the same collection interventions as any other residential customer would be subject to.[121]

Benefits for ratepayers include reducing bills to sustainably payable levels.[122] The Companies would also benefit, however, through tangible improvement in bill collectability with associated reductions in collection expenses, working capital,

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[119] *Id.* at 68.
[120] *Id.* at 69–75.
[121] *Id.* at 74–75.
[122] *Id.* at 69.

uncollectibles, and continuing revenue streams from ratepayers who would otherwise not be making payments, and may otherwise be disconnected.[123]

Such a program would be well within the Commission's authority to approve. As laid out above in the *Legal Standard*, Section c., the cornerstone of reasonableness, and the Commission's power to make "'suitable and reasonable classifications of … rates" specifically provided for in KRS 278.030(3)" combined with the lack of any limiting language as to what classes of customers may receive reduced rates in KRS 278.170, allows the Commission broad discretion in setting or allowing discounted or variable rates for classes of customers, or even individual customers, including taking into consideration the economic health of those customers or classes of customers.[124]

The Companies appear to claim that an AMP would not be allowed because "the Commission has explicitly stated it cannot address affordability as a means of distinguishing among customers for rate purposes…."[125] However, like the Companies' claim that "the U.S. Supreme Court has stated that affordability is not a proper concern of utility regulators…"[126] the claim that the Commission lacks such authority is both wrong, and in apropos of the AMP proposal Mr. Colton makes. First, the Commission's decision in the Kentucky-American Water Company case cited by Mr. Conroy stated:

> we find insufficient support to establish a new customer class based solely on customer income. *None of the proponents of the proposed discount have provided any convincing empirical data* to demonstrate that Kentucky-American's cost of providing water service to residential customers whose annual income is equal to or less than the national poverty level significantly

[123] *Id.* at 69, 82–85.
[124] Pub. Serv. Comm'n of Ky. v. Commonwealth, 320 S.W.3d 660, 668 (Ky. 2010); Nat'l-Southwire Aluminum Co. v. Big Rivers Elec. Corp., 785 S.W.2d 503, 514 (Ky. App. 1990).
[125] Conroy Rebuttal at 17. It is unclear here if Mr. Conroy intends to claim that an AMP would not be allowed, as he does not specifically address that proposal.
[126] *Id.*

> differs from those whose annual income is greater than the national poverty level. *Discount proponents have also failed to provide any statutory or decisional authority* for the proposition that customer income levels may constitute a reasonable basis to distinguish customers for cost-of-service purposes.[127]

The situation of creating a separate rate class based on low-income status is also not the same as creating a low-income assistance program such as the proposed AMP. Indeed, were the Companies' claim to be true, many of their existing assistance programs would be disallowed, such as the Companies' Home Energy Assistance ("HEA") programs, which collect a $0.30 charge per month from all residential customers "to fund residential low-income Home Energy Assistance programs which have been designed through a collaborative advisory process and approved by the Commission."[128]

In the current case, extensive evidence of collection expenses, working capital, uncollectibles, and loss of continuing revenue streams that could be avoided through an AMP has been provided. That case, with its narrow interpretation of KRS 278.170, was also decided prior to the Commission's decision, and subsequent Kentucky Supreme Court review of economic development rates in *PSC of Ky. v. Commonwealth*,[129] in which the Court stated that "while utilities are statutorily entitled to offer reduced rates to the persons and entities identified in KRS 278.170(2) and (3), those utilities may also offer other customers reduced rates subject to PSC approval and compliance with general statutory guidelines regarding reasonableness."[130] Furthermore, Joint

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[127] Order at 82, *Adjustment of the Rates of Kentucky-American Water Company*, Case No. 2004-00103 (Mar. 01, 2005) (emphasis added).
[128] Stipulation Testimony Exhibit 4 at 164, Case Nos. 2025-00113, 2025-00114 (Oct. 20, 2025).
[129] Pub. Serv. Comm'n of Ky. v. Commonwealth, 320 S.W.3d 660 (Ky. 2010).
[130] *Id.* at 667.

Intervenors have presented decisional authority for the proposition that the Commission not only should, but *must* balance the interests of ratepayers against the Companies' rights in setting the lowest reasonable rates.

Finally, to the extent that the Companies portray the proposal as a discounted rate for low-income customers, it misunderstands. An AMP is not a discounted rate, but a way for customers to earn retirement of arrears through keeping current with payments, including a co-pay toward the arrears.[131] Contrary to the claim of Company witness Montgomery, it does not "incentivize customers to delay payment or accumulate arrears in order to qualify for forgiveness,"[132] but rather is targeted at low-income ratepayers who are otherwise *unable* to keep up with payments due to the high energy burden. Further "program administrators have learned that the best 'incentive' for making full and timely payments is to have customers taking service pursuant to the AMP be subject to the same credit and collection processes as all other customers."[133]

For these reasons, the Commission has ample authority and supporting empirical evidence to order *at a minimum* investigation on the design of an appropriate AMP, and should Order the Companies to do so, and order the Companies to report within 12 months.

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[131] Colton Direct at 74.
[132] Rebuttal Testimony of Shannon L. Montgomery, Vice President, Customer Services, on behalf of Kentucky Utilities Company and Louisville Gas and Electric Company at 13, Case Nos. 2025-00113, 2025-00114 (Sept. 30, 2025) ("Montgomery Rebuttal.")
[133] Colton Direct at 70.

ii. The Commission should require the Companies to expand access to their TOD rates.

As noted above, the Commission previously ordered the Companies to use their new Advanced Metering Infrastructure ("AMI") "develop and implement a pre-pay program ***as well as develop DSM programs, including those that specifically target low-income customers.***"[134] This and the following section provide specific suggestions based on the testimony of Mr. Colton for how the Companies could do just that to mitigate the affordability impacts of their rates.

As recommended by Mr. Colton, the Companies' "should be directed to engage in a two-year pilot project that focuses on enlisting community-based organizations in the provision of outreach for the Company's time-of-day rates initiative in particular" and "[t]he availability of the LGE/KU Time-of-Day ("TOD") rates should be expanded to deliver financial benefits to low-income customers."[135] Mr. Colton provides detailed descriptions of proposals[136] that the Joint Intervenors believe the Commission should consider and require the Companies to adopt, or at a minimum study and report on. Specifically, the Companies should be required to develop a pilot program to improve outreach for under-enrolled programs such as residential TOD rates, for which the Companies currently have only *seventeen* enrolled ratepayers,[137] and as discussed below the WeCare Program, which is also under-enrolled.

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[134] June 2021 KU Order at 16; June 2021 LG&E Order at 17.
[135] *Id.* at 5
[136] Colton Direct at 40–45 (regarding the outreach pilot program); *Id.* at 51–52 (regarding expanding TOD enrollment itself).
[137] Response of Kentucky Utilities Company to Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Mountain Association's Initial Request for Information, Response to Question No. 1.138, Case No. 2025-00113 (July 16, 2025); Response of Louisville Gas and Electric Company to

Regarding time-of-day rate availability, the Joint Intervenors offer additionally that now that AMI rollout is approximately 99% complete,[138] the Companies have ample data to determine those who might benefit from time-of-day rates. In response to Mr. Colton's suggestion that the Companies switch customers who might benefit the Companies state they "believe customers are best positioned to decide whether a RTOD rate is right for them and are committed to helping them make informed decisions."[139] First, it should be noted that the Commission has before ordered that the optimal rate for residential customers be provided automatically, apparently with the Companies' agreement.[140] However, at a minimum, the Companies should be directed to develop additional targeted outreach such as bill inserts and direct mail, and be prepared to offer the alternative in response to bill inquiries, complaints, or requests for payment assistance or defaulted payment arrangements. Additional materials could, and *should* be developed for community partners either through a pilot program as recommended by Mr. Colton or otherwise, to assist community partners in helping ratepayers with identifying through the online "MyMeter" portal whether TOD rates would be beneficial to them.

Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Metropolitan Housing Coalition Initial Request for Information, Response to Question No. 1.147, Case No. 2025-00114 (July 16, 2025).

[138] Response of KU to JI, Response to Question No. 1.153, Case No. 2025-00113 (July 16, 2025), Response of LG&E to JI, Response to Question No. 1.162, Case No. 2025-00114 (July 16, 2025).

[139] Montgomery Rebuttal at 5.

[140] Order at 11, *LG&E for an Adjustment of Its Electric and Gas Rates*, Case No. 2014-00372 (Jun. 30, 2015) ("When asked whether LG&E would be agreeable to transferring customers who do not make a choice to the residential tariff that would result in the lesser percentage increase, LG&E stated that it would transfer those customers to their lowest rate….[T]he Commission finds that LG&E should transfer each LEV customer to the residential rate that will result in the lesser percentage increase based on the customer's load profile.").

iii. Expanded low-income energy efficiency programs would reduce waste and directly improve household energy affordability despite rising rates.

As the Companies have stated, and as reiterated several times above, low-income programs are a crucial part of fair, just, and reasonable rates. One such existing program is the Companies' WeCare Program, which is an existing program providing assistance to low-income households to provide energy efficiency upgrades, thus lowering bills.[141] As pointed out by Mr. Colton, the benefits of such programs are far beyond just lowering bills, however, and often provide health and safety benefits ancillary to the primary purpose of the program, but perhaps just as important.[142]

Yet in the current case, despite the proposed increase in rates the Companies make no concomitant increase to such low-income programs.[143] What's more, the Companies are still falling well short of what they committed to in their 2024-2030 Demand-Side Management and Energy Efficiency Program Plan.[144] As recommended by Mr. Colton, the Companies should be directed to increase their budget for the WeCare program to serve at least 50% of the qualified low-income population,[145] and the Companies should be ordered to study ways to increase participation in its demand-side management (DSM) programs, such as the pilot outreach program proposed by Mr. Colton.[146]

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[141] Montgomery Direct at 5.
[142] Colton Direct at 103-05.
[143] *Id.* at 116-17.
[144] *Id.* at 117-18.
[145] *Id.* at 119.
[146] *Id.* at 118, referencing the pilot program proposed earlier at 40-45.

iv. Need to hold fixed charges steady – preserve or improve customer ability to see changes in their usage reflected in the bills.

Much of the Companies' support for their solution to the affordability crisis, namely the Prepay Program, is that it allows ratepayers to take control of their usage to reduce bills.[147] Indeed, that is also the premise of other low-income programs including WeCare, "an education and weatherization program designed to reduce energy consumption of income-qualified customers."[148] However, as Mr. Colton offers, "[w]hen the Companies increase their fixed charges, they make it even more difficult for low-income customers to improve the affordability of their bills by reducing their consumption."[149] In response, Mr. Conroy claims that "Mr. Colton is incorrect to assert that granting the Companies their requested residential BSCs [basic service charges] will decrease incentives to engage in energy efficiency or conservation." He further states that "[i]ncreasing the Companies' residential BSCs as proposed is consistent with cost of service and would increase energy efficiency incentives relative to today's rates." However, this defies basic logic. The proposed increase in the basic service charge for KU is 21% in the application,[150] and the proposed increase in the energy charge is less than 13%,[151] meaning the fixed basic service charge would make up a *greater* proportion of the overall bill, thus decreasing the incentive to reduce energy usage. The same is true for LG&E electric and gas.[152]

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[147] Montgomery Direct at 26–27.
[148] Stipulation Testimony Exhibit 4 at 148, Case Nos. 2025-00113, 2025-00114 (Oct. 20, 2025).
[149] Colton Direct at 119–120.
[150] Customer Notice of Rate Adjustment, Case Nos. 2025-00113, 2025-00114 (May 30, 2025). $0.64 (proposed) - $0.53 (current) / $0.53 (current) = 20.8%.
[151] *Id.* $0.11897 (proposed) - $ 0.10533 (current) / $ 0.10533 (current) = 12.9%.
[152] *Id.* For electric there would be a 15.6% BSC increase compared to a 9.5% increase to the energy charge: $0.52 (proposed electric BSC) - $ 0.45 (current electric BSC) / $ 0.45 (current electric BSC) =

In order to maintain, or even increase ratepayer's limited ability to control what they pay for utilities, the Commission should disapprove the proposed increases to the basic service charges for the Companies.

v. Performance-Based Ratemaking can advance energy affordability goals.

To the extent that affordability is the concern of the Companies, as they have asserted,[153] they don't appear to have taken it very seriously. For instance, as Mr. Colton pointed out, "[t]he Company has never addressed how to respond to the unaffordability of service to low- and moderate-income customers at the corporate level," and was unable to provide any presentation, agenda, or written materials regarding low-income, customer service. and/or credit and collection issues.[154]

Rather than proposing that the Commission order the Companies to undertake any specific activity to improve the affordability of and access to their service, Mr. Colton proposes a suite of performance metrics aimed at increasing outcomes:

- Improving LIHEAP enrollment, as a means of opening the door to to accessing additional low-income services;[155]
- Increase in affordability metrics:[156]
  - Reduction in defaulted residential deferred payment arrangements;
  - Reduction in number of disconnections;
  - Increase in the number of reconnections;
  - Reduction in average monthly arrears.

15.6% increase to the BSC, compared to $0.11867 (proposed electric energy) - $ 0.10838 (current electric energy) / $ 0.10838 (current electric energy) = 9.5%. For gas there would be a 24.6% increase to the BSC, as compared to an 11.6% increase for usage: $0.81 (proposed gas BSC) - $ 0.65 (current gas BSC) / $ 0.65 (current electric BSC) = 24.6% increase to the BSC, compared to $1.16240 (proposed gas usage) - $ 1.04164 (current gas usage) / $ 1.04164 (current gas usage) = 11.6% for usage.

[153] Crockett Direct at 2; Conroy Rebuttal at 17; Nov. 5, 2025 HVT at 11:06:00 to 11:11:00 a.m.

[154] Colton Direct at 92-93.

[155] Colton Direct at 96-97.

[156] Colton Direct at 97-99.

Each is a simple set of metrics to increase the affordability and access of the Companies' essential services, as an overall part of the balancing of fair, just, and reasonable rates. To the extent either metric is not met, a reduction in the overall revenue requirement of 15 basis points is proposed, or 25 basis points if both are not met.[157] Either a 15 or 25 basis point reduction from the reasonable ROE of 9.425% would still leave the Companies' return well within the reasonable zone suggested by the variety of expert testimony of 9.0% to 10.95%, albeit closer to the lowest reasonable rate suggested and supported by evidence in the record, and would therefore not constitute a taking.

The Companies have suggested that such a penalty is not allowed by Kentucky law, citing a string of cases.[158] However, what Mr. Conroy fundamentally overlooks is that *unlike* the cases he cites, the proposed Performance-Based Ratemaking suggested by Mr. Colton, those cases involved penalties for *inadequate quality of service*,[159] not in

[157] Colton Direct at 100.
[158] Conroy Rebuttal at 18.
[159] Conroy Rebuttal at 18, n. 47. The quotations in Mr. Conroy's string cite speak for themselves regarding improper basis for penalties:

> *Ky. Pub. Serv. Comm'n v. Commonwealth ex rel. Conway*, 324 S.W.3d 373, 381 n. 16 (Ky. 2010) ("While we recognize that the PSC has discretion in fulfilling its statutory duty of insuring that rates are fair, just, and reasonable, we do not hold that the PSC has unlimited power to do whatever it wants in regards to ratemaking. For example, in *South Central Bell v. Utility Regulatory Commission*, 637 S.W.2d 649 (Ky.1982), we recognized that the PSC (or its predecessor) could not use its plenary ratemaking authority for ***purposes other than insuring that rates were fair, just, and reasonable***; specifically we held that the Commission could not order a rate that was too low to be "fair, just, and reasonable" ***to penalize a utility for poor service*** because statutes required separate procedures for dealing with ratemaking issues and dealing with service issues."); *S. Cent. Bell v. Util. Regul. Comm'n*, 637 S.W.2d 649, 653 (Ky.1982) ("Clearly, the legislature has provided two effective vehicles to enforce its order, including those that deal with adequacy of service. It is equally clear that the General Assembly omitted a specific provision allowing the Commission ***to enforce its service cases by a reduction in the rate case***. … We believe that granting the Commission the authority, in a rate case, ***to penalize the utility for poor***

order to assure fair, just, and reasonable rates in the first place through improved affordability and access. Furthermore, as stated above, the proposed penalties would not result in unjust or unreasonable rates, only less margin for error by the Companies in assuring they meet their required ROE.

II. Net Metering

Like rates charged by the utilities, rates paid to customer-generators with their own on-site generation must be fair, just, and reasonable. However, in the case of distributed generation, the Commission has set an exact set of factors to be

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> ***service*** would be an improper extension of the statutory procedure."); *An Investigation into the Reasonableness of the Earnings of Brandenburg Telephone Company, Inc.*, Case No. 92-563, Order at 6 (Ky. PSC Oct. 15, 1993) ("[T]he ***rates of a utility and its service standards*** are to be considered as separate issues and not intertwined. In *S. Cent. Bell v. Util. Regul. Comm'n*, 637 S.W.2d 649 (Ky.1982), the Kentucky Supreme Court forbade this Commission to consider South Central Bell's ***poor quality of service*** to lower an otherwise reasonable rate of return. In that case, the Commission had determined, as it has here, a rate of return for a utility and after making that determination, penalized the utility by ***reducing the rate of return for its poor service quality***. The Commission is, therefore, ***precluded by law from considering quality of service in awarding to a utility a rate of return other than that found reasonable***.") (internal citation abbreviated); *Electronic Application of Southern Water and Sewer District for an Alternative Rate Adjustment*, Case No. 2018-00230, Order at 4-5 (Ky. PSC Jan. 31, 2019) (citing *S. Cent. Bell v. Util. Regul. Comm'n*, 637 S.W.2d 649, 653 (Ky.1982)) ("Although the Commission shares the Attorney General's concerns regarding Southern Districts' ***management practices***, contrary to the Attorney General's assertion the Commission *does not have statutory authority to penalize Southern District* ***for its management practices*** *by arbitrarily reducing rates as a penalty*.")

Id. (all emphases added). It also bears mentioning that LG&E already *has* a performance-based rate, Tariff Sheet 87 - PBR: Experimental Performance Based Rate Mechanism, which through a complex, multi-page formula appears to compare "Benchmark Gas Costs" to "Actual Gas Costs. The tariff sheet appears to have expired in 2024, current Tariff Sheet 87.10, but billing is proposed to continue through October 2026, in this application. Application, Attachment to Filing Requirement: Tab 4 - 807 KAR 5:001 § 16(1)(b)(3) at 96, Case No. 2025-00114 (May 30, 2025).

considered,[160] as well as a set of principles,[161] and proper methodology for compensation.[162] This only makes sense, as individual customer-generators are not themselves monopoly utilities that can propose reasonable rates to be charged for their electric services. If it were left to the Companies to propose reasonable rates and solutions they would of course propose rates most favorable to themselves, and have,[163] and solutions that would involve "substantial ratepayer-funded investment solution[s]...."[164]

A. Value of distributed generation

As the Commission has recognized, distributed generation ("DG") and distributed energy resources ("DERs") such as rooftop solar have benefits for the Companies' system, including for each of the categories of avoided costs, as well as a value to the

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[160] The factors were first laid out in detail in the Commission's May 14, 2021 Final Order in Case no. 2020-00174, regarding Kentucky Power Company's application for "NMS II" rates. Order at 25-40, *Electronic Application of Kentucky Power Company for (1) a General Adjustment of Its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; And (5) All Other Required Approvals and Relief* ("2020 KPCo Rate Case"), Case no. 2020-00174 (May 14, 2021). The Commission later affirmed these same "avoided cost components" in its September 24, 2021 Order on the application of LG&E and KU for NMS-2 rates. *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, and *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 Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Case No. 2020-00350 (together, "2020 LG&E-KU Rate Cases"), Order at 48-58 (Sep. 24, 2021).
[161] 2020 KPCo Rate Case, Order at 21-24 (May 14, 2021); 2020 LG&E-KU Rate Cases, Order at 41-42 (Sep. 24, 2021).
[162] 2020 KPCo Rate Case, Order at 24-25 (May 14, 2021); 2020 LG&E-KU Rate Cases, Order at 47-48 (Sep. 24, 2021).
[163] *See*, *e.g.*, LG&E-KU Rate Cases, Order at 51 (regarding Company-proposed avoided transmission capacity costs: "[f]or similar reasons noted in the avoided generation capacity section, the Commission does not find LG&E/KU's position convincing, accurate, or reasonable.")
[164] *Id.* at 45.

system as a whole if comprehensively integrated into planning and operational processes.[165] Furthermore, as pointed out by Joint Intervenors' witness James Fine:

> Although utility finance is important, it is a subset of broader benefits that extend beyond affordable and reliable electricity service to include environmental and economic benefits such as avoiding the myriad impacts of a coal and gas-fueled generation fleet, and the investments, jobs and companion effects needed for healthy communities.[166]

Mr. Fine discusses a number of other ways in which DG and DERs can provide value to the grid.[167]

B. The Companies did not follow Commission direction on setting avoided cost components in their application.

It is abundantly clear from the record, including the Companies' own repeated admissions, that they did not follow the Commission's previous Orders with regard to setting the avoided cost components that make up the compensation to customer-generators for excess electricity fed back to the grid over a billing period. In fact, the Companies propose a $0 avoided cost for every one of the Commission's required avoided cost categories *except* avoided energy.[168] In doing so, the Companies even acknowledge that they did not follow Commission precedent for setting a number of

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[165] 2020 LG&E-KU Rate Cases, Order at 42-43 (Sep. 24, 2021).

