

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

In the matters of:

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

AND

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

SIERRA CLUB’S POST HEARING BRIEF

I. Introduction

In the Applications filed in these proceedings on May 30, 2025, Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E” or “the Company”) (collectively, “the Companies”) requested approval to increase the Companies’ respective electric and gas rates charged to residential and other utility customers.¹ After the opportunity for multiple rounds of discovery, a technical conference, expert testimony, and an in-person

¹ 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. 2025-00114, Application at 1 (May 30, 2025); Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates, and Approval of Certain Regulatory and Accounting Treatments, Case No. 2025-00113, Application at 1 (May 30, 2025). Because these dockets were combined into a single proceeding, many filings are identical in both dockets. Where citing to the docket in both 2025-00113 and 2025-00114 would be redundant, this brief will cite to the LG&E docket, Case No. 2025-00114 only.

settlement conference, on October 20, 2025 Sierra Club joined some of the parties to these proceedings in a proposed Stipulation that, among other things: (1) made targeted changes to improve the effectiveness of the requested Extremely High Load Factor tariff that will primarily apply to future data center customers; (2) included a two-year “stay out” provision precluding the Companies from filing a new rate case until January 1, 2028; and (3) provided significant reductions to the requested rate increases sought in the Companies’ Applications. For an average KU residential customer, the proposed Stipulation terms would reduce monthly electric bill increases from \$18.14/month as sought in the Application to \$9.01/month. For an average LG&E electric residential customer, the Stipulation would reduce the monthly increase from \$11.04 to \$5.04/month, and for residential gas customers from \$11.12 to \$8.10/month. Sierra Club believes that the stipulation is fair, just, and reasonable, and should be approved by the Commission. The Stipulation provided that the parties intended it to “resolv[e] all issues in this proceeding.”²

But after the close of business on Friday, October 31, 2025, at approximately 7:30pm, the Companies, without providing notice to Sierra Club, filed a motion for leave to file new testimony and new exhibits, seeking to introduce a brand-new issue into these proceedings. For the first time, the Companies requested that the Commission approve a so-called “Mill Creek 2 Adjustment Clause,”³ which would set up a monthly process for the Commission to approve

² 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. 2025-00114, Stipulation Testimony Exhibit 1: Stipulation and Recommendation at 22, Sec. 10.4 (Oct. 20, 2025).

³ 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. 2025-00114, Kentucky Utilities Company’s and Louisville Gas and Electric Company’s Joint Motion for Leave to File Supplemental Testimony Regarding Stipulation Mechanisms and Mill Creek 2 Adjustment Clause at 2 (Oct. 31, 2025) (hereafter, “Joint Motion”).

costs associated with the Companies' plan to keep Mill Creek 2, an aging coal-fired unit, open beyond its previously planned retirement date of mid-2027 until at least 2031. Although the Companies apparently decided as early as July 2025 to keep Mill Creek 2 open beyond 2027—and began incurring substantial costs to do so—the Companies chose to introduce the issue in these dockets for the first time at 7:30p.m. on Friday night before the start of the hearing in this matter at 9:00a.m. the following Monday morning after having signed a Stipulation that plainly states an intention to resolve all issues in these proceedings. The Companies apparently assumed they would receive Commission approval for the Mill Creek 2 Adjustment Clause first proposed in a contested Stipulation put forward in Case No. 2025-00045 related to the construction of new gas plants.⁴

But the Companies' flawed assumption in one case does not excuse their failure to bring the issue forward in this docket in a timely manner and present a complete record for the Commission's consideration. The Companies had ample opportunity to raise the possibility of keeping Mill Creek 2 open and addressing any attendant costs in these proceedings. Between the Companies' decision to keep Mill Creek 2 open in July 2025 and the October 31, 2025 filing, there were the Companies' responses to information requests filed on August 12, 15, 22, and 25, a technical conference hosted by Staff on August 19, Rebuttal Testimony on September 30, in person settlement talks on October 8-9, and the Stipulation filed on October 20. At no time did the Companies raise the issue of Mill Creek 2's retirement date and the proposed Adjustment Clause in the Applications, their Initial Testimony, or at any of those other opportunities.

⁴ See Joint Motion at 2 (citing the Commission's decision in Case No. 2025-00045 as the sole justification for the timing of the motion).

