COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY POWER COMPANY FOR (1) A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING THE TRANSFER TO THE COMPANY OF AN UNDIVIDED FIFTY PERCENT INTEREST IN THE MITCHELL GENERATING STATION AND ASSOCIATED ASSETS; (2) APPROVAL OF THE ASSUMPTION BY KENTUCKY POWER COMPANY OF CERTAIN LIABILITIES IN CONNECTION WITH THE TRANSFER OF THE MITCHELL GENERATING STATION; (3) DECLARATORY RULINGS; (4) DEFERRAL OF COSTS INCURRED IN CONNECTION WITH THE COMPANY'S EFFORTS TO MEET FEDERAL CLEAN AIR ACT AND RELATED REQUIREMENTS; AND (5) ALL OTHER REQUIRED APPROVALS AND RELIEF	)	CASE NO. 2012-00578

ORDER

On December 19, 2012, Kentucky Power Company ("Kentucky Power") filed an application seeking, *inter alia*, a Certificate of Public Convenience and Necessity authorizing the transfer of an undivided 50 percent interest in the Mitchell Generating Station and related assets from an affiliate, Ohio Power Company ("Ohio Power"), ultimately to Kentucky Power. The proposed transfer will consist of a series of near-simultaneous transactions that are scheduled to take place on or about December 31, 2013, and are intended to be accomplished without incurring unintended tax consequences.

Under the corporate restructuring plan approved by the Public Utilities Commission of Ohio, Ohio Power will enter into a Corporate Separation Transaction whereby it will divest its generation assets, including the Mitchell Generating Station, to AEP Generation Resources Inc. ("AEP Generating Resources"). Immediately upon the closing of the Corporate Separation Transaction, a 50 percent undivided interest in the Mitchell Generating Station (including related assets and assumed liabilities) will be transferred in a near-simultaneous series of transactions to NEWCO Kentucky, which is a yet-to-be formed corporation to be organized under the laws of the State of Delaware for the limited purpose of effectuating the transfer of the subject assets and liabilities to Kentucky Power. In the final step, NEWCO Kentucky, a wholly owned subsidiary of AEP Generation Resources, will merge with Kentucky Power, with Kentucky Power being the surviving entity and owning a 50 percent undivided interest in the Mitchell Generating Station. The merger will take place in accordance with the terms and conditions of the Form of Agreement and Plan of Merger of Kentucky Power Company and NEWCO Kentucky.

As part of its application, Kentucky Power also requests that the Commission enter an order declaring that the merger between NEWCO Kentucky and Kentucky Power is not subject to the Commission's approval under KRS 278.020(5)[1] or KRS

[1] KRS 278.020(5) provides, in relevant part, as follows:

> No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock or otherwise, or abandon the same, without prior approval by the commission.

278.020(6).[2] In support of this request, Kentucky Power states that NEWCO Kentucky will be created and briefly exist at the time of the merger solely to effectuate the proposed transfer. Although during this brief period NEWCO Kentucky will own assets that could be used for the generation of electricity to the public, Kentucky Power nonetheless maintains that NEWCO Kentucky will not be a jurisdictional utility as defined under KRS 278.010(3)(a), because it does not intend to generate electricity to the public and it will own the assets only as a conduit to facilitate their transfer to Kentucky Power. Kentucky Power asserts that NEWCO Kentucky's corporate existence will cease upon its merger with Kentucky Power. As a result, Kentucky Power contends that the merger is not subject to the approval requirements under KRS 278.020(5), which is limited to the acquisition or transfer of ownership or control of a utility under the jurisdiction of the Commission.

With respect to the application of KRS 278.020(6), Kentucky Power maintains that NEWCO Kentucky will not be providing utility service in the Commonwealth, noting that NEWCO Kentucky will exist only a brief time and solely for the purpose of facilitating the proposed Mitchell Generating Station transfer. Thus, Kentucky Power asserts that the merger is not subject to the requirements of KRS 278.020(6), which is limited to the acquisition of control of a utility furnishing service in the Commonwealth. Kentucky Power further notes that NEWCO Kentucky will be under common control with Kentucky Power and, therefore, the merger is not subject to the approval requirements

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[2] KRS 278.020(6) provides, in relevant part, as follows:

> No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission.

under KRS 278.020(6) pursuant to the corporate reorganization exception provided in KRS 278.020(7)(b) for the acquisition of a utility by an acquirer that is already under common control with the utility.

Having reviewed the request and being otherwise sufficiently advised, the Commission finds that all aspects of the transaction whereby Kentucky Power seeks to acquire a 50 percent undivided interest in the Mitchell Generating Station will be subject to our review and jurisdiction under KRS 278.020(1), with the financing being reviewed under KRS 278.300. As part of that overall transaction, the merger of NEWCO Kentucky and Kentucky Power does not require Commission approval under either KRS 278.020(5) or KRS 278.020(6) for the reasons set forth below.

First, KRS 278.020(5) requires prior Commission approval of any acquisition or transfer of ownership, or control, of any utility under the jurisdiction of the Commission. The Commission's jurisdiction "extends to all utilities in this state."[3] In turn, KRS 278.010(3) defines a "utility" to include any person who owns or controls any facility used in connection with the generation, transmission or distribution of electricity to or for the public for compensation.[4] Although NEWCO Kentucky, as a result of the series of transactions relating to the transfer of the Mitchell Generating Station, would own interests in facilities that could be used to generate, transmit or distribute power to the public for compensation, its corporate existence is solely and briefly designed to facilitate the transfer of the Mitchell Generating Station from Ohio Power to Kentucky Power and that once the transfer is effectuated NEWCO Kentucky's corporate existence

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[3] KRS 278.040(2).

[4] KRS 278.010(3).

ceases. Given the unique circumstances posed herein, the Commission finds that the merger of NEWCO Kentucky and Kentucky Power would not trigger KRS 278.020(5).

Next, KRS 278.020(6) provides, in relevant part, as follows:

> No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission.

As applied to the proposed merger of NEWCO Kentucky into Kentucky Power, the critical question is whether the merger involves a utility, here, NEWCO Kentucky, that furnishes utility service in Kentucky. Based on the facts as provided in the application, the Commission finds that NEWCO Kentucky cannot be considered a utility furnishing electric service in Kentucky. Accordingly, the NEWCO Kentucky and Kentucky Power proposed merger does not implicate KRS 278.020(6) requiring prior Commission approval.

IT IS THEREFORE ORDERED that prior Commission approval is not required pursuant to KRS 278.020(5) and KRS 278.020(6) for the merger of NEWCO Kentucky and Kentucky Power.

By the Commission

ENTERED
FEB 15 2013
KENTUCKY PUBLIC SERVICE COMMISSION

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