[166] Direct Testimony of James Fine on Behalf of Joint Intervenors Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Coalition and Mountain Association at 5 (Aug. 29, 2025) ("Fine Direct").

[167] Fine Direct at 36-38.

[168] Direct Testimony of Charles R. Schram Vice President, Energy Supply and Analysis on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company at 30-38 (May 30, 2025) ("Schram Direct") (avoided generation capacity, avoided energy, avoided ancillary costs, avoided environmental costs, avoided carbon costs); Direct Testimony of Peter W. Waldrab Vice President, Electric Distribution on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company at 40-41 (May 30, 2025) ("Waldrab Direct") (avoided distribution capacity); and Direct Testimony of Elizabeth J. "Beth" McFarland Vice President, Transmission on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company at 31 (May 30, 2025) ("McFarland Direct").

these avoided costs components, and instead of trying to follow precedent simply fall back on similar claims already discredited by the Commission. For instance, with regard to avoided distribution and transmission capacity costs, the Companies simply state that they couldn't figure out how to do it as the Commission ordered.[169] Instead they state that the way they proposed to set the values in the 2020 rate cases was sufficient,[170] despite the Commission *explicitly* stating "[f]or similar reasons noted in the avoided generation capacity section, the Commission does not find LG&E/KU's position convincing, accurate, or reasonable."[171] Similarly, on the stand at hearing during when asked whether "the proposal here for avoided capacity cost for QFs and net metering customers in the original application was … consistent with what the commission ordered," Mr Schram politely responded "[n]o, the commission ordered something different."[172] Nor is it for a lack of available data. When walked through the data on which the Commission based its previous avoided distribution costs, for example, Company witness Waldrab readily admitted that each piece was available to the Companies.[173]

The Companies application, therefore, falls into the trap already condemned by the Commission of not compensating DERs "until there is a critical mass," thus creating the same "self-fulfilling prophecy."[174]

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169 LG&E-KU's Resp. to Staff Request 4-13(c) and (d), Case No. 2025-00113 and 2025-00114 (Sept. 23, 2025).
170 Waldrab Direct at 37, McFarland Direct at 31-32.
171 2020 LG&E-KU Rate Cases, Order at 52-53.
172 Nov. 6, 2025 HVT at 10:10:40 to 10:10:53 a.m.
173 Nov. 5, 2025 HVT at 3:33:35 to 3:34:10 p.m.
174 2020 LG&E-KU Rate Case, Order at 53.

C. The Companies still do not follow Commission Order on netting methodology

Further, the Companies continue to fail to follow the Commission's Order in their previous rate cases regarding netting methodology, as pointed out by Mr. Fine.[175] In its September 24, 2021 *Orders* in the Companies' previous rate cases, the Commission made the following findings concerning the Companies' proposed methodology:

> Based upon the evidence of record, the Commission finds that LG&E/KU's proposed methodology for NMS 2 netting period is not fair, just and reasonable, and should be rejected. This is because LG&E/KU's proposed instantaneous credit for all energy exported on to the grid **is inconsistent with the plain language of KRS 278.465(4),** which provides that "net metering means the difference between" the dollar value of all electricity generated by an eligible customer-generator that is exported to the grid over a billing period and the dollar value of all electricity consumed by the eligible customer-generator over the same billing period.
>
> **Consistent with our finding in Case No. 2020-00174[176] and KRS 278.465(4)**, the Commission finds that LG&E/KU should continue to net the total energy consumed and the total energy exported by eligible customer-generators over the billing period in NMS 2 consistent with the billing period netting period established in NMS 1. The Commission further finds that, because the energy charge is based upon electricity consumed, the energy charge and any riders that are based on a per kWh charge should be netted against energy exported pursuant to KRS 278.465(4).[177]

It could be no clearer that as of the entry of the September 24, 2021 *Order* in Case No. 2020-00349, the Commission rejected the "instantaneous crediting" of all fed-in electricity (which would have the effect of devaluing all fed-in electricity) and interpreted KRS 278.465(4) *as amended* in 2019, to **still** require that the NMS 2

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[175] Fine Direct at 40-41.
[176] Case No. 2020-00174 was the Electronic Application of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) Approval Of Tariffs And Riders; (3) Approval Of Accounting Practices To Establish Regulatory Assets And Liabilities; (4) Approval Of A Certificate Of Public Convenience And Necessity; And (5) All Other Required Approvals And Relief, which was the **first** case filed seeking to change the 1:1 netting that existed prior to the 2019 changes to the law.
[177] 2020 LG&E-KU Rate Cases, Order at 48 (Sep. 24, 2021) (emphasis added).

approach to netting be "consistent with the billing period netting period established in NMS 1."

LG&E-KU requested rehearing of the Commission's September 24, 2021 *Orders* in those cases, arguing, among other things, that the Commission's netting approach for NMS-2 was contrary to law. By *Order* of November 4, 2021, the Commission granted rehearing as to the description of the netting methodology as expressed on page 48 of the Commission's September 24, 2021, *Order.*[178]

With regard to the netting methodology for NMS-2, the Commission ordered on rehearing that:

> The first sentence in the second paragraph on page 48 of the September 24, 2021 Order is stricken and replaced with the following: Consistent with our finding in Case No. 2020-00174 and KRS 278.465(4), the Commission finds that LG&E/KU should **continue** to net the dollar value of the total energy consumed and the dollar value of the total energy exported by eligible customer generators over the billing period in NMS 2 **consistent with the billing period netting period established in NMS 1**.[179]

The November 4, 2021, *Order* did not modify, withdraw, or otherwise change its September 24, 2021 *Orders* finding that LG&E/KU's proposed methodology for the NMS-2 netting period "is not fair, just and reasonable and should be rejected." Nor did the Commission modify, withdraw, or otherwise change its September 24, 2021, *Orders* explaining that:

> This [rejection] is because LG&E/KU's proposed instantaneous credit for all energy exported on to the grid is inconsistent with the plain language of KRS 278.465(4), which provides that "net metering means the difference between" the dollar value of all electricity generated by an eligible customer-generator that is exported to the grid over a billing period and the dollar

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[178] 2020 LG&E-KU Rate Cases, Order at 25 (Nov. 4, 2021).
[179] 2020 LG&E-KU Rate Cases, Order at 25 (Nov. 4, 2021) (emphasis added)

> value of all electricity consumed by the eligible customer-generator over the same billing period.

Order, Case No. 2020-00349 (Sept. 24, 2021) at 48.

Despite this, contrary to the Commissions' Orders, the Companies current tariffs and methodology in practice continues to compensate the dollar value of energy exported and charge the dollar value of the energy consumed on an *instantaneous* basis, with no netting *over the billing period* of the energy exported and the energy consumed as required by the Commission.

D. The settlement reasonably preserves the status quo for the moment, but the Commission should order short-term compliance with its previous orders.

In the face of the proposal to cut the compensation for NMS-2 customers nearly in half, from $0.07534 to $0.03859 for KU customers,[180] and from $0.07089 per kWh to $0.03786 for LG&E Customers,[181] the proposed settlement offers a reasonable compromise of maintaining the status quo with current compensation, and keeping the tariff open to new participants.[182] Among other short-term benefits, this is in accord with the Commission's guiding principles for setting net metering compensation, including to "[c]onduct forward-looking, long-term, and incremental analysis."[183]

Despite believing that even greater compensation is merited,[184] and that the Companies continue to fall short of the requirements of the Commission's previous

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[180] Customer Notice of Rate Adjustment at 3, Case no. 2025-00113 (May 30, 2025).
[181] Customer Notice of Rate Adjustment at 3, Case no. 2025-00114 (May 30, 2025).
[182] Stipulation Testimony Exhibit 1: Stipulation and Recommendation at 9.13, Case Nos. 2025-00113, 2025-00114 (Oct. 20, 2025).
[183] 2020 LG&E-KU Rate Cases, Order at 41-42 (Sep. 24, 2021).
[184] Fine Direct at 11-36.

Order, the Joint Intervenors recommend the Commission approve the provision of the proposed stipulation regarding net metering rates.

However, the Commission should also Order the Companies to fully comply with the terms of its previous Orders regarding Net Metering within a reasonable amount of time, but no later than 12 months from the date of entry of its Order in this matter. Specifically, the Commission should require the Companies to determine the current appropriate values for each of the avoided costs using the methodology laid out in its previous Orders, including determining an appropriate jobs benefit as already ordered.[185] Further, while conducting that appropriate analysis, the Commission should direct the Companies to study how DG and DERs could be better integrated into their system to produce an even greater value. Company Witness Waldrab discusses several times how DERs can "provide grid services beyond strictly operating as a load or a source."[186] Specifically, he describes programming of smart solar inverters to improve line efficiencies, as well as the possibility of DER management systems ("DERMS") to dispatch a variety of distributed resources including solar and home batteries, as well as electric vehicles, "in order to provide broader grid benefit,"[187] such as serving peak demand on certain circuits.[188] The Commission previously expressed how even without the capital-intensive investment necessary for DERMS smart inverters compliant with UL 1741 and IEEE 1547-2018, as the Companies already require for interconnecting

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[185] 2020 LG&E-KU Rate Cases, Order at 58 (Sep. 24, 2021).
[186] Waldrab Direct at 31.
[187] Id.
[188] Rebuttal Testimony of Peter W. Waldrab Vice President, Electric Distribution on Behalf of Companies at 9 (Sep. 30, 2025); *see also* Nov. 5, 2025 HVT at 3:38:54 to 3:47:50 p.m.

DERs, can provide substantial benefit on their own, if just enabled to autonomously provide certain grid benefits.[189]

III. The Commission Should Strengthen and Approve Rate EHLF with Certain Amendments.

Joint Intervenors support the adoption of a tariff for Extremely High Load Factor customers. These customers, including prospective data center customers, have the potential to cause significant costs for the Companies, primarily in the form of generation- and transmission-related infrastructure. As the Commission recently stated regarding East Kentucky Power Cooperative's Data Center Power Tariff:

> The resulting high level of uncertainty [from projected data center-driven load growth] complicates the long-term planning process that utilities rely on to make costly generation and transmission decisions. This is because utilities must balance their mandate to serve current ratepayers who will be impacted by decisions to construct new generation and transmission infrastructure against their need to have sufficient headroom to reliably serve new load as it materializes on the grid for decades to come.[190]

As Joint Intervenor Witness Fine testified, "it is reasonable and fair for the customers creating those new loads, rather than ratepayers writ large, to bear the full cost of recovering grid expansion investments."[191] Without a properly designed tariff and rate structure, other ratepayers may be left paying for costs that the Companies incurred to serve EHLF customers.

Joint Intervenors therefore support the adoption of Rate EHLF in this proceeding. Certain improvements are necessary, however, to ensure that Rate EHLF successfully protects the Companies and other ratepayers from the risks associated with building

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[189] 2020 LG&E-KU Rate Cases, Order at 45-47 (Sep. 24, 2021).
[190] Order at 16, In re Electronic Tariff Filing of East Kentucky Power Cooperative, Inc. to Establish a New Tariff for Data Center Power, Case No. 2025-00140 (Oct. 30, 2025).
[191] Fine Direct at 46:9–11.

infrastructure for and serving data centers and similarly high-impact customers. Specifically, Joint Intervenors recommend the following improvements to Rate EHLF.

Regarding Rate EHLF eligibility, all customers that qualify for Rate EHLF should be required to take service under it. Furthermore, the mega-volt-ampere ("MVA") threshold for Rate EHLF should be lowered to 50 MVA, as the Proposed Stipulation and Recommendation would do, and the 85% load factor threshold should be eliminated or reduced to 75%. Rate EHLF should also apply to data center customers with multiple smaller facilities and to multi-tenant data center customers, even if that requires aggregating load when determining tariff eligibility.

Regarding the protections included in Rate EHLF, the ramp-up period for Rate EHLF customers should be capped and separated from the 15-year minimum contract term, and the collateral and minimum billing demand provisions should be strengthened. The Renewable Energy Goals provisions for Rate EHLF customers included in the Proposed Stipulation should also be strengthened.

Finally, in addition to approving an improved Rate EHLF, the Commission should order the Companies to assess cost allocation methodologies for Rate EHLF customers as soon as possible, and at least within six months of the Commission's Order in this proceeding.

A. Rate EHLF Should Explicitly Require All Qualifying Customers to Take Service Under Its Terms.

As currently written, Rate EHLF would be "available" for all qualifying customers, but the Rate EHLF tariff would not explicitly *require* all qualifying customers to take service under Rate EHLF.[192] Allowing customers that would otherwise be eligible for Rate EHLF to enter into Special Contracts with the Companies could allow those customers to escape Rate EHLF's protections, undermining the overall efficacy of the tariff.

Joint Intervenors appreciate that, on cross-examination and in response to discovery requests, the Companies have stated that all eligible customers will take service under Rate EHLF rather than under Special Contracts with different terms.[193] However, at other points, Witness Hornung alluded to the idea that Special Contracts might be appropriate in certain circumstances for customers that would otherwise qualify for Rate EHLF.[194] In order to ensure that the Rate EHLF-customers cannot use Special Contracts to enter into electric service with fewer protections than Rate EHLF would provide, the Commission should order that all qualifying customers be required to take service under Rate EHLF. In the alternative, the Commission should order that any Special Contracts with Rate EHLF-qualifying customers contain provisions that are at least as protective as the analogous Rate EHLF provisions.

B. The Commission Can and Should Approve a 50 MVA Rate EHLF Eligibility Threshold Regardless of the Proposed Stipulation.

Joint Intervenors support the lowering of the Rate EHLF eligibility threshold from 100 MVA to 50 MVA. In their initial Application, the Companies proposed

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[192] Stipulation Ex. 5 at 35, Case Nos. 2025-00113, 2025-00114 (Oct. 20, 2025).
[193] Companies' Resp. to JI 2.8; Nov. 3, 2025 HVT at 5:15 to 5:16 p.m; Nov. 6, 2025 HVT at 1:18 p.m.
[194] Companies' Resp. to JI 2.3 ("the Company expects to enter into an Electric Service Agreement with each metered customer under the appropriate tariff rate (or to enter into a special contract if that is the more appropriate approach under the circumstances))"; Nov. 6, 2025 HVT at 1:18 to 1:20 p.m. (Mr. Hornung testifying that customers that do not fit nicely within the Companies' tariff structure or have unique operational issues may be put on a special contract, though also testifying that he could not think of any specific operational issues that would push a Rate EHLF customer onto a special contract).

for Rate EHLF to have an eligibility threshold of 100 MVA. As Witness Fine testified, the Companies failed to justify such a high MVA threshold, and East Kentucky Power Cooperative's Rate DCP (Data Center Power), which the Commission has since approved, uses a significantly lower 15 MW threshold.[195] Witness Fine therefore recommended that the Commission order an eligibility threshold of no greater than 50 MVA.[196]

Sierra Club Witness Jeremy Fisher also recommended lowering the MVA threshold. As Witness Fisher noted, the only evidence the Companies provided to support the 100 MVA threshold was a list of other tariffs that the Companies claimed to have reviewed. Witness Fisher testified that, of the list of tariffs the Companies provided, "[o]nly Evergy, Appalachian Power, and Georgia Power have proposed commensurate capacity thresholds as the Companies, while AEP Ohio, APS, Dominion, NV Energy, and Entergy Louisiana are 5 to 30 MW, nearly an order of magnitude smaller than the Companies' proposed EHLF threshold."[197]

The Proposed Stipulation and Recommendation would lower the Rate EHLF eligibility threshold to 50 MVA. Even in the absence of the proposed stipulation,

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[195] Fine Direct at 50:1–52:4.
[196] Id.
[197] Direct Testimony of Jeremy I. Fisher, PhD, on behalf of Sierra Club at 8, Case Nos. 2025-000113, 2025-00114 (Aug. 29, 2025) ("Fisher Direct"). Evergy Missouri and Evergy Kansas have since lowered the eligibility threshold from 100 MW to 75 MW in approved settlement agreements. Order at 3, *In re Application of Evergy Kansas Metro, Inc., Evergy Kansas South, Inc., and Evergy Kansas Central, Inc. for Approval of Large Load Service Rate Plan and Associated Tariffs*, Docket No. 25-EKME-315-TAR (Kans. Corp. Comm'm Nov. 6, 2025), https://estar.kcc.ks.gov/estar/ViewFile.aspx/25-315_Settlement_Agreement.pdf?Id=f65c8223-c3d3-47a7-b83b-877f318cf355; Order at 24, *In re Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Approval of New and Modified Tariffs for Service to Large Load Customers*, Case No. EO-2025-0154 (Mo. P.S.C. Nov. 13, 2025), https://efis.psc.mo.gov/Document/Display/857331.

the Commission can and should order that Rate EHLF's eligibility threshold be lowered to no greater than 50 MVA. Witness Hornung's cross-examination testimony demonstrates that any concerns the Companies previously raised about lowering the eligibility threshold to 50 MVA are immaterial. First, Witness Hornung explained that a greater-than-50 MVA customer is still a "big load" and a "substantial facility."[198] Second, and crucially, Witness Hornung explained that the Companies have become "comfortable that they could lower [the MVA threshold] to that level and still manage the throughput [from higher load customer prospects]."[199] Because the Companies originally failed to justify a 100 MVA threshold and have since become comfortable with a 50 MVA threshold, the Commission should order such a threshold regardless of whether it approved the proposed stipulation.

C. The Load Factor Threshold Should Be Reduced or Eliminated.

In addition to lowering the MVA threshold from 100 MVA to 50 MVA, the Commission should order that the 85% load factor threshold for Rate EHLF be eliminated or reduced. As Witness Fine testified, the threshold should be eliminated because data centers do not necessarily maintain the high load factors and they may have flexible loads in at least some circumstances.[200] Furthermore, as Witness Fisher testified, of the nine utility tariffs that the Companies originally claimed to have reviewed when designing Rate EHLF, only two include load factor thresholds, and only one included a load factor threshold of 85% or greater.[201] In Kentucky, East Kentucky Power

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[198] Nov. 6, 2025 HVT at 3:29 to 3:31 p.m.
[199] *Id.*
[200] Fine Direct at 46:16–18; *see also* Fine Direct at 49:7–13.
[201] Fisher Direct at 8.

Cooperative's Data Center Power tariff included a significantly lower 60% load factor threshold for determining tariff eligibility,[202] and Kentucky Power Company's Industrial General Service tariff provisions for large load customers did not include any load factor threshold.[203] If the Commission chooses not to eliminate the Rate EHLF load factor threshold, it should instead adopt Witness Fisher's recommendation to lower the threshold to 75%, which Witness Fisher explained would "ensur[e] that [the Companies] are able to capture still very high load factor customers that consume substantial amounts of energy relative to their peak, but not inadvertently preclude[] lower load-factor, high-impact customers."[204]

D. Rate EHLF Should Apply to Data Center Customers with Multiple Smaller Facilities and to Multi-Tenant Data Center Customers.

As discussed above, new data centers and other high load factor customers have the potential to complicate the long-term planning process that utilities rely on to make costly generation and transmission decisions, and tariff provisions are necessary to ensure that other ratepayers are not left bearing the cost of those decisions. Unfortunately, tariff eligibility thresholds may not necessarily capture all such impactful customers. For instance, as originally proposed, Rate EHLF did not contain any term that would apply Rate EHLF to a data center operator with multiple smaller

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[202] Order at 4, In re Electronic Tariff Filing of East Kentucky Power Cooperative, Inc. to Establish a New Tariff for Data Center Power, Case No. 2025-00140 (Oct. 30, 2025).
[203] *See* Kentucky Power Company's Original Tariff Sheet 8-3 (Tariff I.G.S.), *In re Electric Tariff Filing of Kentucky Power Company to Revise its Industrial General Service Tariff*, Case No. 2024-00305 (Aug. 30, 2024), https://psc.ky.gov/pscscf/2024%20cases/2024-00305//20240830_Kentucky%20Power%20Tariff%20Filing.pdf; Order, *In re Electric Tariff Filing of Kentucky Power Company to Revise its Industrial General Service Tariff*, Case No. 2024-00305 (Mar. 18, 2025).
[204] Fisher Direct at 14.

facilities that each fell below Rate EHLF's MVA threshold. Similarly, the proposed Rate EHLF does not contain any term to ensure that Rate EHLF would apply to a multi-tenant data center if the tenants of that facility fall below Rate EHLF's MVA threshold. As Witness Fine testified, "[t]he Commission should not allow data centers and other large loads to skirt their responsibilities," and there is therefore a need to compel certain customer loads to be aggregated as a single entity when determining Rate EHLF tariff eligibility.[205] Witness Fisher similarly testified that "[i]t is critical that data center providers not be exempted from the important protections of EHLF just by virtue of spreading their data centers onto multiple meters."[206]

The Companies originally stated that they could not support aggregating customer load to meet Rate EHLF thresholds because they believed that 807 KAR 5:041 Sec. 9(2) prohibited such aggregation.[207] The Proposed Stipulation and Recommendation then added a term stating that "[i]f a customer attempts to circumvent the minimum capacity threshold of Rate EHLF by siting multiple smaller facilities, the customer will nonetheless be served under Rate EHLF."[208] Witness Hornung's cross-examination testimony regarding this provision should dispel any concerns that Section 9(2) prevents aggregating customer load for determining whether Rate EHLF should apply to a customer. As Witness Hornung explained regarding the aggregation stipulation provision, there is a difference between aggregating meters for billing

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[205] Fine Direct at 52:5–10.
[206] Fisher Direct at 11.
[207] Rebuttal Testimony of Michael E. Hornung, Manager, Pricing/Tariffs, on behalf of Kentucky Utilities Company and Louisville Gas and Electric Company at 3:13–20, Case Nos. 2025-00113, 2025-00114 (Sept. 30, 2025) ("Hornung Rebuttal").
[208] Proposed Stipulation and Recommendation Section 8.2(b), Case Nos. 2025-00113, 2025-00114 (Oct. 20, 2025).

purposes and for tariff eligibility purposes.[209] Even assuming that 807 KAR 5:041, Section 9(2) may prohibit aggregating meters for purposes of billing, the Companies now agree that it does not do so for purposes of determining tariff eligibility.

