

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of:

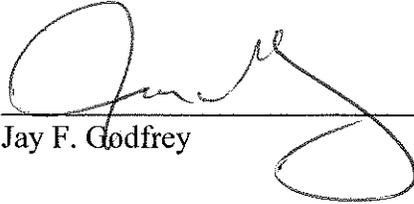
The Application Of Kentucky Power Company For:)
(1) The Approval Of The Terms And Conditions)
Of The Sixth Amendment To The Renewable)
Energy Purchase Agreement For Biomass Energy)
Resources Between The Company And)
ecoPower Generation-Hazard, LLC;)
(2) Authorization To Enter Into The Sixth)
Amendment to The Agreement; (3) The Grant Of)
Certain Declaratory Relief; And (4) The Grant Of)
All Other Required Approvals And Relief)

Case No. 2015-00190

DIRECT TESTIMONY OF
JAY F. GODFREY
ON BEHALF OF KENTUCKY POWER COMPANY

VERIFICATION

The undersigned, Jay F. Godfrey, being duly sworn, deposes and says he is the Managing Director for Energy Marketing, Renewable Energy and Joint Ventures, for American Electric Power and he has personal knowledge of the matters set forth in the forgoing testimony and the information contained therein is true and correct to the best of his information, knowledge and belief.



Jay F. Godfrey

STATE OF OHIO

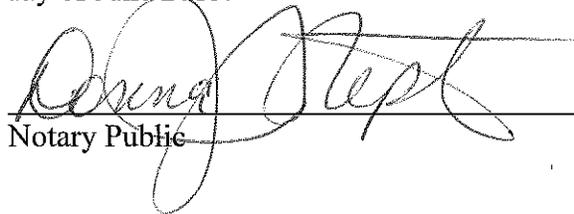
)

) Case No. 2015-00190

COUNTY OF FRANKLIN

)

Subscribed and sworn to before me, a Notary Public in and before said County and State, by Jay F. Godfrey, this the 16th day of June 2015.



Notary Public

My Commission Expires: 1/4/2019



Donna J. Stephens
Notary Public, State of Ohio
My Commission Expires 01-04-2019

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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	PURPOSE OF TESTIMONY.....	4
III.	DESCRIPTION OF THE ECOPOWER REPA AND CURRENT STATUS OF THE AGREEMENT.....	4
IV.	SIXTH AMENDMENT TO THE ECOPOWER REPA.....	9

**DIRECT TESTIMONY OF
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1 **I. INTRODUCTION**

2 **Q. WOULD YOU PLEASE STATE YOUR NAME AND BUSINESS?**

3 A. My name is Jay Godfrey, and my business address is 1 Riverside Plaza,
4 Columbus Ohio, 43215.

5 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

6 A. I am employed by American Electric Power Service Corporation (“AEPSC”), a
7 wholly owned subsidiary of American Electric Power Company (“AEP”).
8 AEPSC supplies engineering, financing, accounting, commercial and similar
9 planning and advisory services to AEP’s electric operating companies, including
10 Kentucky Power Company (“Kentucky Power” or the “Company”). My current
11 position is Managing Director – Energy Marketing, Renewable Energy and Joint
12 Ventures.

13 **Q. WOULD YOU BRIEFLY DESCRIBE YOUR EDUCATIONAL AND**
14 **PROFESSIONAL BACKGROUND?**

15 A. I earned a Bachelor’s degree in Business Administration from California State
16 University – Chico in 1985 majoring in Finance and minoring in Economics and
17 earned a Master’s degree in Business Administration with an emphasis in Finance
18 from National University in 1990. In 2006 I completed the AEP Strategic
19 Leadership Program at The Ohio State University Fisher School of Business.

1 I have over twenty years of commercial and financial management
2 experience in the energy industry, including twenty years in the renewable energy
3 sector. Prior to joining AEPSC's wind energy group in 2002, I worked for seven
4 years (1995-2002) in various project finance and wind project development roles
5 in Europe and the U.S. for Enron Wind Corporation ("EWC"), since acquired by
6 General Electric ("GE"), which operates today as GE Energy. Other business
7 management experience includes serving as the Financial Controller for two
8 publicly held companies in non-energy related fields, and holding other
9 management positions.