The Commission should reject the eleventh-hour request because it was untimely, prejudiced the parties' and the Commission's ability to prepare for and meaningfully participate in the hearing, precluded any expert review and testimony on the topic, effectively shielded a highly controversial topic from public view, and, ultimately, prevented the Commission from having the opportunity to thoroughly investigate the proposal. The lack of record support for the Mill Creek 2 Adjustment Clause, the timing decisions, and the prejudice that stem from those choices are entirely the Companies' own making. The Commission should not reward the Companies for that conduct. As set out below, the Sierra Club respectfully asks the Commission to approve the Stipulation as proposed in these dockets and deny the Companies' last-minute Mill Creek 2 Adjustment Clause proposal.

II. Standard of Review

Under KRS 278.030(1) utility rates must be "fair, just and reasonable."⁵ Under KRS 278.190(3), "the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility."⁶ In acting on such a request, the Commission shall rule "as speedily as possible, and in any event not later than ten (10) months after the filing of such schedules."⁷

⁵ KRS 278.030(1); *Ky. Pub. Serv. Comm'n v. Commonwealth, ex rel. Conway*, 324 S.W.3d 373, 377 (Ky. 2010).

⁶ KRS 278.190(3); *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates, a Certificate of Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Subcredit*, Case No. 2020-00349, Order at 4 (Sept. 24, 2021).

⁷ KRS 278.190(3).

III. The Commission Should Reject the Eleventh-Hour Mill Creek 2 Adjustment Clause.

A. The Commission’s Order in Case No. 2025-00045 Did Not Endorse the Companies’ Eleventh-Hour Filing in this Docket, and the Companies Have Not Provided the Commission with the Opportunity to Thoroughly Investigate the Mill Creek 2 Adjustment Mechanism.

The Companies first publicly requested authority to extend the retirement date for Mill Creek 2 beyond the anticipated 2027 in-service date of Mill Creek 5, and recover associated “stay open” costs through a Mill Creek 2 Adjustment Clause, in a July 2025 Stipulation in Case No. 2025-00045.⁸ The contested Stipulation was filed late in that proceeding, without the benefit of being subject to test by pre-hearing discovery or by expert witnesses of the other parties. The Commission, understandably, rejected the clause, along with other late-filed cost recovery mechanisms for lack of an adequate record and opportunity for review:

Due to the Mill Creek 6 and Mill Creek 2 Mechanisms being introduced as part of the Stipulation Agreement in this case, the Commission finds that LG&E/KU have not met their burden of proof regarding the Mill Creek 6 Mechanism and the Mill Creek 2 Mechanism. The Commission believes it did not have an opportunity to investigate the proposals, and that LG&E/KU failed to provide substantial evidence that the proposed Mechanisms should be approved.⁹

The Commission denied the Mill Creek 2 adjustment mechanism without prejudice, meaning it could be re-filed with stronger evidence “in a separate proceeding, allowing the Commission *an opportunity to thoroughly investigate the proposals.*”¹⁰ And while the

⁸ Electronic Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates, Case No. 2025-00045, Stipulation Testimony Exhibit 1: Stipulation and Recommendation (July 29, 2025).

⁹ Electronic Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates, Case No. 2025-00045, Order at 153-154 (Oct. 28, 2025).

¹⁰ *Id.* at 154 (emphasis added).

Commission’s Order stated “[i]n the event” the mechanisms were introduced in this docket, the Commission explained that any should filings would require “further evidence in support of the proposed mechanisms in those proceedings.”¹¹ That single sentence, however, was not an open-ended invitation to introduce new issues into this case zero business days—technically zero business *minutes*—before the start of the hearing in this case. But that is the route the Companies chose.

Here, the last-minute Mill Creek 2 proposal offered even less opportunity for the Commission and parties to investigate the merits. Unlike the Stipulation filed in Case No. 2025-00045, here the proposal was *not* introduced as part of the October 20, 2025 Joint Stipulation. Instead, it was filed by the Companies after the close of business the last day before the hearing, without notice to Sierra Club. And while it included a purported bill impact analysis, the timing of the Companies’ filing effectively shielded that evidence from either pre-hearing discovery or review by intervenors’ expert witnesses. Nor did it give the Commissioners and intervenors reasonable time to review the motion, testimony, and technical exhibits, and adequately prepare cross examination.¹² Moreover, even this scant level of record support is undermined by the Companies’ refusal to substantiate its own initial assessment. In their Joint Supplemental Testimony, Company Witnesses Robert Conroy and Christopher Garrett called the bill impact analysis “a general illustration” that is “subject to change” and “should be viewed as illustrative