This less restrictive interpretation of Section 9(2) aligns with Commission precedent. The Commission has previously clarified regarding the Companies' Green Tariff Option #3 that Section 9(2) does not prohibit aggregation from multiple locations to meet eligibility thresholds.[210] In his rebuttal testimony, Witness Hornung had attempted to limit the import of aggregation for Green Tariff Option #3 by stating that such "aggregation is purely voluntary for customers desiring to qualify to pay a premium to obtain renewable energy, and it is strictly limited to that sole purpose."[211] However, the text of Section 9(2) does not refer to or depend on voluntary participation by a customer, and Witness Hornung presented no textual analysis of Section 9(2) to explain why the Commission's decision regarding Green Tariff Option #3 would not logically extend to other instances of aggregation for determining tariff eligibility. Furthermore,

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[209] Nov. 6, 2025 HVT at 3:32 to 3:33 p.m.
[210] Order at 17, In re Electronic Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of a Solar Power Contract and Two Renewable Power Agreements to Satisfy Customer Requests for a Renewable Energy Source Under Green Tariff Option #3, Case No. 2020-00016 (June 18, 2020) ("The Commission clarifies that the intent of the aggregation is to allow a single customer the ability to aggregate usage from multiple locations to meet the minimum monthly billing load threshold for Green Tariff Option #3. This is similar to aggregation provisions contained in the renewable energy tariffs of East Kentucky Power Cooperative, Inc., Kentucky Power Company, and Duke Energy Kentucky, Inc."); see also Fisher Direct at 11 ("However, this apparent prohibition does not seem to have inhibited the Companies from considering aggregation when assessing if a customer is eligible for other tariff provisions. For example, the Companies' Green Tariff provision requires that a customer be at least 10 MVA for eligibility for a renewable power agreement, but state that 'a Customer with multiple accounts may aggregate those accounts for the sole purpose of meeting the 10 MVA requirement.'" (quoting Louisville Gas and Electric Company. P.S.C. Electric No. 13, First Revision of Original Sheet No. 69, https://lge-ku.com/sites/default/files/media/files/downloads/LGE-Electric-Rates-052825.pdf.))
[211] Hornung Rebuttal at 4:7–9.

Witness Hornung's testimony on cross-examination suggests that the Companies now view Section 9(2) as more broadly permitting aggregation for determining eligibility.[212]

Furthermore, even if Section 9(2) did apply to the issue of aggregation determining tariff eligibility, the Commission may still grant a deviation from Section 9(2) for good cause shown.[213] KU has previously been granted deviations from Section 9(2) on the basis that certain forms of aggregation did not violate the intent of the regulation.[214] Specifically, KU argued that "the intent of this regulation is to prevent special consideration being given to one customer so that that customer would have an advantage over another customer and that this regulation arises from a time when the use of blocked rates was much more prevalent."[215] Here too, aggregation of customer load for determining tariff eligibility would not provide unfair advantage, but would instead simply further the intent of Rate EHLF by ensuring that high-impact customers cannot escape regulation through corporate structuring.

Given that Section 9(2) does not prohibit aggregation for determining Rate EHLF eligibility, Joint Intervenors recommend two important modifications to the Stipulation provision related to load aggregation.

First, the provision should not depend on whether the customer is "attempt[ing] to circumvent the minimum capacity threshold." Requiring a determination of customer *intent* unnecessarily complicates the provision and may make it harder for the Companies and the Commission to enforce. Furthermore, the Commission's recent

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212 Nov. 6, 2025 HVT at 3:32 to 3:33 p.m.
213 807 KAR 5:041 § 22 ("In special cases for good cause shown the commission may permit deviation from these rules.").
214 Order at 2, Case No. 2003-00320 (Aug. 29, 2003); *id.* at Attach. at 1-2.
215 *Id*. at Attach. at 1–2.

approval of East Kentucky Power Cooperative's Data Center Power Tariff presents a model for aggregating customer load across multiple sites that does not depend on customer intent. For purposes of establishing tariff eligibility, the Data Center Power Tariff aggregates a data center's energy demand and load factor with (1) any other data center owned or operated by the customer at the same location; (2) any non-data center electricity-consuming facilities owned or operated by the customer at the same location; and (3) any other data centers owned or operated by the customer at a different location but within one or more of EKPC's Owner-Members' service territories.[216] The Commission should order the Companies to adopt a similar approach to aggregation of facilities owned by the same customer, in order to ensure that Rate EHLF captures data center companies with aggregate load over 50 MVA.

Second, the Commission must also ensure that Rate EHLF tariff eligibility is structured such that all tenants of a multi-tenant data center facility with a collective load over 50 MVA are required to take service under Rate EHLF. As Witness Fisher explained when the proposed MVA threshold was 100 MVA, "[w]hile there is significant discussion about very large data centers of 100 MW or more, data centers may be built in campuses, or even in different locations across a service territory, where individual buildings (potentially metered individually) may consume less than 100 MW."[217] The same concern applies to a 50 MVA threshold. For instance, on cross-examination, Witness Bevington expressed that there are a number of potential data center customers in their economic development queue for which the Companies do not

[216] Order at 4–5, In re Electronic Tariff Filing of East Kentucky Power Cooperative, Inc. to Establish a New Tariff for Data Center Power, Case No. 2025-00140 (Oct. 30, 2025).
[217] Fisher Direct at 10.

presently know whether their end use would be as multi-tenant data centers.[218] For those facilities, Witness Bevington also expressed that the Companies do not know the MVA of any potential end-use tenants.[219]

The Companies' witnesses have presented contradictory answers as to how the Companies will handle Rate EHLF electric service agreements for multi-tenant data center facilities. When counsel for Joint Intervenors asked Witness Conroy whether all tenants of a multi-tenant data center would be covered under Rate EHLF even if the tenants were individually below 50 MVA, Witness Conroy originally said that they would be.[220] However, when Staff later asked Witness Conroy about a data center campus with two separate customers who have each signed 25 MW electric service agreements, Witness Conroy testified that those customers would not qualify for Rate EHLF.[221] Witness Bevington for his part testified that he believed that a 450 MVA facility with ten 45 MVA tenants would be covered under Rate EHLF, although he added the caveat that we would need to know more about the customer's specific business model to say with certainty.[222] And Witness Hornung, when asked about a situation with separately metered tenants below 50 MVA, stated that the Companies "would seek to put as much as [they] can on EHLF," but also stated that "if a tenant is under 50 MVA, it would it would not qualify for Rate EHLF so long as they were not trying to game the system and putting them all over the place."[223] Clearly, more clarity is required, and the

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[218] Nov. 5, 2025 HVT at 2:38 to 2:41 p.m.
[219] *Id.* at 2:44 to 2:48 p.m.
[220] Nov. 3, 2025 HVT at 5:20:50 to 5:21:25 p.m.
[221] Nov 4, 2025 HVT at 11:23 to 11:24 a.m.
[222] Nov. 5, 2025 HVT at 2:50:50 to 2:51:25 p.m.
[223] Nov. 6, 2025 HVT at 1:23 to 1:26 p.m.

Commission should act to ensure that Rate EHLF applies to all multi-tenant data center facilities that meet the 50 MVA threshold at the facility level.

Witness Hornung attempted to dismiss the need for aggregation for multi-tenant data centers in his rebuttal testimony by alluding to the "built-in portfolio diversity of having multiple entities taking service at the same site, which would tend to decrease the risk that the whole campus would cease to take service."[224] The Commission should not accept this argument, as the Companies have provided no evidence to support Witness Hornung's contention that having multiple entities at the same multi-tenant data center would lead to a decrease in risk. Each of the tenants at a multi-tenant data center may be affected by the same industry-wide trends, which could mean that multiple such tenants cease taking service at roughly the same time. Furthermore, if one or more tenants at a multi-tenant data center cease taking service, it may no longer be profitable to operate the data center campus as a whole. Thus, there is a need to ensure that Rate EHLF applies to a multi-tenant data center as a whole and/or to each of its tenants.

As Witness Fine explained, "one solution [for these multi-tenant data centers] is to require a main meter at each major development that is subject to the EHLF tariff."[225] That way, the Companies could determine whether the facility as a whole has a cumulative load of over 50 MVA, without needing to aggregate each tenant's individual load. If so, each tenant of that facility could be required to take service under Rate EHLF regardless of their individual MVA level. Alternatively, rather than requiring a main

[224] Hornung Rebuttal at 4:1–5.
[225] Fine Direct at 52:17–53:4.

meter at each development, the Companies could be required to aggregate each tenant's load solely for purposes of determining whether the multi-tenant facility would qualify for Rate EHLF and, if so, require each tenant to take service under Rate EHLF.

E. The Ramp-Up Period Should Be Capped and Separated from the 15-Year Minimum Contract Term.

Joint Intervenors agree with the Companies that a sufficiently long minimum contract term is necessary to ensure that Rate EHLF take service for long enough to pay for the substantial investments that may be needed to serve them. Unfortunately, several aspects of the Companies' Rate EHLF proposal threaten to undermine the efficacy of the Companies' proposed minimum contract length. In addition to the insufficient collateral and minimum billing demand requirements discussed below, the Companies have not established sufficient protections related to a Rate EHLF customer's ramp period.

A ramp period "is a specified period of time in which the customer's expected electricity use will increase from zero to the expected peak requirements."[226] Such a period is "designed to set in place an orderly transition from the start of service to the full requirement."[227] As Witness Fisher noted, "[i]n most cases, the tariff can adjust the ramp period for a given customer, but the ramp period is set at a maximum of four or five years."[228] The Companies, however, have proposed no tariff guidelines for the length or ramp rate in a customer's ramp period, stating instead that the ramp period

[226] Fisher Direct at 14.
[227] *Id.* at 14.
[228] *Id.* at 14–15.

will be managed solely through the electric service agreements.[229] Furthermore, the Companies have proposed that the ramp period be included in the 15-year minimum contract period, rather than taking place *before* the 15-year period.[230]

As Witness Fine explained, "[t]he inclusion of an uncapped ramp-up period in the minimum contract term is essentially an escape clause to end payments before costs are recovered fully, because customers would not have any mandatory timeframe in which to reach the demand levels established in the contract."[231] This would undermine other proposed Rate EHLF terms. As Witness Hornung testified, "an extended contract term requirement and capacity change and termination provisions" were designed to "ensure recovery of at least fifteen years of non-fuel revenues based on the original contract capacity requirement."[232] Similarly, on cross-examination, Witness Hornung stated that the 15-year minimum contract length was designed with the intent of ensuring that Rate EHLF customers "pay their significant portion associated with the infrastructure we're putting, whether than be generation, transmission, or distribution."[233] However, if the Rate EHLF customers have no mandatory timeframe to reach the full contract capacity, then the other Rate EHLF terms cannot on their own ensure recovery of any set amount of revenues.

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[229] Response of Companies to JI, Question No. 1.166, Case Nos. 2025-00113, 2025-00114 (July 16, 2025); Response of Companies to JI, Response to Question No. 2.10(a), Docket Nos. 2025-00113, 2025-00114 (Aug. 12, 2025("Companies' Resp. to JI 2.10(a)").
[230] *Id.*
[231] Fine Direct at 53:15–18.
[232] Direct Testimony of Michael E. Hornung, Manager, Pricing/Tariffs, on behalf of Kentucky Utilities Company and Louisville Gas and Electric Company at 7:15–18, Case Nos. 2025-00113, 2025-00114 (May 30, 2025) ("Hornung Direct").
[233] Nov. 6, 2025 HVT at 1:31:15 to 1:31:25 p.m.

Witness Hornung's rebuttal testimony attempted to suggest that a cap on ramp-up periods is not necessary because the ramp-up period for all customers would be sufficiently short: "there is no need for a ramp period; it is not in the data center customers' interests to plan to prolong unnecessarily their ramp periods."[234] But when the Companies were asked to "provide the anticipated range of potential ramp-up period lengths and ramp rates, along with the anticipated range of potential minimum billing that would apply during ramp-up periods, for customers under the EHLF rate," Witness Hornung responded that "[t]he Company does not have the information in order to perform this analysis as this would be customer specific."[235] On cross-examination, discussing a ramp-up period for a hypothetical 1-GW customer, Witness Hornung could not confirm whether a 10-year ramp period would be unreasonably long, and regarding a 15-year ramp period (the entire length of a minimum-length EHLF contract), Witness Hornung could only say that the Companies would "need to know more information about this before we'd agree to it."[236] Ramp-up periods of such length could substantially undermine the Companies' cost recovery under an EHLF contract, as the customer might be allowed to pay far less than the ultimate costs of the investments required to serve that customer for the vast majority of the contract period.

The purpose of standardized tariff terms is to set reasonable guidelines on important electric service agreement terms, and the Companies should not be allowed to defer all ramp-up period protections to the individual electric service agreements. As Witness Hornung himself stated on cross-examination regarding electric service

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[234] Hornung Rebuttal at 7:17–20.
[235] Response of KU to JI, Response to Question No. 2.5(a), Case No. 2025-00113 (Aug. 12, 2025).
[236] Nov. 6, 2025 HVT at 1:31:38 to 1:32:13 p.m.

agreements, "they're not very big contracts because we have a thick tariff book which contains most of the terms and conditions associated with serving customers."[237] Furthermore, contrary to Witness Hornung's suggestion on cross-examination, the CPCN stipulation provision stating that "LG&E-KU will file all Rate EHLF electric service agreements with the Commission" should not serve as a replacement for tariffed ramp-up period guidelines.[238] A filing requirement is not the same as a review requirement, and the present proceeding is the appropriate forum for prohibiting unreasonable ramp-up periods.

Fortunately, other utilities have capped the permissible length of ramp-up periods in ways that this Commission could emulate. For instance, the Michigan Public Service Commission recently approved Consumers Energy Company's large load tariff provisions that include a 15-year contract term, which begins after the conclusion of a ramp-up period that "shall not exceed five years but is otherwise subject to negotiation with Consumers."[239] Other examples of utilities that have capped permissible ramp-up periods include the Appalachian Power Company and Wheeling Power Company (five

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[237] *Id.* at 1:35:35 to 1:35:36 p.m.
[238] *Id.* at 1:32 p.m.
[239] Order at 107, *In the matter of the application of Consumers Energy Company for ex parte approval of certain amendments to Rate GPD*, Case No. U-21859 (Mich. Pub. Serv. Comm'n, Nov. 6, 2025), https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/068cs00001Nipc9AAB.

year cap),[240] Indiana Michigan Power Company (five year cap),[241] Evergy Kansas (five year cap),[242] Evergy Missouri (five year cap),[243] and AEP Ohio (four year cap).[244]

The Consumers Energy 15-year minimum contact length in addition to a separate ramp-up period of no more than five years would add up to the 20-year minimum contract term in Kentucky Power's General Service Tariff large load tariff provisions and would be the ideal structure for the Commission to order the Companies to adopt. Such a structure would ensure that the ramp-up period does not threaten to reduce recovery under the 15-year minimum contract term.

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[240] Revised Tariff Sheets, *In re Appalachian Power Company and Wheeling Power Company Application for Approval of Revisions to Schedules LCP and IP*, Case No. 24-0611-E-T-PW, (W.V. Pub. Serv. Comm'n Apr. 7, 2025), First Revision of Original Sheet No. 14-3, https://www.psc.state.wv.us/scripts/WebDocket/ViewDocument.cfm?CaseActivityID=639454.

[241] Submission of Industrial Power Tariff – Tariff I.P., In re Verified Petition of Indiana Michigan Power Company for Approval of Modifications to its Industrial Power Tariff – Tariff I.P., Cause No. 46097 (Ind. Util. Regul. Comm'n Feb. 25, 2025), First Revised Sheet No. 21.3, https://iurc.portal.in.gov/_entity/sharepointdocumentlocation/ba79885d-47f4-ef11-be20-001dd80ad83d/bb9c6bba-fd52-45ad-8e64-a444aef13c39?file=46097_IndMich_Tariff%20Submission_022525.pdf.

[242] Order Approving Unanimous Settlement Agreement at 3, In re Application of Evergy Kansas Metro, Inc., Evergy Kansas South, Inc., and Evergy Kansas Central, Inc. for Approval of Large Load Service Rate Plan and Associated Tariffs, Docket No. 25-EKME-315-TAR (Kans. Corp. Comm'm, Nov. 6, 2025), https://estar.kcc.ks.gov/estar/ViewFile.aspx/25-315_Settlement_Agreement.pdf?Id=f65c8223-c3d3-47a7-b83b-877f318cf355.

[243] Report and Order at 12, In re Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Approval of New and Modified Tariffs for Service to Large Load Customers, Case No. EO-2025-0154 (Mo. Pub. Serv. Comm'n., Nov. 13, 2025), https://efis.psc.mo.gov/Document/Display/857331.

[244] Joint Stipulation and Recommendation, Ex. A at 2, *In the Matter of the Application of Ohio Power Company for New Tariffs Related to Data Centers and Mobile Data Centers*, Case No. 24-508-EL-ATA (Ohio Pub. Utils. Comm'n, Oct. 23, 2024), https://dis.puc.state.oh.us/ViewImage.aspx?CMID=A1001001A24J23B55758I01206; Order and Opinion at 15-16, *In the Matter of the Application of Ohio Power Company for New Tariffs Related to Data Centers and Mobile Data Centers*, Case No. 24-508-EL-ATA (Ohio Pub. Utils. Comm'n, July 9, 2025), https://dis.puc.state.oh.us/ViewImage.aspx?CMID=A1001001A25G09B43531I00509.

F. The Collateral Provision Should Be Strengthened.

Joint Intervenors strongly support the implementation of mandated collateral for EHLF customers. The collateral requirement is a pivotal piece of the protections being implemented in large load tariffs across the country. Without strong collateral provisions, there would be no guarantee that the Companies would recover even a portion of the expected revenue from large load customers, rendering the EHLF minimum contract length and exit fee provisions potentially toothless. Unfortunately, the Companies' proposed collateral structure of 12 or 24 months of the minimum billed amounts at the largest contract capacity value is insufficient. The Commission should instead order the Companies to require collateral equal to 50% of the customer's total minimum charges for the full term of the contract.

The collateral requirement should be structured to maximize the likelihood that the Companies' fully recover the costs of their investments to serve a Rate EHLF customer. The Companies have not met their burden to demonstrate that the proposed Rate EHLF structure would do so, as the Companies have admitted that they have performed no analysis of the potential impacts of EHLF customers on their expenses or on their cost of service.[245] The Companies have also refused to provide any workpapers, analyses, studies, or other documents supporting the proposed collateral requirement.[246] In the absence of such analyses, the Companies must adopt a collateral

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[245] KU Response to Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Mountain Association's Initial Request for Information, Response to Question No. 1.170(b), Case No. 2025-00113 (July 16, 2025).
[246] KU Response to JI's Initial Request for Information, Response to Question No. 1-159(e) Case No. 2025-00113 (July 16, 2025); LG&E Response to JI's Initial Request for Information, Response to Question No.1-168(e), Case No. 2025-00114 (July 16, 2025).

requirement that errs on the side of being *more* protective of existing customers, not less.

Notably, the proposed collateral structure for a minimum-length Rate EHLF contract would be proportionally less protective than LG&E-KU's standard collateral structure for a minimum-length Rate RTS contract. As Companies Witness Hornung explained on cross-examination, the standard deposit amount for a minimum-length, one-year Rate RTS contract would cover two months out of twelve, leaving ten months unprotected by collateral.[247] Applying this 2/12 ratio across a 15 year contract would correlate with 2.5 years of collateral for all Rate EHLF customers. Across a 15-year contract, a 2/12 collateral provision would require 2.5 years of collateral for all Rate EHLF customers. This is 250% of the one-year's worth of minimum billing demand currently proposed to be required for certain Rate EHLF customers.