10 Since joining AEPSC in 2002, I have been involved in the asset
11 management and project financing of AEP's two owned IPP wind projects. More
12 recently I have engaged in development efforts for potential green-field renewable
13 energy projects, and the procurement and management of AEP's wind, biomass
14 and solar renewable energy purchase agreements which now total over 2,500
15 MW. My experience includes negotiating wind, biomass and solar energy power
16 purchase and sales agreements, wind system operations and maintenance
17 agreements, real estate agreements related to wind and solar projects, equipment
18 purchase agreements, and project loan documents. I also have experience
19 evaluating the impact of various financial parameters on wind and solar project
20 investment returns. Beginning in 2014, I also assumed responsibility for the
21 wholesale energy marketing efforts on behalf of the Company's affiliates in PJM
22 (Indiana Michigan Power, Kentucky Power, Appalachian Power and Ohio
23 Power). I serve on the Board of Directors of the American Wind Energy

1 Association (“AWEA”), the Washington D.C. based trade association for the
2 wind industry and also currently serve on the Board of Directors of the Charitable
3 Pharmacy of Central Ohio. I also have previously served on the Renewable
4 Energy Council of the Electric Power Research Institute (“EPRI”), an
5 independent, non-profit company performing research, development and
6 demonstration in the electricity sector for the benefit of the public.

7 **Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES?**

8 A. As Managing Director – Energy Marketing, Renewable Energy and Joint
9 Ventures, I am responsible for managing AEP’s portfolio of Renewable Energy
10 Purchase Agreements (“REPAs”). I direct the team that structures and issues the
11 renewable energy Requests for Proposals (“RFPs”) and model REPAs, reviews
12 and responds to questions posed by potential bidders, and evaluates proposals. I
13 also lead the team that negotiates and finalizes the REPAs with the winning
14 bidder(s). In addition, I am responsible for the development or acquisition of
15 potential new wind and solar project development opportunities within AEP’s
16 service territory and other related technologies. I also am responsible for our
17 wholesale energy marketing activities in PJM on behalf of AEP’s regulated
18 affiliates, including Kentucky Power, which includes mainly cooperatives,
19 municipal agencies and other non-profit entities such as universities.

20 **Q. HAVE YOU PROVIDED TESTIMONY IN ANY OTHER**
21 **PROCEEDINGS?**

22 A. Yes.

1 **Q. PLEASE DESCRIBE AND IDENTIFY SOME OF THOSE**
2 **PROCEEDINGS.**

3 A. I have presented testimony or testified on behalf of AEP affiliates in the states of
4 Arkansas, Indiana, Kentucky, Michigan, Oklahoma, Ohio, Texas and Virginia. In
5 Kentucky, I filed testimony in Case Number 2009-00545 (related to the requested
6 approval of a Wind REPA), and more recently in Case Number 2013-00144, for
7 the approval of the terms and conditions of the Renewable Energy Purchase
8 Agreement For Biomass Energy Resources between the Company and ecoPower
9 Generation-Hazard LLC (“ecoPower REPA”).

10 **II. PURPOSE OF TESTIMONY**

11 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
12 **PROCEEDING?**

13 A. The purpose of my testimony is to outline the current status of the ecoPower
14 REPA, describe the conditions giving rise to the Sixth Amendment to the
15 ecoPower REPA, and discuss the contents of the Sixth Amendment, with
16 attention to how the changes to the REPA, as amended, would be applied if a
17 Kentucky Power Cost Event were to be experienced during the term of the
18 ecoPower REPA.