¹¹ *Id.*

¹² While the Commission allowed the parties a four-hour break at the close of the public comment portion of the hearing before beginning cross examination, the Companies offered no justification for the prejudice its Friday-night filing imposed on the Commission and other parties to the case. Moreover, the Companies offered no precedent for the notion that a handful of hours is sufficient to review and understand highly technical financial analysis in advance of cross examination.

and not predictive of final outcomes.”¹³ On cross examination, Mr. Garrett deferred questions on this topic to Company Witness Lonnie Bellar,¹⁴ who could not identify how much bills would be expected to differ from those in the “illustrative” projections filed on the Friday evening before the hearing.¹⁵ In response to Post Hearing Requests for Information LG&E stated that information was “not available.”¹⁶

The Company’s problem is of their own making. They assumed that the Mill Creek 2 Adjustment Clause would be approved in Case No. 2025-00045. When it wasn’t, the Companies scrambled to assemble evidence and filed it in this docket three days later. The Companies thus put forward a new proposal in this docket at the last minute, ensuring the only opportunity the Commission had to hear from witnesses who could explain the proposal would occur less than one business day after the filing, and even those witnesses were unprepared to answer basic questions about how it would impact customers. Sierra Club had no opportunity to hire its own expert to scrutinize the proposal and file testimony. On this record, the Commission should find, as it did in Case No. 2025-00045, that it “did not have an opportunity to thoroughly investigate”

¹³ 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. 2025-00114, Joint Supplemental Testimony of Robert M. Conroy, Vice President, State Regulation and Rates and Christopher M. Garrett, Vice President, Financial Strategy and Chief Risk Officer on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company at 5-6 (Oct. 31, 2025) (hereafter, “Joint Stipulation Testimony”).

¹⁴ Hearing Video, 4:53:50 to 4:54:55 (Nov. 4, 2025) (Garrett cross). Available at <https://www.youtube.com/watch?v=T9cty18Z6Is>.

¹⁵ Hearing Video, 7:04:00 to 7:05:15 (Nov. 4, 2025) (Bellar cross). Available at <https://www.youtube.com/watch?v=T9cty18Z6Is>.

¹⁶ 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. 2025-00114, LG&E Response to Sierra Club 3-2(b) (Nov. 25, 2025). Because Mill Creek is wholly owned by LG&E, questions related to Mill Creek were substantively answered by LG&E but not KU.

the Mill Creek 2 Adjustment Clause and that the Companies “failed to provide substantial evidence” as required.¹⁷

IV. The Companies’ Choice to Introduce the Mill Creek 2 Adjustment Clause Mechanism the Night Before the Hearing Improperly Shielded a Controversial Decision from Public Scrutiny.

The Companies’ proposed Mill Creek 2 Adjustment Clause, if approved, would provide a non-public process for LG&E to recover costs associated with a highly controversial decision to keep an aging coal-fired unit open longer than planned, and would do so without LG&E ever formally announcing that decision to the public. As the Joint Supplemental Testimony introducing the concept in this case explains, “[n]either LG&E’s current rates nor the rates proposed in this rate case includes the stay-open costs associated with extending Mill Creek 2’s life,”¹⁸ because “[a]t the time LG&E filed its rate case in May 2025, it did not plan to continue to operate Mill Creek 2.”¹⁹ As confirmed in live testimony during the hearing in this case, the Companies made the decision to keep Mill Creek 2 open beyond 2027 in July 2025 when they submitted the proposed Stipulation in Case No. 2025-00045.²⁰ Even though portions of that Stipulation related to Mill Creek 2 were rejected by the Commission, the testimony of the Companies’ Witness Bellar confirmed at the hearing that the Companies nonetheless intend to keep Mill Creek 2 open longer than previously announced.

¹⁷ Electronic Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates, Case No. 2025-00045, Order at 153 (Oct. 28, 2025).

¹⁸ Joint Stipulation Testimony at 12.

¹⁹ *Id.* at 15.

²⁰ Hearing Video, 7:07:30 to 7:08:00 (Nov. 4, 2025) (Bellar cross). Available at <https://www.youtube.com/watch?v=T9cty18Z6Is>.