Witness Hornung attempted to defend the proposed collateral structure by emphasizing the monetary amount of expected collateral for hypothetical EHLF customers, testifying that "a 402 MW LG&E Rate EHLF customer meeting enhanced creditworthiness requirements would need to post collateral of more than $100 million at the time of contract signing."[248] In fact, in response to a data request seeking clarification on how the "more than $100 million" collateral amount was calculated, the Companies produced an analysis showing that the collateral for such a customer would

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[247] Nov. 6, 2025 HVT at 1:38:05 to 1:38:33 p.m. In contrast, as Witness Hornung admitted on cross-examination, one-year's worth of collateral for Rate EHLF would leave fourteen years of the Rate EHLF minimum contract term unprotected by collateral. *Id*.
[248] Hornung Direct at 7:19–23.

only be $73,072,656.[249] This would leave over $1 billion in expected minimum billing from the customer across a 15-year contract unprotected by collateral.[250]

Crucially, the roughly $73 million in expected collateral payment is of limited significance without being able to compare the collateral to the Companies' anticipated expenses to hypothetical customers, analysis of which the Companies have not conducted.[251] We know, however, that the Companies designed the collateral requirement because they expect that "one or just a few such [EHLF] customers could require the Companies to acquire additional general resources to supply their needs and the needs of existing customers."[252] Needless to say, such resources may cost far more than $73 million, with the Companies' Mill Creek 6 gas plant currently expected to cost $1.415 billion.[253] In other words, if Rate EHLF customers are unable to pay their minimum billing costs or exit fee under their electric service agreements, the current collateral structure guarantees that the Companies recover only a small fraction of the expected EHLF revenues and costs to serve the EHLF customers.

Collateral structures that are more protective of utilities and their current customers have been adopted in other jurisdictions. As Witness Fine explained in his Direct Testimony, "a recent AEP Ohio approved settlement set the collateral at 50% of the customer's total minimum charges for the full term of the contract, a more protective

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[249] Companies' Resp. to JI 4.15.
[250] *Id.*
[251] Response of KU to JI, Response to Question No. 1.170(b), Case No. 2025-00113 (July 16, 2025); Response of KU to JI, Response to Question No. JI 1-159(e), Case No. 2025-00113 (July 16, 2025); Response of LG&E to JI, Response to Question No. JI 1-168(e), Case No. 2025-00114 (July 16, 2025).
[252] Hornung Direct at 4:13–15.
[253] Joint Application at 12, Case No. 2025-00045 (Feb. 28, 2025).

approach to collateral than proposed by the Companies."[254] In order to ensure that Rate EHLF sufficiently protects the Companies and other ratepayers in the occurrence of EHLF customer default, the Companies should adopt a collateral requirement of 50% of the customer's total minimum charges for the full term of the contract.

In attempting to rebut Witness Fine's comparison to the AEP Ohio collateral provision, Witness Hornung argued that the AEP Ohio tariff provisions are not "reasonably comparable to Rate EHLF" because they "do not include generation cost because Ohio is a retail choice state."[255] This argument fails. The collateral provision should be designed primarily to insulate a utility and its existing customers from risk, while also bearing in mind the burden to the new customer. While it is true that the inclusion of generation costs under Rate EHLF would naturally increase the collateral amounts required, it also means that the Companies and their existing customers would be bearing more risk than AEP Ohio if they are unable to recover those generation costs through the electric service agreement. Because the risk to the Companies and their existing customers under an electric service agreement with a large load customer is higher due to the inclusion of generation costs, it should be expected that the collateral required by a Rate EHLF customer would also be higher. Furthermore, Witness Hornung himself referred to the AEP Ohio tariff when defending the proposed

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[254] Fine Direct at 55:18–20. (citing Joint Stip. and Recommendation, Ex. A at 5–6, *In the Matter of* the Application of Ohio Power Company for New Tariffs Related to Data Centers and Mobile Data Centers, Case No. 24-508-EL-ATA (Ohio Pub. Utils. Comm'n Oct. 23, 2024), https://dis.puc.state.oh.us/ViewImage.aspx?CMID=A1001001A24J23B55758I01206; Order and Opinion at 16, *In the Matter of the Application of Ohio Power Company for New Tariffs Related to Data Centers and Mobile Data Centers*, Case No. 24-508-EL-ATA (Ohio Pub. Utils. Comm'n July 9, 2025), https://dis.puc.state.oh.us/ViewImage.aspx?CMID=A1001001A25G09B43531I00509.).
[255] Hornung Rebuttal at 9:3–20.

Rate EHLF contract length,[256] rendering his attempt to categorize that tariff as not "reasonably comparable to Rate EHLF" unpersuasive.

The Companies have not proven that their proposed collateral structure is sufficiently protective of existing ratepayers; the collateral structure is proportionally *less* protective that the Companies' standard deposit structure; and the collateral structure would ensure the recovery of only a small portion of the costs to serve Rate EHLF customers and the expected revenue from them. As such, the Commission should order the Companies to strengthen the Rate EHLF collateral provision by requiring collateral equal to 50% of the customer's total minimum charges for the full term of the contract.

G. The minimum billing demand provision should be strengthened.

Joint Intervenors also recommend that the Commission order the Companies to adopt a minimum billing demand requirement greater than originally proposed. The Companies have proposed that Rate EHLF customers be charged a minimum billing demand that is the greater of (1) the maximum measured load in the current billing period, (2) the highest measured load in the preceding eleven monthly billing periods, or (3) 80% of the contract capacity based on the maximum load expected on the system or on facilities specified by Customer.[257] As with other proposed Rate EHLF terms, the Companies have not provided any workpapers or assessments demonstrating that an 80% minimum billing demand requirement is sufficient to protect other ratepayers from subsidizing costs caused by Rate EHLF customers. As Witness Fine testified, a minimum billing demand greater than the

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[256] *Id.* at 7:13-16.
[257] The testimony in these rate cases also refers to this provision as the "demand ratchet."

currently proposed 80% would help protect against the risk of other ratepayers bearing costs caused by Rate EHLF customers.

The Companies have stated that the 80% minimum demand threshold was designed to be revenue neutral with the RTS rate because "[s]ervice under Rate RTS and EHLF is identical,"[258] though this ignores the potentially far greater need for generation infrastructure and transmission network upgrade costs for Rate EHLF customers.[259] The Companies have also stated that the 80% minimum demand charge is appropriate for a rate schedule because "one would expect" monthly variation around the 85% average monthly load factor, and the 80% minimum contract demand charge provides a "reasonable floor" for that variation.[260] In the absence of workpapers or analyses of higher minimum billing demand requirements, the Companies have provided no bases to suggest that 80% is in fact a "reasonable floor."

Witness Fine testified that "one way to avoid [the] risk for ratepayers [of being burdened with costs caused by Rate EHLF customers] is to ensure that the EHLF rate is designed to recover all costs within the signed contract period and to increase the minimum billing requirement above 80%, while still providing incentives to avoid load during peak times."[261] Joint Intervenors recommend that the Commission adopt Witness Fine's recommendation and increase the minimum billing requirement above 80% in order to more fully recover the costs to serve Rate EHLF customers. As one

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[258] Response of KU to JI Question 2-7(b), Case No. 2025-00113; Response of KU to JI, Response to Question No. 1-159(a), Case No. 2025-00113 (July 16, 2025).
[259] *See* Fisher Direct at 23-27.
[260] Companies' Resp. to JI 2.9.
[261] Fine Direct at 55:2-5. Witness Hornung's rebuttal testimony misrepresented Witness Fine's proposal, claiming that Witness Fine proposed that the minimum demand charge ratchet should be raised to 100% of contract capacity. Hornung Rebuttal at 5:12-16.

example of a minimum billing demand requirement greater than 80% of contract capacity, Kentucky Power's Industrial General Service Tariff provisions for large load customers include a minimum billing demand of "90% of the greater of (a) the customer's on-peak contract capacity or b) the customer's highest previously established monthly billing demand during the past 11 months or (c) the customer's maximum demand created during the billing month."[262]

If the Commission does instead approve the 80% minimum billing demand in this proceeding rather than a higher minimum billing demand, it should simultaneously order the Companies to assess the cost of service and revenue implications of higher minimum billing requirements, including a 90% minimum billing requirement, and report the results of this assessment in the next rate case. That way, in the next rate case, the Commission and all parties will be better able to assess whether the 80% minimum billing demand should be increased to better protect other ratepayers.

H. The Renewable Energy Goals Provisions for Rate EHLF Customers Included in the Proposed Stipulation and Recommendation Should Be Strengthened.

Joint Intervenors support the inclusion of tariff provisions enabling Rate EHLF customers to meet their energy and demand needs through renewable energy. Unfortunately, the "Renewable Energy Goals" provisions included in the Proposed Stipulation and Recommendation are not sufficient.[263] As Companies Witness

[262] Kentucky Power Tariff Filing at PDF 10, In re Kentucky Power Company to Revise its Industrial General Service Tariff, Case No. 2024-00305 (Aug. 30, 2024); Order at 3, In re Kentucky Power Company to Revise its Industrial General Service Tariff, Case No. 2024-00305 (Mar. 18, 2025).
[263] Stipulation Testimony Exhibit 1: Stipulation and Recommendation at Section 8.3, Case Nos. 2025-00113, 2025-00114 (Oct. 20, 2025).

Bevington testified, he does not view the Renewable Energy Goals provisions as necessarily adding any potential options for meeting customers' renewable energy goals.[264] Rather, Witness Bevington characterized the provisions as signaling that "if an option doesn't exist that is something that [a customer has] done someplace else and seems like a proposal that we could present to the Commission in a favorable fashion, we would be willing to think creatively about helping them reach their goals outside of anything specific."[265] Without actually expanding the tariff offerings available to serve potential Rate EHLF customers, the benefit of the Renewable Energy Goals provisions is necessarily limited. That said, the Commission could still order that the provisions be strengthened in several important ways.

First, the Renewable Energy Goals provisions must be incorporated into the Rate EHLF tariff sheets, rather than existing solely in the Proposed Stipulation. As Witness Bevington testified, the purpose of the Renewable Energy Goals provisions is to signal to potential Rate EHLF customers that the Companies would be willing to think creatively to help the customers meet their renewable energy goals. But if the provisions are not incorporated into the tariff sheets, then there is no guarantee that potential Rate EHLF customers will know of the Companies' stipulated commitments.

Incorporating the Renewable Energy Goals language into the Rate EHLF tariff sheets would be one simple way to ensure that more potential customers are aware of the Companies' commitments. It will also assist in fostering discussion of the Companies' commitments. Regarding the Companies' green tariff offerings, solar share

[264] Nov. 5, 2025 HVT at 2:36 to 2:37 p.m.
[265] *Id.*

program, and qualifying facility tariff provisions, Companies Witness Bevington testified that if a potential customer "want[s] to get down into the details" of those programs then he would refer them to the relevant tariff sheet or rate book language.[266] Witness Bevington further testified that referring to the tariff sheet language for those programs is helpful for discussing the actual details of those programs.[267]

In addition to incorporating the commitments into the Companies' rate books, the Commission should also require the Companies to proactively explain their renewable energy-related commitments and offerings to all prospective Rate EHLF customers. On cross-examination, when asked if the Companies would do so, Witness Bevington stated that "we don't want to bring up things that might complicate a conversation."[268] The potential impact of Rate EHLF customers on the Companies' power supply resource requirements and energy mix warrants discussion with EHLF customers of ways to serve them with renewable energy, and the Companies would not "complicate" conversations with such customers by explaining their renewable energy-related commitments to them. The Commission should therefore order the Companies to do so for each potential Rate EHLF customer.

Finally, the Companies should be required to report on all efforts to support potential Rate EHLF customers in achieving their renewable energy goals. Publicly filed reports of the Companies' efforts would help ensure that the Companies are complying with the Renewable Energy Goals provisions and would help inform the Commission and interested parties of ways in which the Companies could strengthen their efforts.

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[266] Nov. 5, 2025 HVT at 2:32 p.m.
[267] *Id.*
[268] *Id.* at 2:33 to 2:35 p.m.

I. In Addition to Adopting an Improved Rate EHLF, the Commission Should Order the Companies to Assess Cost Allocation Methodologies for Rate EHLF Customers.

Many of the Rate EHLF provisions discussed above concern the risk of stranded assets in the event that the Companies build new infrastructure for new customers that do not materialize or that cease taking service prior to the Companies recovering a significant portion of their costs. The Companies' Application and Proposed Stipulation are silent, however, on how the costs of serving Rate EHLF customer load should be allocated. Rather, the Companies stated in discovery that they assume that their traditional 6 Coincident Peak ("6-CP") allocation methodology will be appropriate for Rate EHLF.[269] The Companies have not done the necessary analysis to determine whether this allocation methodology will best protect other ratepayers from needing to carry costs that should be paid for by the Rate EHLF customers causing them, and the Commission should adopt Witness Fine's recommendation to open a docket as soon as possible, and at least within six months of the Commission's final Order in this proceeding, to fully evaluate what cost allocation method(s) are most appropriate for the generation, transmission, and distribution costs that will be incurred to serve EHLF customers.[270]

The potential cost impacts of Rate EHLF customers demand more than the status quo. As Witness Hornung testified, "one or just a few such [EHLF] customers could require the Companies to acquire additional generation resources to supply their

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[269] Response of KU to the Sierra Club's Second Request for Information, Response to Question No. 2-4(c), Docket No. 2025-00113 (Aug. 12, 2025).
[270] Fine Direct at 57:6-58:20.

needs and the needs of existing customers."[271] As examples of what such generation resources might cost, in Case No. 2025-00045, the Companies received approval for two combined cycle gas plants with projected capital costs of $1.383 billion and $1.415 billion.[272] In other words, as Witness Fine testified, "the production, transmission, and distribution costs to serve EHLF customers will inevitably be quite high."[273] Witness Fine further explained that, "[u]nder cost causation principles, those costs should be borne primarily by the EHLF customers,"[274] but that the Companies' "current cost allocation methodology would almost certainly shift substantial costs to residential and other customer classes."[275]

Sierra Club Witness Fisher likewise testified as to the ways in which EHLF customers may impose costs on other ratepayers. Specifically, Witness Fisher identified three primary avenues by which Rate EHLF customers may impose substantial costs on other customers: (1) accelerated generation costs, (2) transmission and network costs, and (3) higher energy utilization.[276] Regarding accelerated generation costs, Witness Fisher noted that "the utility will always seek to frontload generation prior to the activation of these new large load customers, which means that existing customers will pay for the costs of accelerating generation resources for EHLF customers."[277] Regarding transmission and network costs, Witness Fisher noted that "if the utility is building the network transmission upgrade specifically to serve a narrow class of

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[271] Hornung Direct at 4:13-15.
[272] Joint Application at 12, Case No. 2025-00045 (Feb. 28, 2025).
[273] Fine Direct at 58:1-2.
[274] *Id.* at 58:6-7.
[275] *Id.* at 58:10-11.
[276] Fisher Direct at 23-27.
[277] *Id*. at 25.

customers, those costs may be inappropriately socialized."[278] As Witness Fisher also noted, the Companies have confirmed that they currently expect network interconnection costs required to serve EHLF customers to be borne by all customers.[279] Finally, regarding higher energy utilization, Witness Fisher explained that

> [t]he high load factor customers envisioned under EHLF are expected, by definition, to consume far more energy than their peak capacity would imply relative to other ratepayer classes. That means that they're consuming a disproportionate share of system energy, and may require the Companies to build and operate infrastructure with more energy availability than they otherwise would plan for – hence the construction of new combined cycle power plants, rather than peakers.[280]

Crucially, as Witness Fisher testified, "[i]f we consider that the Companies need to build to provide both capacity and energy, then a 6-CP rate allocation methodology may severely undercount the services provided to high load factor customers, or the costs those high energy customers cause on the system."[281] In contrast, allocation "methods that took into account energy use in addition to peak consumption (Base-Intermediate-Peak or "BIP" and Probability of Dispatch or "POD") had radically different allocations for residential and very large, high load factor customers."[282]

The Companies, however, have not yet analyzed the potential impacts of Rate EHLF customers on their expenses; net income or profit; cost of service study results, including cost allocation to customer classes; cost-shifting or cross-subsidization among customer classes; or residential rates or bills.[283] Nor, despite the unprecedented costs

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[278] *Id*. at 24.
[279] *Id*.
[280] *Id*. at 25.
[281] *Id*. at 25-26.
[282] *Id*. at 26.
[283] Response of KU to JI, Response to Question No. 1-170, Case No. 2025-00113 (July 16, 2025); Response of LG&E to JI, Response to Question No. 1-179, Case No. 2025-00114 (July 16, 2025).

associated with serving Rate EHLF customers, do they seem to have assessed how demand allocators other than 6-CP would change projected costs for other customer classes or EHLF customers.[284] Regarding Rate EHLF customers, Witness Hornung has stated that "the Company will seek to recover its embedded cost under its traditional rate-making methodologies."[285] Witness Hornung further stated on cross-examination that he does not foresee changing the Companies' methodology.[286]

Given the potential cost impacts of Rate EHLF customers and the Companies' expressed reticence to assess alternate cost allocation methodologies for those customers, the Commission should adopt Witness Fine's recommendation to open a docket to fully evaluate what cost allocation method(s) are most appropriate for the generation, transmission, and distribution costs that will be incurred to serve EHLF customers.[287] Witness Fine explained that potential options that could be considered in this docket include: (1) marginal cost ratemaking, (2) shifting allocation more towards energy rather than demand, (3) probability of dispatch, (4) direct assignment of certain costs that are primarily attributable to one or more EHLF customers, and (5) basing any coincident peak allocation on 12-CP rather than 6-CP.[288]

This approach would align with Commission precedent. In the Companies' 2018 rate cases, intervenors raised concerns about the Companies' cost of service

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[284] Response of Companies to Sierra Club, Response to Question No. 2-4(c), (e), Case Nos. 2025-00113, 2025-00114 (Aug. 12, 2025).
[285] Response of Companies' to JI, Response to Question No. 2.7(b), Case Nos. 2025-00113, 2025-00114 (Aug. 12, 2025).
[286] Nov 6, 2025 HVT at 1:45:00 to 1:45:05 p.m.
[287] Fine Direct at 58:18-20.
[288] *Id.* at 58:13-16.

study methodology, which at the time was based on loss of load probability ("LOLP").[289] Recognizing the concerns with the Companies' then-current cost of service study methodology but without explicitly rejecting it, the Commission ordered "that in LG&E's next electric base rate case that an alternate COSS should be filed along with the LOLP COSS."[290] As a direct result of this Commission order, the Companies submitted 6-CP and 12-CP cost of service studies in their 2020 rate cases as alternatives to the LOLP cost of service proposed by the Companies, and the Companies also submitted a comparison of LOLP class rates of return with 12-CP and 6-CP methodologies.[291] In a recent large load tariff proceeding in Michigan, the Michigan Public Service Commission also ordered a utility to assess different cost of service methodologies, including direct assignment of generation, transmission, and distribution costs to individual large load customers or to the large load customer rate class as a whole.[292]

Thus, the Commission would be well within its regulatory powers to order the Companies to assess alternate cost of service methodologies for Rate EHLF customers. This assessment should not wait until the Companies' next general rate

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[289] Order at 20-21, Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates, Case No. 2018-00295 (Ky. PSC Apr. 30, 2019); Order at 18-19, Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates, Case No. 2018-00294 (Ky. PSC Apr. 30, 2019).
[290] *Id.*
[291] Direct Testimony of William Steven Seelye Managing Partner The Prime Group, LLC at 2, 107, and Exhibit WSS-22, 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 and 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 Metering INfrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit, Case Nos. 2020-00349, 2020-00350 (Nov. 25, 2020).
[292] Order at 114-116, In the matter of the application of Consumer Energy Company for ex parte approval of certain amendments to Rate GPD, Case No. U-21859 (Mich. PSC Nov. 6, 2025).

case, however. Instead, as Witness Fine recommended, "[t]he Commission should open a docket as soon as possible,"[293] and at least "within 6 months to fully evaluate what cost allocation method(s) are most appropriate for the generation, transmission, and distribution costs that will be incurred to serve EHLF customers."[294] Under the proposed stipulation, the next rate case would not occur until 2028 at the earliest, but in this proceeding, the Companies are already seeking to establish cost recovery mechanisms for generation assets and a Sharing Mechanism that include Rate EHLF customers under the Companies' Group 1 / Group 2 methodology.[295] The Companies have also indicated that they will seek approval for a Mill Creek 6 recovery mechanism in the Mill Creek 6 monitoring docket, and the Mill Creek 6 plant was proposed specifically to meet anticipated data center load growth.[296] Thus, the Companies have created an urgent need to assess cost allocation methodologies for Rate EHLF customers as soon as possible, and certainly prior to the next rate case.

IV. The Companies' Halloween Supplemental Testimony and Exhibits were erroneously admitted to the record and should be given no weight.

At approximately 7:30 pm on October 31, 2025, the Friday evening before the hearing in this proceeding, the Companies filed a Joint Motion for Leave to File Supplemental Testimony Regarding Stipulation Mechanisms and Mill Creek 2

[293] Fine Direct at 57:16–20.
[294] *Id.* at 58:18–20.
[295] *See* Stipulation Ex. 7 at 1; Stipulation Ex. 8 at 1; Stipulation Ex. 9 at 1; Stipulation Ex. 10 at 1; Supplemental Testimony Ex. 6 at 1.
[296] Joint Supplemental Testimony of Robert M. Conroy Vice President, State Regulations and Rates and Christopher M. Garrett Vice President, Financial Strategy and Chief Risk Officer on Behalf of KU and LG&E at 5 n. 4., Case No. 2025-00113 (Oct. 31, 2025).