19 **III. DESCRIPTION OF THE ECOPOWER REPA AND**
20 **CURRENT STATUS OF THE AGREEMENT**

21 **Q. PLEASE DESCRIBE THE ECOPOWER REPA.**

22 A. Subject to multiple conditions precedent set forth in the ecoPower REPA, as
23 amended, the Company has entered into a 20 year REPA with ecoPower
24 Generation-Hazard LLC (“ecoPower”) under which the Company will purchase

1 the output from a proposed nominal 58.5 MW (net) biomass power generation
2 facility (“Project” or “Facility”) to be developed, constructed, owned, and
3 operated by ecoPower in Perry County, Kentucky.

4 **Q. PLEASE HIGHLIGHT SOME OF THE MAJOR CONDITIONS**
5 **PRECEDENT CONTAINED IN THE ECOPOWER REPA WHEN IT WAS**
6 **FIRST ENTERED INTO IN MARCH 2013.**

7 A. The ecoPower REPA contains a number of conditions precedent to the
8 effectiveness of the REPA that must be met which include but are not limited to:

- 9 1. Receipt of a “Commission Approval Order” as defined in the ecoPower
10 REPA to include final, non-appealable orders approving both the
11 ecoPower REPA and the Mitchell Transfer by a date certain;
- 12 2. Establishment and maintenance of a Security Fund by the Sellers at agreed
13 amounts by a date certain; and
- 14 3. On an ongoing basis after the initial approval orders are obtained,
15 Kentucky Power’s full recovery of all costs associated with this ecoPower
16 REPA.

17 **Q. WHAT IS THE CONSEQUENCE OF NOT MEETING ANY OF THESE**
18 **CONDITIONS?**

19 A. These items are conditions precedent to any of the Company’s obligations under
20 the ecoPower REPA, and the failure to satisfy any of these conditions precedent,
21 either through the initial Commission approval orders or on an ongoing basis,
22 provides the Company with the ability to terminate the ecoPower REPA without
23 recourse or liability to the Company.

24 **Q. HOW IS COMMISSION APPROVAL ORDER DEFINED IN THE**
25 **ECOPOWER REPA?**

26 A. The term Commission Approval Order is defined in the ecoPower REPA to mean:

1 a final, non-appealable order from the Commission, among other things,
2 (i) approving the terms and conditions of this REPA as amended, without
3 modification, (ii) declaring that concurrent recovery of costs associated
4 with this REPA through Kentucky retail rates via a monthly rider or
5 monthly surcharge to Purchasers base rates is appropriate, (iii) approving
6 and authorizing Purchaser to enter into this REPA, and (iv) granting
7 without modification or condition all approvals required to accomplish the
8 Mitchell Transaction, which order is satisfactory to Purchaser in all
9 respects in its sole discretion.

10 **Q. THE TERM “COMMISSION APPROVAL ORDER” REQUIRES FOUR**
11 **SEPARATE APPROVALS FOR THIS ONE CONDITION PRECEDENT**
12 **TO BE SATISFIED. RECOGNIZING THAT THERE ARE OTHER**
13 **CONDITIONS PRECEDENT, WHAT IS THE CURRENT STATUS OF**
14 **THIS ONE CONDITION PRECEDENT?**

15 A. Under the ecoPower REPA, the Company must receive final, non-appealable
16 orders from the Commission, acceptable to the Company, that contain four
17 separate items referenced above as items (i) thru (iv). In attempting to secure a
18 Commission Approval Order, the Company sought and made application for
19 items (i) thru (iv) in two separate cases before the Commission.

20 In Case No. 2013-00144, the Company sought (1) approval of the terms
21 and conditions of the ecoPower REPA, (2) a declaration that the concurrent
22 recovery of the associated costs with the ecoPower REPA through Tariff B.E.R.
23 was appropriate, and (3) authority to enter into the ecoPower REPA. The
24 Commission issued an order in Case No. 2013-00144 on October 10, 2013
25 (“REPA Approval Order”). The REPA Approval Order is currently subject to an
26 appeal by Kentucky Industrial Utility Customers, Inc. (“KIUC”) to the Kentucky
27 Court of Appeals.