Having sat on their hands for three months, the Companies now plead that there is a “timing urgency” to their request because LG&E will continue to incur “stay open” costs for Mill Creek 2 in the remainder of 2025, 2026, and future years.²¹ But any “urgency” LG&E feels at this point is entirely self-inflicted. And the Companies point to no harm associated with incurring costs and seeking recovery in a future case. In the three months between the July 2025 decision to keep Mill Creek 2 open and the November 2025 hearing in this matter, the Companies chose not to disclose in this docket that the affirmative choice had been made to keep Mill Creek 2 open longer than planned, and LG&E did not seek approval here of the Mill Creek 2 Adjustment Clause until the last possible moment. It was not part of the Companies’ multiple responses to information requests filed in August 2025; or raised in the technical conference on August 19; it wasn’t included in the Companies’ Rebuttal Testimony on September 30; and it wasn’t included in the Stipulation filed on October 20. Whether the Companies merely incorrectly assumed the Commission would approve that provision in Case No. 2025-00045 or cynically decided not to give a controversial issue more public airtime than necessary, the result is the same. The public has been kept in the dark about a key resource decision that has significant climate and public health impacts for LG&E’s customers. And that flaw is compounded by the fact that, as Company witness Bellar admitted on cross examination, the public would have no right to participate in the Commission’s review of any “stay open” costs under the proposed Mill Creek 2 Adjustment Clause mechanism, further shielding that Company decision from public scrutiny.²²

²¹ Joint Stipulation Testimony at 15.

²² Hearing Video, 7:09:30 to 7:11:10 (Nov. 4, 2025) (Bellar cross). Available at <https://www.youtube.com/watch?v=T9cty18Z6Is>.

The Companies held four public meetings in this case—on September 8, 2025, October 14, October 16, and October 30²³—and LG&E didn’t tell the public it intended to keep Mill Creek 2 open beyond 2027 or would seek approval of the so-called Mill Creek 2 Adjustment Clause in this case at any of them.²⁴ But as Mr. Bellar confirmed in live testimony, that decision had been made in July 2025, and the Company began incurring “stay open” costs at that time.²⁵ On cross examination, Mr. Bellar hypothesized that customers might have learned of the decision to keep Mill Creek 2 open beyond 2027 from the Companies’ press releases.²⁶ But neither of the Companies’ press releases in this case, dated May 15, 2025 and October 20, 2025, even mentioned Mill Creek 2, much less the Adjustment Clause.²⁷ And the Companies’ July 29, 2025 press release, issued in response to the proposed Stipulation in Case No. 2025-00045, includes a single sentence on the issue, noting that the proposed Stipulation entails the Companies “agreeing to request to extend the operation of Mill Creek 2” from 2027 to 2031.²⁸ The Companies’ silence, pursuing approval for controversial choices only through Stipulations

²³ 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. 2025-00114, Commission Order at 2 (July 31, 2025); *Id.*, Commission Order at 2 (Oct. 8, 2025).

²⁴ Hearing Video, 7:08:00 to 7:08:40 (Nov. 4, 2025) (Bellar cross). Available at <https://www.youtube.com/watch?v=T9cty18Z6Is>.

²⁵ Hearing Video, 7:07:30 to 7:08:00 (Nov. 4, 2025) (Bellar cross). Available at <https://www.youtube.com/watch?v=T9cty18Z6Is>.

²⁶ Hearing Video, 7:06:20 to 7:07:12 (Nov. 4, 2025) (Bellar cross). Available at <https://www.youtube.com/watch?v=T9cty18Z6Is>.

²⁷ 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. 2025-00114, LG&E Response to JI-4.3(a), attachments (Nov. 25, 2025).

²⁸ 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. 2025-00114, LG&E Response to JI-4.3(b), attachments (Nov. 25, 2025).

or last-minute testimony, notably avoided the rigorous public notice required for other aspects of rate cases. It also forced any member of the public interested in the Company’s plans to either (a) track Commission proceedings, read, and digest a 216-page Commission order, or (b) find and parse one sentence out of one LG&E press release on a proposed stipulation in a different case that was later rejected.