Adjustment Clause.[297] As Joint Intervenors explained in their November 2nd Response in Opposition the Companies' motion should have been denied, or in the alternative, the Commission should have adjourned the hearing and issued an amended schedule that afforded an opportunity to review the Companies' workpapers, pursue limited discovery, and prepare for hearing.[298] On November 3rd, after hearing arguments on the motion, the Commission granted the motion but recessed the hearing for approximately four hours to allow the parties additional time to review the evidence.[299]

For the reasons detailed in Joint Intervenors' November 2nd response and incorporated in full herein, the Commission's decision to admit the Supplemental Testimony into the record was improper, and the testimony should be given no weight.[300] The motion was untimely and without good cause, leaving intervenors with insufficient time to prepare for hearing or to submit pre-hearing data requests.[301] The testimony also improperly introduced Mill Creek 2 stay-open costs and a Mill Creek 2 surcharge in this proceeding, when those issues were not properly noticed or ripe for decision, as further detailed in Section VI of this Brief.

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[297] Joint Motion of KU and LG&E for Leave to File Joint Stipulation Testimony of Robert M. Conroy and Christopher M. Garrett, Case Nos. 2025-00113, 2025-00114 (Oct. 20, 2025).
[298] Response of Joint Intervenors in Opposition to Joint Motion for Leave to File Supplemental Testimony, Case No. 2025-00113 (Nov. 2, 2025); Joint Intervenors' Motion to Incorporate Response of Joint Intervenors in Opposition to Joint Motion for Leave to File Supplemental Testimony Regarding Stipulation Mechanisms and Mill Creek 2 Adjustment Clause, Case No. 2025-00114 (Nov. 7, 2025).
[299] Order at 2, Case Nos. 2025-00113, 2025-00114 (Nov. 10, 2025).
[300] When the Commission orally announced its ruling in favor of the Companies' Motion for Leave on the first day of the hearing, the Commission noted that it was not making a decision about the weight Halloween evidence would deserve and does not mean that requests addressed in Halloween evidence would be granted. Nov. 3, 2025 HVT at 9:49 a.m.
[301] Joint Intervenors appreciate the difficult procedural issues raised by the Companies' late-filing and the Commission's efforts to afford parties some amount of time to review the Halloween evidence before the presentation of witnesses.

The Commission had authority to deny the Companies' motion. The Commission has previously struck portions of rebuttal testimony that included a proposal to establish a new earnings sharing mechanism and has denied recovery for costs that were introduced for the first time in rebuttal testimony.[302] As explained in Joint Intervenors November 2nd response, the Commission has also 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.[303]

The Supplemental Testimony, having been erroneously admitted into the record, should be given no weight in the Commission's final decision in these cases.[304]

V. The Companies' Concessions in the Stipulation Are Greatly Overstated, and Do Not Justify the Unsupported "Adjustment Clauses" That Could Fundamentally Alter Utility Cost Recovery in Kentucky.

Fourteen days before the scheduled evidentiary hearing in this proceeding, the Companies filed a non-unanimous Stipulation that purported to resolve all of the issues raised in LG&E and KU's latest requests for increases in base rates. In addition to addressing the size of those rate increases and the ROE that the utilities would be allowed to receive, the Stipulation introduced two entirely new surcharge mechanisms,

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[302] Final Order at 3, 77, Case No. 2001-00092 (Jan. 31, 2002).
[303] Order at 9–10, 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 (Apr. 1, 2014).
[304] Joint Intervenors do not seek to re-litigate the admission of the Supplemental Testimony through the present Brief, but raise these arguments as they pertain to the weight of the evidence and the Commission's substantive decisions on the issues contained in the supplemental testimony. That said, Joint Intervenors also do not waive their claim that the Supplemental Testimony was erroneously admitted, and Joint Intervenors hereby preserve the issue of the Supplemental Testimony's admittance for appeal.

referred to by the Companies as “adjustment clauses.” Combined, the Stipulation includes a number of substantial benefits for the Companies and their parent company’s shareholders, including:

- annual rate increases of $132 million for KU and $57.8 million for LG&E electric operations;
- an increase in authorized ROE to 9.9% from the current 9.425%;
- a Sharing Mechanism Adjustment Clause (“SM Surcharge”) that provides an apparently unprecedented guarantee that the Companies will receive at least a 9.4% ROE from July 1, 2027 through July 31, 2028, with ratepayers making up any ROE shortfall during that time period;
- a Generation Cost Recovery Adjustment Clause (“GCR Surcharge”) that enables the Companies to start recovering, on a monthly basis, construction, non-fuel O&M, and incremental future addition costs, for billions of dollars of new generation resources as soon as such projects go into service, rather than having to wait for inclusion in rate base through a future rate case, and continuing through the service life of those resources;
- Application of the 9.9% ROE to the GCR Surcharge and all of the Companies’ other cost-recovery mechanisms, including the Environmental Cost Recovery (“ECR”) surcharge.

In contending that the Stipulation reflects a “reasonable compromise” for the signatory parties,[305] the Companies explain that the stipulated rate increases are lower than they initially sought. In particular, the $132 million increase for KU is $87.9 million lower than its adjusted filed position, while LG&E’s $57.8 million increase is $49 million lower.[306] The Companies also highlight that the Stipulation includes what is referred to as a “more than two-and-a-half-year base rate stay-out commitment” (hereinafter referred to as the “Stay-Out” provision), pursuant to which the Companies commit to not file for another base rate increase until at least January 1, 2028, with no such increase going into effect until at least August 1, 2028.[307]

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[305] Stipulation Testimony at 4, Case Nos. 2025-00113, 2025-00114 (Oct. 20, 2025).
[306] Id.
[307] *Id.* at 5-6, 11.

As discussed further below, the Commission should reject both the GCR and SM Surcharges, as each could fundamentally alter utility cost recovery in Kentucky yet lack evidentiary support and have not been subjected to the type of full litigation needed to assess whether such changes are in the best interest of ratepayers. Before addressing the specifics of those surcharges, however, Joint Intervenors address the fact that the Companies' concessions in the Stipulation are greatly overstated.

A. The Companies' Concessions in the Stipulation Are Greatly Overstated.

1. *The stipulated rate increases are the maximum that could arguably be approved on this record, rather than meaningful concessions by the Companies.*

While Joint Intervenors certainly welcome the reduction in the rate increases reflected in the Stipulation, those reductions are considerably less of a meaningful concession by the Companies than they portray them to be. Instead, the stipulated rates reflect, at most, the maximum increases that the Commission could approve on the record before it. This is so for at least three reasons.

First, more than half of the reductions are calculated as the difference between the revenue requirements of the 9.9% ROE included in the Stipulation and the 10.95% that the Companies proposed. But the resulting reduction to the rate increases of the lower ROE – $45.9 million for KU and $27.8 million for LG&E[308] – reflects less a concession by the Companies than the fact that their initial 10.95% ROE proposal was wildly inflated, as also discussed above in Section I.B.3. Intervenor testimony on this was consistent, with witnesses for AG-KIUC, Walmart, and the Department of Defense thoroughly describing how the 10.95% ROE sought by the Companies is "grossly

[308] *Id.* at 12.

excessive,"[309] "an extreme outlier" and "far outside the mainstream" compared to other recent commission-allowed ROEs,[310] "substantially exceeds a fair return,"[311] and would be "the second highest approved ROE for any vertically integrated utility (out of 80 utilities) at any time since 2023.[312] Viewing the purported benefits of the Stipulation in comparison to the Companies' inflated 10.95% initial proposal would simply encourage a type of gamesmanship in which a party makes an unreasonably high initial request simply so it can get credit for reducing it down to something more reasonable later.

That the reduction from 10.95% to 9.9% ROE was not a meaningful concession by the Companies is also seen from the Commission's August 2025 order in Atmos Energy Company's most recent rate case. In that case, the same witness who testified here on ROE for LG&E and KU, Dylan D'Ascendis, proposed a 10.95% ROE for Atmos in testimony quite similar to what the witness sponsored in the present proceedings.[313] In its August order, the Commission granted Atmos a 9.75% ROE for its rate base, rejecting one of the models and certain adjustments relied on by Mr. D'Ascendis.[314] While ROE decisions are, of course, utility-specific, the fact that the Commission reduced Mr. D'Ascendis' 10.95% ROE proposed for Atmos down to 9.75% only a few months ago certainly suggests that, if anything, the 9.9% ROE in the Stipulation may be

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[309] Direct Testimony and Exhibits of Richard A. Baudino at 41, Case Nos. 2025-00113, 2025-00114 (Sep. 2, 2025) ("Baudino Direct").
[310] Baudino Direct at 42.
[311] Direct Testimony and Exhibits of Michael P. Gorman at 4, 71-98, Case Nos. 2025-00113, 2025-00114 (Aug. 29, 2025) ("Gorman Direct").
[312] Direct Testimony and Exhibits of Lisa V. Perry on Behalf of Walmart Inc. at 9, 12-13 (Aug. 29, 2025) ("Perry Direct").
[313] Direct Testimony of Dylan W. D'Ascendis at 5, Case No. 2024-00276 (Sep. 27, 2024) ("24-276 D'Ascendis Direct").
[314] Commission Order at 36-38, Case No. 2024-00276 (August 11, 2025).

higher, rather than lower, than what the Companies could have reasonably expected to get through a litigated decision.

Second, the next largest contributor to the reduction of the rate increases in the Stipulation is the removal of terminal net salvage costs from depreciation for thermal units, which reduces base rate revenue requirements by $16 million for KU and $6.8 million for LG&E.[315] While such costs are typically included in depreciation, the Commission has now twice ruled with regards to Duke Energy Kentucky that KRS 278.264(2) forecloses doing so for fossil fueled generating units unless and until that statute's rebuttable presumption against retirement of such units is overcome.[316] While the Joint Intervenors take no position here on the Commission's interpretation of KRS 278.264(2), with the exception of Mill Creek 2, there is no discernable basis upon which to expect that the Commission would conclude otherwise with regards to the Companies' proposed inclusion of terminal net salvage costs in depreciation in these proceedings.[317] As such, the removal of those costs in the Stipulation simply reflects the results that would have almost certainly been reached through a litigated decision, as opposed to a meaningful concession by the Companies.

Third, two of the revenue requirement reductions included in the stipulated rate increases were made simply to reflect up-to-date or corrected information. First, an

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[315] Stipulation Testimony at 12, 16.

[316] Commission Order at 37–43, Case No. 2024-00354 (Oct. 2, 2025); Commission Order at 14, Case No. 2022-00372 (Oct. 12, 2023).

[317] In rebuttal testimony, Companies witness Garrett acknowledged the Commission's decision in 2022-00372 that KRS 278.264(2) foreclosed the inclusion of terminal net salvage in depreciation for thermal units, stated that the Companies disagreed with that decision, and noted his understanding that the issue was "again under consideration in Case No. 2024-00354. Garrett Rebuttal Testimony at 17-18. Three days after that rebuttal testimony was filed, the Commission re-affirmed its decision on this issue in its October 2, 2025 Order in Case No. 2024-00354.

adjustment was made to reflect that in August 2025 the Companies had issued long-term debt with a coupon rate of 5.85%, rather than the 6.50% they had assumed in their Applications.[318] Second, an adjustment was made to correct certain errors that had been made in calculating depreciation.[319] Combined, these two adjustments were the basis for $8.2 million in reduced revenue requirements for KU and $3.6 million for LG&E.[320]

For these and other reasons explained throughout the record, even in the absence of any of the other proposed Stipulation terms, the stipulated rates are the maximum that the Commission can possibly approve in this proceeding.

2. *The Stay-Out provision is more limited than advertised and would be offset by the GCR Surcharge.*

As noted, the Companies trumpet what they refer to as a "more than two-and-a-half-year base rate stay-out commitment" as a benefit for customers.[321] In the Companies' telling, by ensuring that base rates do not further increase until August 1, 2028, the Stay-Out provision "helps ensure greater rate stability for customers" and provides "valuable consideration that could not be achieved by litigating the issues in these cases."[322] Such benefits are overstated in at least two ways.

First, the "more than two-and-a-half year" time frame referenced by the Companies appears to assume that, in the absence of the Stay-Out provision, the Companies could somehow institute additional base rate increases (beyond those in the

[318] Stipulation Testimony at 15-16.
[319] *Id.* at 18.
[320] *Id.* at 12–13.
[321] *Id.* at 5.
[322] *Id.* at 5–6.

Stipulation) in January 2026, which would be two-and-a-half-years before August 1, 2028. In reality, of course, the Companies would have to file a new application for any base rate increase, which would then initiate a multi-month review process before new base rates could go into effect. So, the benefit of the Stay-Out provision is certainly much shorter than the more than two-and-a-half years claimed by the Companies. At hearing, Companies witness Conroy acknowledged that without the Stay-Out, the Companies would file an application for a base rate increase in November 2026, while with the Stay-Out they could do so in January 2028.[323] This means that the Companies agreed in the Stipulation to push back seeking another base rate increase by 14 months compared to what it would do without the Stay-Out, not "more than two-and-a-half-years."

Second, what the Stipulation gives ratepayers through the 14-month Stay-Out it takes away through the GCR Surcharge. On the eve of the hearing, the Companies produced a spreadsheet purporting to estimate the amount of revenue that the Companies would recover from ratepayers through the GCR Surcharge. That spreadsheet shows a total of approximately $310 million being recovered from LG&E and KU ratepayers in 2027 and 2028.[324] By contrast, the reduction in revenue requirement in the Stipulation, as compared to the Companies' adjusted filed position, is approximately $137 million.

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[323] Nov. 3, 2025 HVT at 4:45 to 4:46:20 p.m.

[324] Supplemental Testimony Ex. 1, Estimated Bill Impact tab, line 9, Case Nos. 2025-00113, 2025-00114 (Oct. 31, 2025). The annual amounts are $64,192,859 for KU and $52,873,140 for LG&E in 2027, and $110,987,082 for KU and $82,075,148 for LG&E in 2028. *Id*.

B. The Commission Should Reject the GCR as Unsupported, Unnecessary, and Unreasonable.

As detailed in subsection b of the Legal Standard section above, for more than 80 years most major new capital costs for utilities were recovered from ratepayers only after a thorough ratemaking process, the hallmarks of which included (1) public notice and the opportunity to seek intervention or submit comments, (2) discovery, submission of expert testimony, and cross examination, (3) vetting of the costs for prudency, and (4) a determination that the resulting rates charged to customers would be fair, just, and reasonable. The GCR Surcharge provision in the Stipulation would sidestep that process for billions of dollars of costs, which would automatically be recovered from ratepayers on a monthly basis after only 10-day's notice to Staff, with any prudency review until an annual lookback after the costs had been recovered. Such a shift would fundamentally alter cost recovery in Kentucky, on the basis of a proposal that was introduced into this proceeding a mere 14 days before the evidentiary hearing with little supporting analysis and no opportunity for expert testimony from other parties. At least on this record, the GCR Surcharge proposal is unsupported, unnecessary, and unreasonable, and should be rejected.

1. *Serious Procedural Deficiencies Foreclose the Approval of the GCR Surcharge in these Proceedings.*

At the outset, the GCR Surcharge cannot be approved here because neither the surcharge itself, nor the costs that would be recovered through it, were in any way at issue in these proceedings before the October 20 Stipulation. As such, there has been no notice to the public about the pending surcharge, and no opportunity for non-settling parties to submit testimony or to conduct discovery regarding the proposal or any of the costs underlying it in advance of cross examination at the evidentiary hearing. In short, the Companies are inviting the Commission to eliminate the base rate process for billions of dollars of costs for decades to come without the opportunity for vigorous examination and debate that are the hallmarks of reasoned and lawful decision making. For the good of the Companies' ratepayers, and the integrity of the ratemaking process, the Commission should decline that invitation.

Joint Intervenors anticipate that the Companies and other signatories to the Stipulation will point to case law and prior Commission decisions approving other surcharge mechanisms to contend that the GCR Surcharge should be approved here. In reality, such case law and decisions compel the opposite result.

First, in 1992, the state legislature amended KRS Chapter 278 to allow for the creation of the ECR surcharge, which provides "current recovery" for certain environmental compliance costs. Kentucky Industrial Utility Customers and Lexington-Fayette Urban County government challenged that statute's constitutionality under the U.S. and Kentucky Constitutions, claiming that by allowing for separate consideration of such costs outside a full rate case it "does not allow a balancing of interests of investors and ratepayers, and therefore violates constitutional due process."[325] While the Kentucky Supreme Court found no violation in that instance, it relied in part on the fact that *after* the application for recovery:

> public notice was given, that the protestants intervened in the action and conducted a vigorous examination of every aspect of the surcharge application. They were permitted discovery, full participation in the hearing, the use of expert witnesses and to cross-examine the Utility's witnesses, as well as to file comprehensive and cogent briefs. They received their due process rights.[326]

[325] Ky. Indus. Util. Customers, Inc. v. Ky. Utils. Co., 983 S.W.2d 493, 497 (Ky. 1998).
[326] Id.

The Court therefore found that the statute was not constitutionally faulty for allowing for separate proceedings to evaluate and allow for recovery of those separate costs after review and approval by the Commission and interested parties.[327]

Next, in 2010, the Court contemplated the *statutory* issue of whether the Commission has the power to allow non-environmental costs to be recovered through separate surcharges outside of a rate case. In *Conway*, the Court reviewed a Commission Order allowing for recovery through a rider of approved costs for a gas main replacement program proposed by Union Light, Heat and Power Company ("ULH&P").[328] The rider there was proposed as part of a base rate application, and called for an ***annual*** revenue requirement adjustment in the rider based on "traditional rate-making theory and financial data" to be approved on an ***annual*** basis.[329] The Commission in that case allowed for a three-year pilot program, rather than the full ten-year program for which ULH&P applied for, required an updated base rate application after that, and provided that the Commission could roll into base rates expenses made by that point so as to "prevent the AMRP Rider from becoming too large a portion of the customer bill."[330]

The Court in *Conway* did not address the constitutional question of what process is due for approval of such riders, whether such riders were statutorily created or not. It *only* contemplated an issue of statutory interpretation, specifically whether the Commission's authority was broad enough "to allow a utility to adjust its rates by

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[327] Id.
[328] Ky. Pub. Serv. Com'n v. Commonwealth ex rel. Conway, 324 S.W.3d 373 (Ky. 2010).
[329] Final Order at 3, 72, Adjustment of Gas Rates of the Union Light, Heat and Power Company, Case No. 2001-00092 (Jan. 31, 2002).
[330] Id.

imposing a surcharge or rider aimed at recovering costs" outside of base rates.[331] While finding in the affirmative, the *Conway* court certainly did not find that the Commission had to approve a proposed surcharge mechanism in every case, or that due process requirements were in any way nullified.

The Companies may also point to the Commission's approval of the Retired Asset Recovery Rider in the Companies' 2020 base rate cases and the Off-Systems Sales adjustment clauses in the 2014 base rate cases, but neither are helpful for their case here. The Companies' Retired Asset Recovery Rider was a specific ratemaking method introduced at settlement, but critically, the rider accomplished recovery of originally filed expenses and revenues in a base rate case.[332] The issue of how to set fair, just, and reasonable rates to address that category of costs was at issue upon filing of the base rate case, creating a factual record sufficient for the Commission to make reasoned judgments about costs and recovery mechanisms for those costs. The same is true of the Companies' Off-Systems Sales adjustment clauses, which again established rates for a category of expenses and revenues that were first included in the Companies' base rate case applications.[333]

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[331] Ky. Pub. Serv. Comm'n. v. Commonwealth ex rel. Conway, 324 S.W.3d 373, 374, 376 (Ky. 2010).
[332] Case Nos. 2022-00349 & 2022-00350. Application, In the Matter of: 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 (Nov. 25, 2020); Application, In the Matter of: 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 (Nov. 25, 2020).
[333] Final Order, Appendix A at 7, *Application of LG&E for an Adjustment of its Electric and Gas Rates*, Case No. 2014-00372 (June 30, 2015) ("The parties agree that the Utilities will remove from base-rate calculations all OSS margins…") ("Off-Systems Sales").

In summary, basic due process requires that new surcharge rates can only be approved when the mechanism and/or the costs that would be recovered through it were at a minimum a part of the Companies' application so that all parties have had an opportunity to fully litigate the proposal. That plainly has not happened here with regards to the GCR Surcharge. As such, the Commission should reject the GCR Surcharge without prejudice to the Companies' ability to repropose it in a future, fully litigated proceeding, with orderly development of the record.

Any argument that cross examination followed by post-hearing data requests are sufficient to cure the procedural inadequacies here should be rejected. For one thing, the lack of discovery and testimony responding to the Companies in advance of cross examination does significantly limit the value of such examination. This is especially so where, as here, the Companies failed to provide with its Stipulation Testimony any analysis of the likely cost impacts of the GCR Surcharge or support for their claim that the surcharge would purportedly benefit ratepayers. Instead, the Companies waited until Halloween night to provide a "preliminary" bill impact analysis and a chart purporting to show a $400 million nominal savings from the GCR Surcharge by 2071, though no support for the latter was produced until a few hours before cross examination started on November 3.[334] Such hiding the ball by the Companies further demonstrates the serious procedural deficiencies that foreclose approval of the GCR Surcharge here. As for post-hearing data requests, while they have some use, they are

[334] 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 Louisville Gas and Electric Company at 7, Case Nos. 2025-00113, 2025-00114 (Oct. 31, 2025) ("Supplemental Testimony"); *Id.* at Ex. 1.

also an opportunity for the Companies to paper the record with information that other parties have little opportunity to evaluate, verify, or submit record evidence in response to. They certainly do not provide a basis to conclude that a vigorous examination of the GCR Surcharge was able to occur.