1 In a second case, the Company sought Commission approval to acquire an
2 undivided fifty percent interest in the Mitchell generating station in Case No.
3 2012-00578. This is the fourth approval referenced in the definition of
4 Commission Approval Order in the ecoPower REPA. The Commission issued an
5 order granting Kentucky Power the requested approval on October 7, 2013
6 (“Mitchell Transfer Order”). The Mitchell Transfer Order is also currently on
7 appeal by the Attorney General to the Kentucky Court of Appeals.

8 **Q. HAS A COMMISSION APPROVAL ORDER, AS DEFINED IN THE**
9 **ECOPOWER REPA, BEEN ISSUED?**

10 A. No. First, neither the REPA Approval Order nor the Mitchell Transfer Order are
11 final and non-appealable. Until such time as both of these orders are final and
12 non-appealable and such orders are satisfactory to the Kentucky Power, the
13 Commission Approval Order condition precedent cannot be met. Second, the
14 REPA Approval Order contains conditions unacceptable to Kentucky Power.
15 Because the definition of Commission Approval Order requires these approvals to
16 be (1) final and non-appealable and (2) satisfactory to Kentucky Power in all
17 respects, there can be no Commission Approval Order until all appeals have been
18 resolved and the unacceptable conditions have been addressed.

19 **Q. WHAT CONDITIONS IN THE REPA APPROVAL ORDER WERE**
20 **CONSIDERED UNACCEPTABLE TO THE COMPANY?**

21 A. Ordering Paragraph 7 of the REPA Approval Order states:

22 In the event Kentucky Power’s credit rating is negatively impacted
23 by the REPA, causing Kentucky Power to increase its common
24 equity position, Kentucky Power shall hold its ratepayers harmless
25 should such an event occur.

1 This condition has the effect of creating financial risk related to the ecoPower
2 REPA for the Company.

3 **Q. DOES THE INCLUSION OF ORDERING PARAGRAPH 7 IN THE REPA**
4 **APPROVAL ORDER PERMIT THE COMPANY TO TERMINATE THE**
5 **REPA?**

6 A. Yes. From the Company's first discussions with the ecoPower team related to
7 this Project, Kentucky Power made clear that, since it would not make any profit
8 off the agreement, the Company would not take on any risk in connection with the
9 agreement. The Company specifically included in the REPA several conditions
10 and rights that sought to mitigate the risk to the Company. These rights give the
11 Company the ability to terminate the REPA for failure to satisfy specifically
12 negotiated Purchaser Conditions Precedent, including those in Section 6.1 of the
13 ecoPower REPA. The addition of the risk created by Ordering Paragraph 7 is
14 unacceptable to the Company and, without a solution that meets with the approval
15 of the Company, would preclude the condition precedent of a Commission
16 Approval Order from being capable of being met.

17 **Q. DID THE COMPANY FIND A SOLUTION TO THE RISKS IMPOSED BY**
18 **ORDERING PARAGRAPH 7 IN THE REPA APPROVAL ORDER?**

19 A Yes. After much negotiation and several extensions of key milestone dates
20 (Amendments 2 through 5) the Company and ecoPower came to agreement on
21 additional terms, which is documented in the Sixth Amendment to the ecoPower
22 REPA. Under the Sixth Amendment, the financial risks imposed on the Company

1 through Ordering Paragraph 7 were fully allocated to ecoPower and its future
2 project partners.

3 **IV. SIXTH AMENDMENT TO THE ECOPOWER REPA**

4 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF THE SIXTH**
5 **AMENDMENT TO THE ECOPOWER REPA.**

6 A. The Sixth Amendment to the ecoPower REPA includes changes to key milestone
7 dates relating to the ability of the Company to terminate the agreement without
8 financial penalty, new defined terms, changes to the Company's conditions
9 precedent in Section 6.1, changes to the Security Fund provisions, and
10 corresponding changes to the forms of documents associated with the Security
11 Fund. As discussed in the testimony of Company Witness Wohnhas, the Sixth
12 Amendment does not change the formula for the contract rate that the Company
13 will be charged for power under the ecoPower REPA.