Moreover, the Company had—and still has—multiple procedural avenues available that would have provided the public and parties to this docket with meaningful notice of the Companies’ plans and adequate time to evaluate the Mill Creek 2 Adjustment Clause. One recent example offers an instructive contrast. In a certificate of public convenience and necessity docket in October 2025, the same month the Companies pursued their eleventh-hour approach, Kentucky Power sought leave to amend a procedural schedule to introduce supplemental testimony addressing new information.²⁹ In making the request, Kentucky Power acknowledged the need to “creat[e] a robust record to aid the Commission in its review,” and thus moved to “allow for additional discovery and supplemental testimony from the intervenors in response.”³⁰ The Commission granted the request, noting 807 KAR 5:001, sec. 4(5) allows the Commission to “allow a complaint, application, answer, or other paper to be amended or corrected or an omission supplied” and that the Commission may direct that the amendment relate back to the date of the original filing.³¹ The Commission’s revised schedule moved through those additional

²⁹ Electronic Application of Kentucky Power Company for Approval of (1) a Certificate of Public Convenience and Necessity to Make the Capital Investments Necessary to Continue Taking Capacity and Energy From the Mitchell Generating Station After December 31, 2028, (2) an Amended Environmental Compliance Plan, (3) Revised Environmental Surcharge Tariff Sheets, and (4) All Other Required Approvals and Relief, Case No. 2025-00175, Order at 1 (Oct. 17, 2025).

³⁰ *Id.* at 3.

³¹ *Id.* at 2.

steps efficiently, with Kentucky Power’s supplemental testimony filed on October 10, followed by additional discovery, intervenor testimony, and Kentucky Power rebuttal testimony, all before the hearing held on November 18, 2025.

Here, the Companies likewise could have sought leave to amend their initial filing pursuant to 807 KAR 5:001, sec. 4(5) in order to allow the Commission and other parties to evaluate the proposed adjustment mechanism for Mill Creek 2 “stay open” costs and submit testimony on that topic. The Companies had three months—more than double the amount of time needed by Kentucky Power—in which to file supplemental testimony on the Mill Creek 2 Adjustment Clause, and allow for additional discovery, and provide for intervenor testimony before a hearing. This would have allowed the Commission the opportunity to thoroughly evaluate the proposal and would have subjected the Companies’ assertions and initial bill analysis to pre-hearing discovery and, potentially, to expert intervenor testimony. As another option, the Commission’s Order in Case No. 2025-00045 specifically allowed the Companies to seek approval “in a separate proceeding, allowing the Commission an opportunity to thoroughly investigate the proposals.”³² There is nothing precluding LG&E from filing for approval of the mechanism now in a separate docket, or waiting until after the end of the two-year stay out period and including these costs in the Companies’ next rate case filing after January 1, 2028. Any of those options—amending the Application in this docket, filing a new docket now, or including these costs in the next rate case—would allow for a full record, adequate public notice, and a meaningful opportunity for the Commission and intervening parties to fully examine the

³² Electronic Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates, Case No. 2025-00045, Order at 154 (Oct. 28, 2025).

Companies' proposals and test the strength of the evidence presented. Unfortunately, the Companies' choices precluded those opportunities, and the Commission should deny the Companies' request.

V. Conclusion

By choosing not to introduce the Mill Creek 2 Adjustment Clause into this docket until the night before the start of the scheduled hearing, the Companies prevented the Commission, the parties, and the public from conducting the same "thorough investigation" that the Commission found lacking in Case No. 2025-00045. The Commission need not speculate as to the Companies' motives here—whether arrogance or gamesmanship—the timing of the Companies' last-minute filings prejudiced the intervening parties. The limited evidentiary record put forward by the Companies does not adequately support the preferred Mill Creek 2 Adjustment Clause, which would only further shield the Companies' choices with respect to an aging coal-fired plant from public scrutiny. If the Companies want to establish a process for the Commission to review and approve "stay open" costs associated with a Mill Creek 2 life extension, it has options that do not entail tacking the request onto the end of an unrelated case the night before hearing. For the reasons set out above, the Sierra Club respectfully asks the Commission to approve the proposed Joint Stipulation addressing rate adjustments for LG&E and KU. The Commission should further reject the Companies' late-filed Mill Creek 2 Adjustment Clause as untimely and unsupported.

Dated: December 2, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing copy of Sierra Club's Post Hearing Brief in this action is being electronically transmitted to the Commission on December 2, 2025, and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

/s/ Joe F. Childers
JOE F. CHILDERS