As a result of these procedural deficiencies, significant questions about the GCR Surcharge remain unanswered. One prime example of this is with regards to whether moving cost recovery from rate base (which uses a 6 CP cost allocation method) to the GCR Surcharge (which would use the Group 1 / Group 2 methodology) would substantially change how the billions of dollars of costs at issue would be allocated between different customer classes. This issue was not addressed in the Companies' Stipulation Testimony, and at hearing Witness Conroy testified that he thought the Companies had compared cost allocation under the Group 1 / Group 2 methodology to that under rate base cost recovery back in the early 2010s.[335] In response to a post-hearing data request, the Companies acknowledged that Mr. Conroy's recollection was not correct and that the Companies had not carried out such a comparison.[336] In response to Staff, however, the Companies produced a spreadsheet purporting to show that the Group 1 / Group 2 methodology would allocate costs differently than under base rates.[337] There is no real opportunity at this point, however, to verify the accuracy of those results or to fully evaluate whether whatever changes in cost allocation that would result from the GCR Surcharge is in the best interest of ratepayers.

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[335] Nov. 4, 2025 HVT at 9:35 to 9:37 a.m.
[336] Companies' Responses to JI, Response to Question No. 4.1, Cases No. 2025-00113, 2025-00114 (Nov. 25, 2025).
[337] Companies' Resp. to Staff Post-Hearing Request 8, Case Nos. 2025-00113, 2025-00114 (Nov. 25, 2025).

2. *The Scope of the GCR Surcharge is Vast*

The scope of the GCR Surcharge is vast in terms of the rate base that it would apply to, the amount of revenues that would flow through it, and the length of time it would remain in effect. In particular, the Companies propose that the GCR Surcharge would allow for the recovery of all construction costs, non-fuel O&M, and incremental capital additions for any new generation or storage project that has been approved but not yet in service as of the date of the final order in these proceedings. This would include the Mill Creek 5 and Brown 12 gas plants, the E.W. Brown battery storage system, and the Mercer County and Marion County solar projects.[338]

By December 2032 (the last month for which the Companies have provided a projection), the total GCR rate base would be approximately $3.46 billion, consisting of $1.068 billion for KU[339] and $2.391 billion for LG&E.[340] More than $100 million of revenue would flow through the GCR Surcharge for KU in each of the years 2028 through 2031, with an additional $99 million in 2032.[341] For LG&E, the numbers get even larger, with $258 million of revenues flowing through the GCR Surcharge in 2031 and $249 million in 2032.[342] These amounts reflect average bill impacts of more than $7 per month for KU residential customers, and more than $20 per month for LG&E customers.[343]

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[338] Stipulation Testimony at 7.
[339] PSC DRPH KU Attach. to Q4 at Line 3 of tab GCR KU (Monthly), Case No. 2025-00113 (Nov. 25, 2025).
[340] *Id.* at Line 3 of tab GCR LGE (Monthly).
[341] *Id*. at line 9 of tab Estimated Bill Impact (Annual).
[342] Id.
[343] *Id.* at line 20.

The amount of capital and costs to be recovered via the GCR Surcharge represents a significant proportion of the Companies' existing rate bases and revenue requirements. LG&E's $2.391 billion in 2032 GCR rate base would be *more than two-thirds* of LG&E's base period electric rate base of $3.48 billion.[344] LG&E's proposed 2032 GCR revenue requirement of roughly $250 million would represent nearly 20% of LG&E's stipulated base rate revenue requirement.[345] Using LG&E's bill impact workpaper, the GCR Surcharge would account for roughly 16% of a monthly bill, adding charges of more than $30 for average residential users in peak months.[346] Similarly, by 2032, KU's estimated $1.068 billion GCR rate base would represent roughly 17.5% of KU's stipulated total jurisdictional rate base, and $100 million GCR revenue requirement would represent roughly 5% of KU's base rate revenue and 5% of an average residential customer's monthly bill.[347]

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[344] LG&E Base Period Update Attachment to Tab 54 - Section 16(8)(a) at updated and revised version, tab SCH C-1, Row 38, Case No. 2025-00114 (Oct. 15, 2025).
[345] LG&E Base Period Update Attachment to Tab 54 - Section 16(8)(a) at updated and revised version, tab SCH A, Row 34, Case No. 2025-00114 (Oct. 15, 2025).
[346] KU Responses to Commission Staff's Post Hearing Request, Attach. To Q4 at "Estimated Bill Impact (Annual) tab Lines 54-61, Case No. 2025-00113 (Nov. 25, 2025) (used to calculate monthly bill impacts by changing estimated residential usage from annual to monthly averages); LG&E's Responses to JI's Initial Request for Information, Attach. To Q8a-b, Case No. 2025-00114 (July 16, 2025).
[347] KU Base Period Update Attachment to Tab 55 - Section 16(8)(a) at updated and revised version, tab SCH-1, Row 17, Case No. 2025-00113 (Oct. 15, 2025); KU's Responses to the Commission Staff's Post-Hearing Request for Information, Attach. To Q4 at "Estimated Bill Impact (Annual) tab on Lines 54 to 61 (used workpaper to calculate monthly bill impacts by changing estimated monthly usage value); KU's Response to JI's Initial Requests for Information, Attach. To Q8a-b, Case No. 2025-00113 (July 16, 2025).

3. *The Companies Have Failed to Support Their Claim that the GCR Surcharge is needed to ensure financial strength of the utilities*

In their Stipulation Testimony, the Companies contend that the GCR Surcharge is needed to "prevent erosion of the Companies' financial position" while they continue to make capital investments during the Stay-Out period.[348] As detailed in Section V.C below, this claim – which is the same reason the Companies offer for the SM Surcharge – is entirely unsupported as the Companies have failed to provide any projection or estimate purporting to show that they would experience significant erosion of their financial position without the GCR Surcharge. The mere conclusory statement that they would do so does not provide justification for such a sweeping change in how billions of dollars of generation costs would be recovered from customers for decades to come.

Even if the Companies' cursory claim about their financial position during the Stay-Out period were supported on this record, it would not justify anything close to the scope of the GCR Surcharge proposed here. As noted, the Companies have proposed the GCR Surcharge as a permanent tariff mechanism through which the Companies would recover costs over the entire service life of any covered generation or storage asset. Any concerns about the impact of the Stay-Out provision on the financial position of the Companies, however, would end when the Stay-Out ends, on August 1, 2028. As such, in a world where the Companies had shown a likely eroded financial position during the Stay-Out (which, again, they have not done here), it would at most support a very time-limited surcharge mechanism from the April through August 2027 in-service dates of the Brown BESS, Mercer County Solar, Mill Creek 5, and Marion

[348] Stipulation Testimony at 6.

County Solar,[349] to the August 1, 2028 end of the Stay-Out. Brown 12, with its June 2030 in-service date, plainly has no relevance to this entire conversation, and should not be included in any surcharge.

While the Companies have not substantiated their claimed concern about erosion of their financial position, the record does offer another possible explanation for the GCR Surcharge proposal – making PPL and its investors happy. In particular, the very first page of the Regulatory Overview in PPL's 2nd Quarter 2025 Investor Update highlights the percentage of PPL's capital investment plan that is covered under "constructive regulatory mechanisms" that reduce the "impact of regulatory lag on earnings for investments." This aligns with Companies' business strategy, which identifies recovery of capital projects costs efficiently, with limited regulatory lag, among its central components.[350] While the presentation shows 36% of LG&E/KU's share of the PPL capital plan being covered under AFUDC, only 5% is covered under trackers. The GCR Surcharge would significantly increase that latter number, which investors would apparently view as "constructive" for their earnings.

4. *<u>The Claimed Benefits of the GCR Surcharge to Ratepayers are Illusory</u>*

In their Stipulation Testimony, the Companies contended that the GCR Surcharge would benefit ratepayers by ensuring that declining capital balances for each

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[349] Attachment to Companies Response to Staff PH DR 4 at tab GCR KU (Monthly), lines 30-32, and tab GCR LG&E (Monthly), lines 30-34.
[350] Nov. 5, 2025 HVT at 11:11 to 11:12 a.m.; *see also* 2023 Annual Report, PPL Corporation, at 19 ("Central to PPL's and the other Registrants' [regulated utility subsidiaries in Kentucky, Pennsylvania, and Rhode Island] strategy is recovering capital project costs efficiently through various rate-making mechanisms, including periodic base rate case proceedings using forward test years, annual FERC formula rate mechanisms and other regulatory agency-approved recovery mechanisms designed to limit regulatory lag.").

asset covered under the surcharge would result in declining return on capital expenditures over time.[351] As noted above, the Companies claimed in their Halloween Supplemental Testimony that such benefit would amount to $400 million in nominal savings through 2071.[352] On the morning the hearing started, the Companies produced a workpaper showing how that purported savings was calculated. What it actually helped show is that the claimed benefit of the GCR Surcharge is illusory.

As explained at hearing by witness Garrett,[353] the workpaper shows an analysis of two different scenarios – one in which costs are recovered on a monthly basis under the GCR Surcharge, and one in which costs are recovered through base rates that are assumed to reset every three years. Under the GCR Surcharge, the capital balance resets every month as depreciation is paid, which means that the return on capital expenditures (also known as the carrying cost of that capital balance) declines every month. Under the base rate approach, however, the capital balance only resets every time base rates reset – i.e. every three years in the Companies' analysis. As a result, under the base rate scenario, customers pay more return on capital expenditures in the time between the base rate resets than they would under the GCR Surcharge. The $400 million cited by the Companies is the total of the increased return on capital that ratepayers would pay in between base rate resets as compared to under the GCR Surcharge. As witness Garrett acknowledged at hearing, however, that $400 million does not reflect actual savings to customers because the higher amounts of return on capital expenditures that customers would pay under the base rates scenario

[351] Stipulation Testimony at 7.
[352] Supplemental Testimony at 7.
[353] Nov. 4, 2025 HVT at 2:35 to 2:49 p.m.

simply offsets incremental investments being made elsewhere in the utility's system and, therefore, reduces the need for rate increases to cover those other investments.[354] In short, the purported $400 million savings is really just a wash.

The Companies also note in their Halloween Supplemental Testimony that the generating assets the costs of which would be recovered through the GCR Surcharge would provide customers with, on average, a $60 million per year fuel cost benefit for every year from 2028 through 2035.[355] The Companies have not cited a source for that $60 million figure. But even accepting its accuracy, those are savings that would result from the generating assets themselves, not from whether those assets are paid for through the GCR Surcharge rather than base rates. As such, the $60 million figure is a red herring that has nothing to do with whether the GCR Surcharge is just and reasonable for customers.

5. *The proposed GCR Surcharge reporting and review process is more likely to create administrative overload than meaningful vetting of the costs that customers would pay.*

Finally, the Companies contend that there would be "ample opportunities" for the Commission to review the amounts recovered through the GCR Surcharge.[356] In support, the Companies note that they would file monthly reports in which they would identify the GCR costs recovery factor for the coming month, and recommend that the Commission initiate annual review proceedings to assess the costs that were recovered over the previous year.[357] Through such filings and review, the Companies contend that

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[354] *Id.* at 2:47 to 2:48 p.m.
[355] Supplemental Testimony at 8.
[356] Stipulation Testimony at 8.
[357] *Id.*

ratepayers can be assured that all costs that were recovered through the GCR were prudent and reasonable.[358]

In reality, this process appears far more likely to further tax a Commission and Staff that are already stretched thin than to provide for meaningful review of the costs that customers would be paying. Every month, Staff would be receiving two separate reports (one from each utility), each containing eight different forms providing cost and revenue information about multiple facilities.[359] That is 24 different reports, containing eight forms each and every year, which Staff and/or the Commission would have only 10 days to review before the new monthly GCR surcharge would go into effect. If the Commission were also to approve the MC2 and/or MC6 surcharges, or the inclusion of additional generating assets in the GCR Surcharge in the future, the administrative burden would be even higher. And, of course, all of this would be on top of the reports and review proceedings for the ECR and other surcharges and riders already in place. In short, the continued proliferation of surcharges and riders that the Companies are trying to advance have the makings of administrative overload.

Such process would also not provide anything close to the type of review that can occur during a base rate case. For one thing, it would not be reasonable to expect Staff or the Commission to be able to assess prudency of the GCR costs in the 10 days between when the monthly reports would be filed and the costs would be collected. As such, any prudency review under the GCR Surcharge would occur only after the costs have been recovered, rather than occurring before cost recovery as in a base rate case.

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[358] *Id.*
[359] The Companies provided a proposed schedule for such monthly filings in response to Staff Post-Hearing Data Request 22.

In addition, under the GCR Surcharge, review would be sidelined to low profile dockets that typically have only limited engagement and less analytical rigor than a full base rate case. Finally, by removing the billions of dollars of GCR costs from base rate cases, the analysis would be detached from the consideration of the overall justness and reasonableness of the Companies' rates, and the proper balancing of the interests of the investor-owned utility on one hand and the ratepayers on the other that are supposed to be the hallmarks of proper ratemaking.

C. The Commission Should Reject the SM Surcharge as Unsupported on the Record, and an Improper Return on Equity Guarantee

The second Stipulation provision that the Companies claim is necessary for the Stay-Out is the proposed SM Surcharge, which would establish a 9.40% to 10.15% deadband around the 9.90% ROE included in the Stipulation. Pursuant to this time-limited proposal, if the Companies earn an ROE lower than 9.4% from July 1, 2027 through July 31, 2028, there would be a surcharge to customers to make up the difference. Conversely, if the Companies were to earn greater than a 10.15% ROE during that time period, the excess amounts would be refunded to ratepayers. In short, as Companies witness Conroy acknowledged at hearing, the SM Surcharge is a guarantee that the Companies will earn at least a 9.4% ROE, and no more than 10.15% ROE, during the designated 13-month SM Surcharge period.[360]

In support, the Companies claim that the SM Surcharge is needed to "ensure that the Companies' financial position is not unduly eroded during the stay-out period."[361] This would be a major change from the current situation, which shows that the financial

[360] Nov. 3, 2025 HVT at 5:05 p.m.
[361] Joint Stipulation Testimony at 8, 11.

position of the Companies is quite strong, with an actual ROE of 10.32% from November 2024 through October 2025,[362] and ROEs of 10.4% for LG&E[363] and 9.7% for KU in 2024.[364] The Companies, however, did not provide in the Stipulation Testimony any evidence that such a major change would occur. For example, the testimony is bereft of any projection or estimate of the costs, revenues, and/or ROE that the Companies anticipate earning during the SM Surcharge period, much less any analysis suggesting that erosion of its financial position is a significant risk as a result of the Stay-Out.[365] Instead, the Companies offer only the conclusory statement that they "are likely to under-earn the stipulated 9.9% ROE", especially during that period.[366] That claim was, again, entirely unsupported with any analysis in the Stipulation Testimony, and at hearing Companies witness Garrett simply reiterated the claim that they anticipate underearning the 9.9% ROE "given the additional capital spend" that the Companies are planning.[367]

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[362] Response of Kentucky Utilities Company to the Commission Staff's Post-Hearing Request for Information and Response of Louisville Gas and Electric Company to the Commission Staff's Post-Hearing Request for Information, Case Nos. 2025-00113, 2025-00114, Response to Question No. 6 (Nov. 6, 2025).
[363] Response of Louisville Gas and Electric Company to the United States Department of Defense and All Other Federal Executive Agencies' Initial Data Request, Attach. to Q8, Case No. 2025-00114 (July 16, 2025).
[364] Response of Kentucky Utilities Company to the United States Department of Defense and All Other Federal Executive Agencies' Initial Data Request, Attach. To Q8, Case No. 2025-00113 (July 16, 2025).
[365] The Companies' Stipulation Testimony provided only a high-level description of the SM Surcharge, an overview of how it would be implemented, and draft SM Surcharge tariff sheets for each of the utilities. Stipulation Testimony at 8-11; Stipulation Exhibits 9, 10, and 11. In the Halloween Supplemental Testimony, the Companies repeated almost verbatim the high-level description of the SM Surcharge and overview of how it would be implemented, along with a proposed template showing how the Companies would calculate the SM Surcharge after the 13-month period. Supplemental Testimony at 9-12; Supplemental Testimony Exhibit 3.
[366] Stipulation Testimony at 14-15.
[367] Nov. 4, 2025 HVT at 3:38 to 3:39 p.m. In response to JI PH DR 4.2, the Companies contend that projected capital spends in their 2025 Business Plan would lead to a $79 million annual revenue

Of course, even the claim that the Companies anticipate underearning the 9.9% ROE does not establish that the Companies are at risk of underearning a 9.4% ROE, much less that doing so would unduly erode the Companies' financial position. In fact, KU underearned 9.4% in 2023, 2021, and 2020, apparently without unduly eroding its financial position.[368] There has been no showing that the Companies need ratepayer protection from doing so here and, even if such a showing had been attempted, approval of the SM Surcharge would be procedurally improper as the Joint Intervenors had no opportunity to make a case against such proposal through pre-hearing data requests and testimony.

In addition to the lack of an evidentiary basis and procedural inadequacy, the SM Surcharge is fundamentally flawed because it would improperly guarantee that the Companies receive at least a certain level of ROE, rather than simply providing them the opportunity to do so. An ROE guarantee would conflict with a core principle of utility regulation that "the hazard that the property will not earn a profit remains on the company in the case of a regulated, as well as an unregulated business" and that "regulation does not insure that the business shall produce net revenues."[369] In fact, the Companies' own ROE witness D'Ascendis states as much in his Direct Testimony, noting that:

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requirement increase during the SM Surcharge reporting period for capitalization incurred between July 2026 and January 2028. Notably absent from such numbers, however, are what the resulting impact would be on ROE during that time period, or whether the cost recovery proposed under the GCR Surcharge is reflected in such numbers.

[368] Response of Kentucky Utilities Company to the United States Department of Defense and All Other Federal Executive Agencies' Initial Data Request, Attach. To Q8, Case No. 2025-00113 (July 16, 2025).

[369] Federal Power Commission v. Natural Gas Pipeline Co., 315 U.S. 575, 590 (1942).

Q. IS THE AUTHORIZED RETURN SET IN REGULATORY PROCEEDINGS GUARENTEED [sic]?

A. No, it is not. Consistent with the Hope and Bluefield standards, the ratemaking process should provide the utility a reasonable opportunity to recover its return of, and return on, its reasonably incurred investments, but it does not guarantee that return. While a utility may have control over some factors that affect the ability to earn its authorized return (e.g., management performance, operating and maintenance expenses, etc.), there are several factors beyond a utility's control that affect its ability to earn its authorized return. Those may include factors such as weather, the economy, and the prevalence and magnitude of regulatory lag.[370]

By providing a 9.4% ROE guarantee, the SM Surcharge would improperly shift to ratepayers the risk of factors that are beyond the utility's control, while weakening the incentive for the Companies to perform well on the factors that are. After thorough research, Joint Intervenors were not able to locate a single example of the Commission previously approving a guaranteed ROE.[371] It should not do so here.

VI. Mill Creek 2 Surcharge Should be Denied as Non-justiciable, Procedurally Defective, Insufficiently Supported, and Unjust and Unreasonable.

The Commission should decline to reach LG&E's Mill Creek 2 Surcharge Mechanism (MC2 Surcharge) in this proceeding.[372] The late-filed rate proposal's procedural defects are glaring and weigh heavily against providing any relief related to a

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[370] Direct Testimony of Dylan W. D'Ascendis at 9, Case Nos. 2025-00113, 2025-00114 (May 30, 2025) ("D'Ascendis Direct").

[371] In 2000, the Commission approved as an "alternative method of regulation" an optional "Earnings Sharing Mechanism" that LG&E and KU ended up adopting and keeping in place for three years. Commission Order at 48-50, Case No. 98-426 (Jan. 7, 2000). That ESM, however, is easily distinguishable from the SM Surcharge because it did not provide an ROE guarantee but, instead, provided that the utilities and their ratepayers would share 60%-40% the costs of underearning a minimum ROE or the benefits of overearning a maximum ROE. The Commission approved termination of the ESM in 2004. Commission Order at 3, Case No. 2003-00434 (June 30, 2004).

[372] Identified here as "LG&E's" proposal in light of LG&E independent ownership of Mill Creek 2, but elsewhere this section will intentionally refer to the Companies, acknowledging the role of LG&E's parent company as well as KU's operational reliance on energy and capacity supplied by Mill Creek 2.

MC2 Surcharge here, as does the lack of good cause for those defects and the banality of the costs at issue. With ordinary avenues still available to properly seek approval of a surcharge, the Companies do not need and are not entitled to approval of a new surcharge for costs "incremental" to their Forecasted Test Year as part of this base rate case.

If the Commission does reach the merits of LG&E's MC2 Surcharge, the surcharge should be denied without prejudice. The paper-thin record on the MC2 Surcharge is legally insufficient and capable of supporting one rational conclusion: the Companies have not carried their burden of showing that approval of the surcharge would result in just and reasonable rates.

A. *The Mill Creek 2 Surcharge goes beyond the scope of requested relief, has not been appropriately noticed, and should not be adjudicated here.*

The MC2 surcharge suffers from glaring procedural defects: neither the surcharge nor the associated costs were in the Companies' applications for authority to adjust their electric rates and for approval of certain regulatory and accounting treatments; the MC2 surcharge was not noticed to the public; and the MC2 surcharge need not and should not be adjudicated until the Commission determines in separate proceeding whether the proposed Mill Creek 2 operational changes are prudent. These defects flouted statutory and regulatory requirements, knee-capped basic fairness, and warrant denial.

1. *<u>The Companies' pleadings did not request approval of a new Mill Creek surcharge, putting the issue outside the Commission's authority to grant that relief.</u>*

First, the MC2 Surcharge mechanism is categorically outside the requested relief in this proceeding, and should not be adjudicated here. In ordinary course, the

Companies initiated these base rates in Q2 2025 with the filing of notice, application, and testimony.[373] Those pleadings (and subsequent corrections, updates, or amendments) define the scope of the Commission's authority to provide relief in this proceeding, and should be taken at face value.[374]

Requested relief in this proceeding included adjustments to base rates; ratemaking treatment for certain previously-approved regulatory assets for extraordinary storm expenses accounting requests[375] and AMI project implementation; establishment of deferral accounting authority for storm damage restoration, vegetation management, and depancaking obligations; and approval of a new Adjustment Clause to separately recover the cost of solar power agreements, among other relief.[376] The requested relief does not include a new Mill Creek 2-related rate and does not make any deferral accounting requests related to Mill Creek capital or O&M costs. Instead, the Forecasted

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[373] Nov. 3, 2025 HVT at 7:22:05 to 7:23:00 p.m. (JI's cross-examination of Witness Conroy confirming Mill Creek 2 surcharge was not mentioned by the Companies in their original rate case application, not mentioned in their direct or rebuttal testimony, and not included as part of the non-unanimous stipulation filed on October 20, 2025).

[374] *Bingham Greenebaum Doll, LLP v. Lawrence*, 567 S.W.3d 127, 131 (Ky. 2018) ("subject matter jurisdiction is determined from the pleadings, which are to be examined and taken at face value") (citing *Daugherty v. Telek*, 366 S.W.3d 463, 467 (2012)).

[375] Application at 11, Case No. 2025-00114 (May 30, 2025) (citing Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for An Order Approving the Establishment of Regulatory Assets, Case No. 2023-00093 (Ky. PSC Apr. 5, 2023) ("2023 Wind Storm"); Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for An Order Approving the Establishment of Regulatory Assets, Case No. 2024-00181 (Ky. PSC Nov. 21, 2024) ("2024 May Storm"); Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for An Order Approving the Establishment of Regulatory Assets, Case No. 2024-00329 (Ky. PSC Dec. 4, 2024) ("2024 Hurricane Helene"); Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for An Order Approving the Establishment of Regulatory Assets, Case No. 2025-00025 (Ky. PSC Mar. 19, 2025) ("2025 Winter Storm Blair").

[376] Mill Creek 2 was not mentioned among the "Reasons for Increase in Revenue Requirements" in LG&E's rate case Application at 8-10, Case No. 2025-00114 (May 30, 2025).

Test Period used to derive the requested base revenue requirement increase included Mill Creek 2 capital and O&M costs assuming a 2027 retirement, as currently approved.

Although the Companies decided to incur "incremental" Mill Creek 2 capital and O&M costs no later than July 2025, the Companies never updated the as-filed Forecasted Test Year to reflect that changed expectation. Such an update was not provided despite the fact that, pursuant to statute, the Companies did update their base and forecast periods on October 15, 2025, months after the Companies' changed expectation. In that update, the Forecast Test Period adjustment for LG&E's total O&M expense increased by just $284,000,[377] which would not begin to account for the roughly $9,800,000 the Companies report via post-hearing data response that they expect to spend in 2026 on "incremental" Mill Creek 2 O&M.[378] Similarly, although the Companies now say that they expect to invest an "incremental" $19.3 million on Mill Creek 2 capital in 2026, their October update increased Forecast Test Year expected capitalization by less than $6.8 million.[379]

Unmistakably, the Companies did not request any relief related to Mill Creek 2 capital and O&M costs in excess of those relied on in the Forecast Test Year until Halloween night. Indeed, the Companies acknowledged at hearing that a Mill Creek 2 Surcharge was not mentioned in LG&E's rate case application, not mentioned in the

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[377] Adjustment difference calculated by comparing the Companies' originally filed Schedule C-1 (sponsored by Witness Fackler and provided in Volume 11 of 11 at tab 54), and the October 15, 2025 updated Schedule C-1.
[378] Attachment to LG&E Response to Commission Staff's Post-Hearing Response, Attachment to Response to Question No. 20, Case No. 2025-00114 (Nov. 25, 2025) (providing annual incremental stay open costs from July 2025 to May 2031).
[379] Comparison of the originally reported capitalization allocated to electric operations in the Forecast Period ($3,732,176,127, reported in Schedule C-1 (Vol. 11, Tab 54)) and the October 15, 2025 updated Schedule C-1 ($3,738,940,515).

Companies' direct or rebuttal testimony, and not mentioned in relation to the non-unanimous stipulation filed on October 20, 2025.[380]

The Companies' Halloween filing,[381] admitted November 3, 2025, at the start of the formal hearing, was the first time the Companies asked for or said much of anything about Mill Creek 2 operational plans and related ratemaking relief in this proceeding. That late filing is not a pleading and cannot expand the requested relief to impose a new surcharge mechanism. Similarly, representations made by the Companies in the Joint Supplemental Testimony supporting a non-unanimous stipulation in another proceeding, Case No. 2025-00045, cannot lawfully operate as a pleading and cannot expand the scope of this proceeding to include an unnoticed new rate for costs not included in the Forward Test Year.[382]

To illustrate, consider the scope of appropriate relief vis a vis the Commission's limited statutory authority to suspend any schedule stating new rates. Here, the Commission exercised its authority to "suspend the operation" of the Companies' requested rate relief and "defer the use of" the requested changes to rates, charges, classifications, or services for six months.[383] With one exception not applicable here, the statute allows that, if a final order is not issued within that timeframe, the Companies

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[380] Nov. 3, 2025 HVT at 4:19:50 to 4:20:46 p.m. (JI's cross-examination of Witness Conroy confirming Mill Creek 2 surcharge was not mentioned by the Companies in their original rate case application, not mentioned in their direct or rebuttal testimony, and not included as part of the non-unanimous stipulation filed on October 20, 2025).
[381] One hundred fifty-four days after filing rate adjustment applications (May 30, 2025 to October 31, 2025); and over 90 days since committing to pursue new Mill Creek 2 operation plan and associated costs (July 31, 2025 to October 31, 2025).
[382] *Contra* Response of Louisville Gas and Electric Company to the Sierra Club's Post Hearing Request for Information, Response to Question No. 3-1, n.1, Case No. 2025-00114 (Nov. 25, 2025).
[383] KRS 278.190(2).

can put the requested “change[s] of rate, charge, classification, or service in effect,” subject to refund.[384]

Under this statutory framework, the scope of requested relief can be clarified by asking the relatively straight-forward question:

> If the Commission does not issue a final order within the suspension period, could the utility put the new rate charge, classification, or service into effect, subject to refund?
>
>> If yes, then that new rate, charge, classification, or service was part of the requested rate relief and would be justiciable in the proceeding.
>>
>> If not, then that new rate, charge, classification, or service was <u>not</u> part of the requested rate relief and would <u>not</u> be justiciable.

Here, if the Commission does not issue a final order within the suspension period, then: (a) LG&E plainly would <u>not</u> be able to put into effect a new MC2 Surcharge rate—not even subject to refund; and (b) should LG&E elect to put its as-filed rate requests into effect, those rates would not begin to recover any portion of the “incremental” costs that a new MC2 Surcharge may or may not be needed for. With that, neither a new MC2 Surcharge nor new “stay-open” costs are within the requested relief, and neither should be reached here.

2. <u>*Until “incremental” Mill Creek 2 costs are found prudent, an appropriate ratemaking treatment to derive just and reasonable rates is not ripe for adjudication and should not be reached.*</u>

In addition to exceeding the scope of requested relief, a new MC2 Surcharge is not ripe for decision or otherwise suitable for adjudication in this proceeding. Until the

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[384] *Id.*

incremental "stay open" costs are found to be prudent, ratemaking treatment for those costs need not and should not be prematurely decided.

Like our courts, the Commission's original jurisdiction requires justiciability, including subject matter jurisdiction, ripeness, and avoidance of advisory opinions.[385] Following the United States Supreme Court, Kentucky law recognizes both constitutional and prudential ripeness.[386] In either category, ripeness serves to avoid premature adjudications,[387] "enhances the quality of [] decision-making by ensuring . . . an adequate record to permit effective review and decision-making,"[388] and can be raised by the parties or the adjudicator at any time during a proceeding.[389] "The Commission has declined to issue advisory opinions in the past," and must not "render advisory opinions or consider matters which may or may not occur in the future."[390]

Because the category of costs to be recovered via a MC2 surcharge may or may not be determined prudent, it is premature for the Commission to concern itself with a bespoke ratemaking treatment. To date, neither the changes to Mill Creek 2's operational plan nor the specific costs have been reviewed for prudency by this

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[385] *Generally* Initial Brief of Joint Intervenors Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Coalition, and Mountain Association at Sec. III, Case No. 2025-00045 (Sept. 5, 2025); *see also*, *Commonwealth Cabinet for Health & Fam. Servs., Dep't for Medicaid Servs. v. Sexton by & through Appalachian Reg'l Healthcare, Inc.*, 566 S.W.3d 185, 193 (Ky. 2018); *Cameron v. EMW Women's Surgical Ctr. P.S.C.*, 664 S.W.3d 663 (Feb. 16, 2023).
[386] W.B. v. Com., Cabinet for Health & Fam. Servs., 388 S.W.3d 108, 115 (Ky. 2012) (following Nat'l Park Hospitality Ass'n v. Dep't of Interior, 538 U.S. 803 (2003)).
[387] *Abbott Labs. v. Gardner,* 387 U.S. 136, 148, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967), *abrogated on other grounds* by *Califano v. Sanders,* 430 U.S. 99, 97 S.Ct. 980, 51 L.Ed.2d 192 (1977).
[388] W.B. v. Com., Cabinet for Health and Family Services, 388 S.W.3d 108, 115 (Ky. 2012)
[389] Id.
[390] Order, In the Matter of: Electronic Application of Kenergy Corp. For a Declaratory Order, Case No. 2023-00309 (Ky. P.S.C. Aug. 6, 2024).

Commission.[391] Whatever beliefs lead one to favor continued spending at Mill Creek 2, recent proceedings tend to show that keeping Mill Creek 2 in operation past the startup of Mill Creek 5 could be imprudent, unreasonable, and impracticable. That was the Companies' conclusion in the last rate cases,[392] in the original application for a CPCN for Mill Creek 5,[393] and related application for approval to retire Mill Creek 1 & 2,[394] and in the Companies' 2024 IRP.[395]

Most recently, the Commission made no prudency determinations related to Mill Creek 2's continued operation and associated cost in the CPCN final order.[396] Rather, the Commission observed that "extending Mill Creek 2 for a short period has the potential for real upside," on the way to saying that LG&E could still choose to retire Mill

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[391] *See generally* Joint Intervenors' Initial Brief at 68-76, Case No. 2025-00045 (Sep. 5, 2025).
[392] 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; 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 Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit, Case No. 2020-00350 [hereinafter "2020 Rate Cases"]. Although filed separately, the rate cases of the two companies were substantially considered together, including the same testimony and final orders.
[393] 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, Case No. 2022-00402.
[394] Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Approval of Fossil Fuel-Fired Generating Unit Retirements, Case No. 2023-00122 ("2023 Retirement Case"). This case was consolidated with Case No. 2022-00402, by its May 16, 2023 Order.
[395] Case No. 2024-00326, Electronic 2024 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company.
[396] *Generally* Order at 154-159, Case No 2025-00045 (Ky. PSC Oct. 28, 2025); *id.* at 166-171 (ordering paragraphs denying without prejudice stipulation provisions related to Mill Creek 2 operation beyond 2027); *see also* Attachment to LG&E/KU Response to Post-Hearing Request No. 3(b), Case Nos. 2025-00113, 2025-00114 (October 30, 2025) (Press Release acknowledging that "the Commission did not rule on extending the operation of Mill Creek 2" in Case No. 2025-00045); LG&E/KU Response to Sierra Club ost-Hearing Request, Response to Question No. 3-1, Case Nos. 2025-00113, 2025-00114 (Nov. 25, 2025).

Creek 2 pursuant to existing retirement authority.[397] Far from being a prudency determination on Mill Creek 2's operation beyond 2027, the order implies acting on the existing retirement authority still "has the potential for real upside," too.[398]

Continuing in the same vein, the Companies have not asked for a prudency determination here, and this record could not support one. The Companies' witnesses and counsel stressed that the Companies are not requesting a prudence determination or the recovery of any costs related to Mill Creek 2's new operational plan:

> We're asking for approval of the mechanism itself.[399]
>
> The Companies are asking for approval of the mechanism itself. Cost associated with what goes into the mechanism will be reviewed by the Commission and the staff on an ongoing basis as we file it.[400]
>
> What we're asking for is the mechanism itself, not approval of any of the cost recovery."[401]
>
> *The Company is not asking the Commission to find any Mill Creek 2 stay-open or life extension cost to be prudent in this proceeding.*[402]

Representations of the Companies' counsel were consistent in argument and in objections, grounding both on the notion that the merits of the costs has not been previously determined and can wait for another proceeding:

> All we're talking about here is approval of the mechanism itself.[403]

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[397] Order at 159, Case No. 2025-00045 (Oct. 28, 2025).
[398] While the Companies' witnesses largely avoided claiming any understanding of the Commission's CPCN Order with respect to Mill Creek 2, *e.g.*, Nov. 3, 2025 HVT at 2:48:45 to 2:50:35 p.m., at least once a witness incorrectly asserted that the CPCN approved continued operation of Mill Creek 2, Nov. 4, 2025 HVT at 4:11:25 to 4:12:16 p.m. Importantly, the Companies' witness is not an attorney and was not providing a legally sound opinion. The ordering paragraphs denied all relief related to Mill Creek 2 in Case No. 2025-00045.
[399] Nov. 3, 2025 HVT at 4:19:24 to 4:19:49 p.m. (JI's cross examination of Witness Conroy).
[400] *Id.* at 4:36:30 to 4:37:27 p.m.
[401] Nov. 4, 2025 HVT at 9:09:42 to 9:11:05 a.m. (JI's cross-examination of Witness Conroy).
[402] LG&E/KU Response to Sierra Club PH Request No. 1.
[403] Nov. 3, 2025 HVT at 4:42:50 to 4:43:10 p.m. (Companies' counsel objection).

> So there is no ask right now for the commission to make any finding on the amount of the costs that Mill Creek 2 will incur to keep it running. All that's before the commission is whether the Mill Creek 2 mechanism should be approved as a mechanism. The commission will have every opportunity later for all of these mechanisms to review the numbers that the companies propose and pass judgment on those numbers about whether they're prudent and fair and just and reasonable. That's all for another day at another time. This is just approval of the mechanism itself. That's all it is.[404]

Even if "that's all it is," denial is still the best next step.[405] The need for bespoke ratemaking treatment of prudently incurred costs can wait until the Commission determines the existence of prudently incurred costs in an appropriate proceeding, with application, notice, ordinary process, and orderly development of the record. The ratemaking treatment hasn't ripened until that need arises.

For efficiency's sake too, it would be wise for the Commission to refrain from attempting to predetermine ratemaking treatment for additional MC2 costs. To the extent that the Commission credits claimed benefits to giving Mill Creek 2 discrete attention outside a base rate case,[406] that same logic favors a separate proceeding to consider the prudence of and ratemaking treatment for "incremental" Mill Creek 2 costs. Prudence and cost-recovery can be most efficiently and effectively addressed in a separate proceeding, and before beginning to pass those costs to ratepayers. Such an approach would also follow the ECR model that the MC2 Surcharge was intended to

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[404] *Id.* at 9:28:15 to 9:29:05 a.m. (Companies' counsel argument in support of late-filed Halloween evidence). Most recently, in Response to Sierra Club's PH Request No. 1, PPL/LG&E are:

> requesting approval only for the Adjustment Clause MC2 mechanism and deferral accounting (regulatory asset) approval of Mill Creek 2 stay-open and life extension costs incurred prior to the mechanism taking effect, as well as approval for deferral accounting needed for the mechanism to operate. The Company is not asking the Commission to find any Mill Creek 2 stay-open or life extension cost to be prudent in this proceeding.

[405] *E.g., W.B. v. Com., Cabinet for Health & Fam. Servs.*, 388 S.W.3d 108, 114 (Ky. 2012) (concluding that "prudential ripeness considerations strongly favor" not considering a constitutional challenge that hinged on the outcome of a separate administrative proceeding).

[406] Supplemental Testimony at 13.

mimic: before costs are approved to move into ECR surcharge, costs must be included in the then-approved environmental compliance plan.[407]

Prudential ripeness considerations further weigh heavily against adjudication in this proceeding. The lack of formal or informal notice despite ample opportunity, lack of good cause, absence of practical or financial need to reach the issue here, and continuing availability of legitimate and ordinary avenues to seek rate relief related to "incremental" Mill Creek 2 costs could each independently justify a prudential decision not to address a Mill Creek 2 Surcharge in this proceeding. Taken together, they arguably require one.

3. *The complete lack of formal notice and near total failure to informally alert customers of a new Mill Creek 2 rate or costs further favors not adjudicating the rate here.*

Even if the Commission finds that the MC2 Surcharge is justiciable, it must still fail for lack of notice. The Commission's regulations require 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.[408] The MC2 surcharge falls under the broad definition of "rate" in this context,[409] but was not included in the Companies'

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[407] *See e.g.*, Application, *Application of LG&E for CPCN and Approval of its 2016 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2016-00027 (seeking an amendment to the previously-approved ECR plan to include certain new environmental compliance projects and approval of cost recovery via ECR surcharge).
[408] 807 KAR 5:001 § 17.
[409] *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).

Customer Notices of Rate Adjustment.[410] As a result, the Companies have not provided the public with the legal notice required by 807 KAR 5:001 Section 17, and the Commission should deny the MC2 Surcharge as procedurally improper.[411]

Earlier in these proceedings, the Commission noted various deficiencies with the Companies' notice, including that "[t]he full notice omits the proposal to change how the environmental compliance recovery (ECR) is calculated by removing the cost of by-products from the formula."[412] If that deficiency makes an ECR notice defective, and the ECR mechanism is the intended model for a MC2 surcharge, it follows that the complete absence of a MC2 surcharge notice ought to be insufficient.

Naturally, the Companies cannot go back in time to before they conceded in settlement to change Mill Creek 2's operational plan to reissue the original public notices with the MC2 Surcharge included. But legitimate procedural avenues are available. At any time since July, and continuing to this day, the Companies could have initiated a separate proceeding, including a new surcharge mechanism as part of the requested relief and provided lawful notice to ratepayers.[413]

Instead, the Companies coupled the lack of formal notice regarding Mill Creek 2 operational plan changes and associated costs to ratepayers with a failure to provide

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[410] *See* Certificate of Completed Notice, Exhibit A, Case Nos. 2025-00113 & 2025-00114 (July 14, 2025).
[411] 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 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.
[412] Order at 7, Case No. 2025-00014 (June 16, 2025).
[413] Nov. 3, 2025 HVT at 4:22 p.m. (confirming that Companies could initiate a separate filing to new surcharge rate proposals and Mill Creek 2 would be included in the Forecasted Test Period of the Companies' next base rate case).

even informal notice to ratepayers. The Commission hosted four public comment hearings in these rate cases,[414] each one an opportunity for the transparent discussion of matters driving rate increases. But the Companies had not announced—not in the rate case records and not during the public comment sessions—a decision to continue operating Mill Creek 2 beyond 2027 or the additional rate hike to pay those costs. Given the claimed importance of Mill Creek 2's new operational plan, it strains credulity to suggest the Companies' representatives forgot that change or the cost implications for customers. It just was not mentioned among the rate hikes ratepayers were there to hear about and provide comment on.

Even less formally, the Companies decided against addressing Mill Creek 2's operational plan or an associated rate increase in either of their two press releases regarding these rate case proceedings.[415] In the Companies' October 20, 2025 Press Release announcing resolution of the rate cases via settlement, there is no mention at all of Mill Creek 2.[416] The Companies' October 30, 2025 Press Release regarding the CPCN Final Order acknowledged that "the Commission did not rule on extending the operation of Mill Creek 2," and did not approve a Mill Creek 2 surcharge, "but noted the [surcharge] could be included for review in other proceedings."[417] The Press Release did not, however, go on to disclose the Companies' intention to foist the MC2 Surcharge into these proceedings the very next day.

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[414] The Commission facilitated four public comment hearings in advance of the formal hearing, on September 8, October 14, October 16, and October 30.
[415] Attachments to LG&E/KU Response to JI PH Request No. 3.
[416] Attachment to LG&E/KU Response to JI PH Request No. 3(a).
[417] Attachment to LG&E/KU Response to JI PH Request No. 3(b).

Reading these rate case and CPCN press releases, neither the press nor stakeholders would have anticipated the MC2 Surcharge becoming a rate case issue. That is the opposite of transparent, and another compelling reason not to approve a MC2 Surcharge mechanism in this proceeding. Captive ratepayers deserve ordinary process; not the surprise of seeing a not a new surcharge for new costs on their February bills, and continuing for an indeterminate period of time.

B. The procedurally deficiencies here are all without good cause, further favoring denial without prejudice.

The justiciability and procedural defects here cannot be excused for good cause, and even if they could, the record plainly reflects that the circumstances here were avoidable and entirely of the Companies' own making. As a matter of law, fairness, and institutional integrity, the absence of good cause for the late-filed evidence, new costs, and new surcharge proposal further favor denial of the MC2 Surcharge here.

The Companies are in a position of their own making. Anytime since agreeing via non-unanimous settlement in July to try to continue operating Mill Creek 2 beyond 2027, the Companies had the opportunity to supplement the rate case record to add the incremental costs to their 2026 Test Year or propose a bespoke surcharge for those costs. Nothing prevented that.

Similarly, at any time since July 2025, LG&E could have initiated a separate application seeking deferral accounting for incremental Mill Creek 2 expenses until they could be rolled into LG&E's next base rate adjustment, or a separate application seeking to establish a new Mill Creek 2 stay-open surcharge rate. Had PPL and LG&E management initiated a separate proceeding in July, it might have run its course with orderly development of an adequate record and a final order by early 2026.

Whether or not to avail itself of those opportunities was the sort of ordinary business judgment that the Companies must make day-in and day-out. Only the Companies decided to let incremental Mill Creek 2 costs ride on the outcome of a CPCN proceeding that, apart from a hotly contested settlement proposal, had nothing directly to do with Mill Creek 2.[418] After seeing public comments and opposition at the August 2025 CPCN hearing to Mill Creek 2's continued operation and an associated surcharge, the Companies still chose not to supplement this record. After September briefing in the CPCN case, LG&E still chose not to cover its bases on Mill Creek 2 costs by supplementing this record or applying for approval of the MC2 surcharge "in a separate proceeding, allowing the Commission an opportunity to thoroughly investigate the proposal[]."[419] The Companies had ample opportunities to reassess and consider whether it would be prudent to have a Plan B in place via this rate case or a separate proceeding.[420]

For months, the Companies sat on their thumbs even though supplementing this record, just in case, would have been a light lift. A new surcharge proposal would be a routine filing, and with respect to the MC2 Surcharge in particular, the Companies demonstrated an ability to manufacture and present MC2 Surcharge information in less

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[418] *See generally*, Joint Intervenors' Initial Brief, Section III at 49-52, Case No. 2025-00045 (Sep. 5, 2025); Joint Intervenors' Response Brief, Section VII at 32-38, Case No. 2025-00045 (Sep. 17, 2025); JI Response in Opposition to Companies Motion for Leave to Supplement, Case No. 2025-00113 (Nov. 2, 2025).
[419] Order at 154, Case No. 2025-00045 (Oct. 28, 2025).
[420] Response of JI in Opposition to Joint Motion for Leave to File Supplemental Testimony, Case Nos. 2025-00113, 2025-00114 (Nov. 2, 2025).

than one business week.[421] The Companies assuredly had the means and time to supplement this record for at least three months.

Further, it was unreasonable not to supplement this record during those three months: awareness of increased incremental revenue requirements based on changed operating plans goes to the core of a rate case. Yet, the Companies somehow didn't "feel it necessary" to mention the MC2 surcharge in this rate case proceeding.[422] Instead, based on an "expectation" that the contested MC2 Surcharge would be approved in a construction certificate proceeding unrelated to MC2, the Companies did not raise MC2 "stay open" surcharges and revenue requirements until the start of the hearing.[423]

Ratepayers and the Commission cannot be expected to compensate for the Companies' choice not to timely supplement the record of this proceeding when their outlook and cost expectations for Mill Creek 2 changed in July 2025, or seek relief in a separate proceeding. In keeping with the regulatory compact underlying monopoly investor-owned utilities, until considered via ordinary process and a well-developed record, PPL investors must carry the costs and risks of their own mismanagement—not their captive ratepayers.

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[421] Nov. 3, 2025 HVT at 4:27 p.m. (confirming that the Supplemental Testimony was developed between issuance of a Tuesday order and Friday evening).

[422] It stands to reason that one reason the Companies did not "feel it necessary" to mention the MC2 Surcharge in this rate case proceeding is that, prior to the Halloween filing, the Companies viewed the MC2 Surcharge as outside their requested relief in this proceeding, i.e., Case No. 2025-00114.

[423] Nov. 4, 2025 HVT at 4:11 p.m. (Witness Bellar testifies that "[t]he Companies had the expectation that the CPCN proceeding would result in approval . . . So we didn't up until a week ago today feel it necessary to have conversations related to Mill Creek 2 continued operation in this proceeding.").

C. Should the Commission reach the merits, the Halloween MC2 Surcharge proposal is inadequately supported, unjust, and unreasonable.

If the Commission does reach the merits of a new MC2 Surcharge in this proceeding, the proposal should be denied as inadequately supported, unjust, and unreasonable. As compared to the record in the construction certificate case, the Companies offered slightly more evidence here, but still not enough to meet the burden of proof. Instead, what has been offered suggests that it would be unjust and unreasonable to establish a rate before determining cost prudence on run-of-the-mill decisions and costs undertaken by the Companies, which is all the MC2 Surcharge would address: routine capital and O&M.

1. <u>The actual costs and prudence of Mill Creek 2's continued operation are still unsettled, with unbounded costs, and no guarantee of operation beyond 2027.</u>

As in the construction certificate case, this record is not sufficiently developed with respect to a MC2 Surcharge and incapable of carrying the Companies' burden of showing the justness and reasonableness of a MC2 Surcharge. First, the Companies can only illustrate what an MC2 Surcharge might look like, with multiple witnesses declining to even ballpark the possible range of accuracy. That inability to ballpark costs is manifestly unreasonable, and without a more definite sense of the rate that will actually result from the proposed ratemaking method, the MC2 Surcharge mechanism cannot be approved on this record.[424]

Instead of an actual rate, the Companies' nominal bill impact analysis "is just strictly a calculation of how the mechanism itself would work"[425] and is "subject to

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[424] *Hope*, 320 U.S. at 602 ("Under the statutory standard of 'just and reasonable,' it is the result reached, not the method employed, which is controlling.").
[425] Nov. 3, 2025 HVT at 2:40 p.m.

change as the actual bill impacts will depend on a variety of factors,"[426] particularly (1) the actual capital and O&M spending undertaken by the Companies; and (2) departures from the assumed revenues for each of Group 1 and Group 2.[427] The Companies themselves disclaim that, because these factors will vary, the bill impact analysis "should be viewed as illustrative and not predictable of final outcomes."[428]

Notwithstanding the specificity of the estimated Mill Creek 2 costs in that illustrative analysis, the Companies are, in fact, so unsure of what the actual costs will be that they do not know, and do not attempt to even ballpark, how much costs and ratepayer impacts could be higher or lower than estimated in Exhibit 5.[429]

The inability to provide a ballpark related to Mill Creek 2 deserves attention. As a matter of standard industry practice, the Companies routinely ballpark the accuracy of generation related costs. As recently as Case No. 2022-00402, the Companies relied on ACEE Class 3 estimates at the time of regulatory review, which would have an "expected accuracy range" of overstating actual costs by 10% to 20%, or understating costs by 10% to 30%, suggesting a ballpark 80% to 130% of the estimated costs. Even within a ballpark, estimates are never guaranteed, again, as shown by the changed cost expectations that developed just during the pendency of Case No. 2022-00402.[430]

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[426] Supplemental Testimony at 13; *see also id.* at 5-6 (noting that bill impact exhibits try to offer "a general illustration" and actual "bill impacts are subject to change…" such that "analyses should be viewed as illustrative and not predictive of final outcomes.").
[427] Nov. 4, 2025 HVT at 1:56:08 p.m.
[428] Supplemental Testimony at 13; *see also Id.* at Ex. 1 GCR Estimated Cost Recovery (cautioning that bill impact calculations were "[b]ased on Stipulated Revenues for Calendar Year 2026," and noting "[r]evenues held constant through 2030 for this analysis; future economic development and other load changes will impact actual bill results.").
[429] Companies' Response to Sierra Club Post Hearing Request, Response to Question No. 3-2, Cases No. 2025-00113, 2025-00114 (Nov. 25, 2025).
[430] Joint Intervenors' Initial Brief (Public Version) at 95-96, Case No. 2022-00402 (Sep. 22, 2023).

In the absence of any kind of ballpark, approval of an MC2 Surcharge here might as well be a blank check. The Companies do not even claim that the "incremental" Mill Creek 2 cost estimate would reflect Class 5 accuracy, describing projects at the "concept screening" stage with an expected range of overstating costs by 20% to 50%, or understating by 30% to 100%, suggesting a ballpark of 50% to 200%.

Directionally, there is a high probability that costs will be higher than estimated. That high probability results from the absence of a complete plan for operation to 2031,[431] the exclusion of potential SCR installation,[432] and the requested ability to pass costs to customers in advance of any prudency determinations.[433]

These factors also draw into question any claimed cost-benefit analyses for Mill Creek's 2's retirement after 2027. A cost-benefit analysis cannot be reasonably relied upon without being the product of a complete plan, including cost estimates with reasonably narrow expected accuracy ranges. Similarly, there cannot be a comparison to alternative resources without a complete plan and reasonably developed cost estimates.[434]

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[431] LG&E/KU Response to Commission Staff's Post-Hearing Request, Response to Question No. 5, Case Nos. 2025-00113, 2025-00113 (Nov. 25, 2025) (noting that 2031 "is outside the Companies' planning window" and estimated values for 2031 are escalations of a prior year).
[432] Supplemental Response of Kentucky Utilities Company and Louisville Gas and Electric Company to the Kentucky Coal Association's First Request for Information Dated March 28, 2025, Supp. Attach. 1 at 4 Case No. 2025-00045, Question No. 4 (May 30, 2025).
[433] LG&E's Response to Sierra Club Post Hearing Request, Response to Question No. 1, Case No. 2025-00114 (Nov. 25, 2025) (confirming that Companies "will bill" actual costs to ratepayers in advance of any prudency determinations.
[434] Notably, the Companies' operating plan changes at Mill Creek 2 were the result of a negotiated settlement joined by the Kentucky Coal Association—representing the pecuniary interests of coal suppliers—and not the result of ordinary planning processes, Integrated Resource Planning results, or a litigated retirement or CPCN proceeding.

Further, even if as a sensitivity, any reasonable cost-benefit analysis ought to include SCR costs. The Companies' own analysis acknowledges that "an SCR may be needed even for a short-term life extension of Mill Creek 2 beyond its currently planned retirement in 2027."[435] Yet, nothing in the Companies' analyses of operating Mill Creek 2 beyond 2027 considered the economic (in)efficiencies of adding the $163 million SCR capital cost and ongoing operation and maintenance expense before 2031.[436]

It's been suggested that KIUC/OAG Witness Kollen's testimony itself would be sufficient evidence to support approval of the generation cost recovery mechanism, but that is wishful thinking.[437] In reality, Witness Kollen testified that the MC2 Surcharge is important to "ensure a reasonable outcome" in Case No. 2025-00045; and claimed the MC2 Surcharge is "necessary to recover the incremental costs for MC2 to continue operations at least through 2031."[438] That's little more than a scintilla of support, with no request for relief in these proceedings, and still less than in the record of Case No. 2025-00045, where the Commission did not find sufficient evidence to support a new MC2 surcharge. The quantum and quality of testimony offered by Witness Kollen cannot carry the Companies' burden here any better than it could in Case No. 2025-00045.

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[435] Supplemental Response of KU/LG&E to the Kentucky Coal Association's First Request for Information Dated March 28, 2025, Supp. Attach. 1 at 4, Case No. 2025-00045, Question No. 4 (May 30, 2025).
[436] Response of KU/LG&E to Commission Staff's Third Request for Information Dated May 23, 2025, Attach. 1 at 6, Case No. 2025-00045 Question 8(b) (June 6, 2025).
[437] Nov. 3, 2025 HVT at 9:42:27 a.m. (KIUC Counsel arguing in support of Halloween Night Motion for Leave to File Supplemental Testimony asserting that KIUC Witness Kollen's Direct Testimony, pages 94-97 (per Kurtz at 9:46 a.m.), would be sufficient evidence to support approval of the Mill Creek 2 surcharge).
[438] Direct Testimony and Exhibits of Lane Kollen on behalf of the Office of the Attorney General of the Commonwealth of Kentucky and Kentucky Industrial Utility Customers at 97, Case Nos. 2025-00113, 2025-00114 (Sept. 9, 2025).

Witness Kollen is also factually wrong: approval of the MC2 Surcharge is not necessary to recover the incremental costs for MC2 to continue operations at least through 2031. It was not necessary in Case No. 2025-00045, or the Companies or another stipulating party would have pursued rehearing or appeal. That did not happen. Instead, the Companies affirmed at hearing that, notwithstanding denial of the MC2 Surcharge in Case No. 2025-00045, they would continue operating and maintaining MC2 in a manner that allows a "soft-landing" by 2030, maybe 2031.

The Companies may need and are entitled to a fair opportunity to recover the incremental costs for Mill Creek 2 to continue operating beyond 2027, once found by this Commission to have been reasonably and prudently incurred. That is not the same thing as needing *this* proposal to be approved in *this* proceeding.

2. *<u>Without any costs at issue, denial without prejudice cannot be confiscatory.</u>*

Denying the MC2 mechanism in this proceeding will not deny the Companies an opportunity to recover those costs and a reasonable return from customers for at least two reasons: (a) denial of the "mechanism itself" has nothing to do with the recoverability of related costs and would not be a denial of any Mill Creek 2 capital or O&M cost recovery; (b) and even if denied here, the record shows that the Companies would be able to operate successfully, maintain financial integrity, and attract capital. From the investor perspective, denial of the surcharge without prejudice deprives them of nothing and does them no harm. On the flip side, ratepayers cannot afford another surcharge, particularly one that puts cost recovery from captive ratepayers *before* the Commission determines the prudence of those expenditures.

Just and reasonable rates must be non-confiscatory, affording a regulated investor-owned utility "a reasonable opportunity to earn a fair return on its investment property . . . while attracting necessary capital at reasonable rates."[439] Without cost recovery directly at issue, the Companies' ability to recover their costs, operate successfully and attract investors cannot be harmed by waiting to consider a new MC2 Surcharge in a separate proceeding, with a fully developed record. Meaning, denial of the MC2 Surcharge here could not possibly be confiscatory.

Furthermore, in the absence of a prudency determination related to "incremental" Mill Creek 2 capital and O&M costs that would be recovered via a MC2 Surcharge, the Companies and their shareholders do not yet have a right to recover those costs.

As a practical matter, there does not seem to be any reason to put cost recovery ahead of cost prudency investigations. Some capital and O&M has already been outlaid, but the majority of costs that would be funneled to a MC2 Surcharge won't be incurred immediately or all at once.[440] There is time for ordinary process and a prudency determination for costs planned for 2026 onward.

As to capital and O&M outlaid in 2025, the Companies arguably already recovered everything they were due under existing just and reasonable rates; anything more would be duplicate recovery. In the most-recent rate cases, the Commission approved fair, just, and reasonable rates, pursuant to a stipulated agreement. Those fair, just, and reasonable rates have been in effect throughout this calendar year, were

[439] LG&E Application at 4 (paragraph 10), Case No. 2025-00114 (May 30, 2025); *Commonwealth ex rel. Stephens v. S. Cent. Bell Tel. Co.*, 545 S.W.2d 927, 930-31 (Ky. 1976).

[440] The Companies previously explained that "stay open" capital projects at Mill Creek 2 cannot occur until after Mill Creek 5 is commissioned as a result of "long lead times." Attachment 1 to LG&E/KU Response to Staff Request No. 3-8(b) (June 6, 2025), *Further Analysis of Mill Creek 2 Retirement* at 4, Case No. 2025-00045.

based on a 2021/22 Forecasted Test Year[441] (i.e., before reducing Mill Creek 2 investment in relation to 2027 "soft landing"), and included Mill Creek 2 capital and O&M costs and revenue requirements. Since those base rate cases were last approved, the Companies were afforded the opportunity to collect fair, just and reasonable rates; there cannot also be "incremental" Mill Creek 2 expenses that ratepayers are financially responsible for.

Further confirming that ratepayers already fulfilled their obligation to pay just and reasonable rates in 2025, the Companies have been earning more than the authorized return on the fair value of their property under those rates. The Companies realized a 10.32% ROE over the most-recent twelve months available, November 2024 to October 2025.[442] That time period includes all so-called "incremental" costs the Companies elected to undertake from July 2025 through Mill Creek 2's return from October outage, and still, the return to investors exceeded the amount assumed in then-approved just and reasonable rates. The Companies are already better than whole with respect to recovery of capital and O&M expenses, and denying a surcharge mechanism related to costs that appear to have been adequately recovered to date through base rates confiscates nothing.

Whatever claims are made, the fact is that the "incremental" Mill Creek 2 costs are of such a modest scale that there cannot be dramatic urgency or an upending of ordinary process to maintain the Companies' financial integrity while considered in a

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[441] In their last base rate cases, the Companies used a 12-month forecasted test period of July 1, 2021 to June 20, 2022. *E.g.* Application at 7, Case No. 2020-00350 (Nov. 25, 2020).
[442] Companies' Response to Commission Staff's Post-Hearing Request, Response to Question No. 6, Case Nos. 2025-00113, 2025-00114 (Nov. 25, 2025).

separate proceeding. In the July to October 2025 timeframe, Mill Creek capital and O&M costs were $2,586,831.79 and $9,905,753.50, respectively; combined, just shy of $12.5 million.[443] Considering that investors' common equity as of August 31, 2025, was just above $3 billion,[444] the 2025 Mill Creek 2 "incremental" capital costs represent roughly 0.08% of equity's share of rate base.[445] Mathematically, less than one tenth of one percent of rate based equity capital being recovered following due course could not possibly jeopardize shareholder returns, much less the Companies' financial standing or ability to attract capital.

As for future costs in 2026 and beyond, there is time to consider their prudence and ratemaking treatment in a separate proceeding, with the benefit of a fully developed record.

3. *It would be unjust and unreasonable to allow double-recovery of 2025 Mill Creek 2 costs and arbitrary cost reallocation for a subset of ordinary plant expenses.*

The Halloween Testimony does not explain how just and reasonable rates could recover a subset of MC2 capital and O&M costs any differently than those costs have traditionally been recovered and otherwise continue to be recovered. Mill Creek 2 capital and O&M expenses have been collected as part of base rates for nearly fifty

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443 Attachment 1 to LG&E/KU Resp. to Sierra Club PH Request No. 3, Case No. 2025-00114 (Nov. 25, 2025).

444 LG&E Base Period Update Attachment to Tab 54 - Section 16(8)(a) at tab "SCH J," Case Nos. 2025-00113, 2025-00114 (Oct. 15, 2025).

445 Consistent with the actual relationship with LG&E and PPL's common shareholders, this percentage is based on the Companies' common equity. If one instead pretended that LG&E had shareholders, the roughly $2.5 million "incremental" Mill Creek 2 capital would amount to roughly 0.11% of LG&E's reported jurisdictional common equity as of August 31, 2025 ($2,293,014,277). LG&E Base Period Update Attachment to Tab 54 - Section 16(8)(a) at tab "SCH J," Case Nos. 2025-00113, 2025-00114 (Oct. 15, 2025).

years, consistent with traditional ratemaking principles. Nothing in the record attempts to explain how treating a vague subset of the same costs differently than Mill Creek 2's capital and O&M costs have traditionally been—and continue to be—recovered in base rates.

Whatever critiques can be made of various ratemaking methodologies and assumptions, LG&E's base rate methodology attempts to assign costs based on a class-by-class basis, differentiating 20 tariff rate classes. Moving to a Group 1-Group 2 allocation abandons that more granular approach and reduces cost-causation to just two buckets of customers. While either method might be used to derive a just and reasonable rate, using one for part of Mill Creek 2's capital and O&M revenue requirements, and another for the remainder, will result in two different Mill Creek rates for every customer class.[446] The Companies have not begun to explain why it would be just and reasonable to differently allocate the same category of costs to the same customers via different rates.

Finally, if the Commission does approve the MC2 Surcharge in this proceeding, the surcharge should explicitly terminate with the Companies' next base rate case.[447]

CONCLUSION

For the foregoing reasons, Joint Intervenors respectfully request the Commission to grant the relief described herein, which is necessary to ensure that the Companies' rates are fair, just, and reasonable.

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[446] *Hope Nat. Gas Co.* 320 U.S. at 602.
[447] As argued more fully with respect to the GCR Surcharge in Section V.B.2 above.

[Signature on next page]

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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 December 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