14 In order to transfer the risks associated with Ordering Paragraph 7 to
15 ecoPower, the Sixth Amendment to the ecoPower REPA also incorporates new
16 Sections 6.1(G) thru (I) in Purchaser's Conditions Precedent. These sections
17 provide the Company with the ability to make withdrawals from an expanded
18 Security Fund, from time to time, in amounts to fully mitigate all financial
19 impacts to the Company with respect to a Cost Event.

20 **Q. PLEASE EXPLAIN HOW A "COST EVENT" IS DEFINED UNDER THE**
21 **SIXTH AMENDMENT?**

22 A. A Cost Event means a situation where either (1) the Company could or may be
23 required to increase its common equity position to mitigate the negative impact of

1 the ecoPower REPA on Company's Credit Rating; (2) the Commission requires
2 the Company to increase its common equity position due to the ecoPower REPA
3 (either in whole or in part); or (3) the Company is required to indemnify any third
4 party, including Company's customers, the Seller or the Commission for costs
5 incurred as a result of this ecoPower REPA, including the denial of any cost
6 recovery, in whole or in part, due to any increase in Purchaser's common equity
7 or effectively the imposition of a reduced return on such increased common
8 equity.

9 **Q. PLEASE SUMMARIZE THE REMEDIES THE COMPANY HAS UNDER**
10 **THE SIXTH AMENDMENT IN THE EVENT A COST EVENT OCCURS.**

11 A. In the event a Cost Event occurs, new Section 6.1(G) gives the Company the right
12 to immediately draw from the Security Fund an amount or amounts necessary to
13 mitigate fully the impacts of the Cost Event on Kentucky Power. Section 6.1(G)
14 further gives Kentucky Power the right to terminate the ecoPower REPA without
15 financial penalty if ecoPower fails to fully restore and replenish the Security Fund
16 within 10 business days of the Company's draw or if the draw is not promptly
17 honored. Section 6.1(H) also provides the Company with the right to terminate
18 the ecoPower REPA without financial penalty in the event that ecoPower fails to
19 comply with its Security Fund obligations. Importantly, Section 6.1(I) makes
20 clear that each of the Purchaser's conditions precedent are separate and
21 independent, and that no one specific Purchaser condition precedent is to limit or
22 otherwise impair or restrict any of the other Purchaser conditions precedent or the
23 enforcement of any termination or indemnity provisions.

1 **Q. HOW HAS THE SIXTH AMENDMENT CHANGED THE SECURITY**
2 **FUND PROVISIONS OF THE ECOPOWER REPA?**

3 A. First and foremost, the Sixth Amendment increased the amount of the Security
4 Fund posted by ecoPower with Kentucky Power from \$10 million to \$15 million
5 dollars. Second, corresponding changes relating to the expanded use of the
6 Security Fund to mitigate the impact of a Cost Event were made in Section 11 of
7 the ecoPower REPA. Finally, several exhibits related to the Security Fund,
8 including the Form of Guaranty (Exhibit M) and the Form of Consent and
9 Agreement (Exhibit N) were amended to incorporate revisions made to Section
10 6.1 (Purchaser's Conditions Precedent) and Section 11.1 (Security Fund.)

11 **Q. DO THE AMENDMENTS MAKE ANY ADDITIONAL CHANGES TO**
12 **THE EXISTING REPA?**

13 A. While the majority of the changes relate to the financial risks imposed by
14 Ordering Paragraph 7 of the REPA Approval Order, the Sixth Amendment to the
15 ecoPower REPA amended the dates by which a Commission Approval Order
16 must be received to account for the on-going appeals of the REPA Approval
17 Order by KIUC and the Mitchell Transfer Order by the Attorney General.

18 **Q. IS COMMISSION APPROVAL OF THE SIXTH AMENDMENT ALSO**
19 **REQUIRED?**

20 A. Yes. Under the Sixth Amendment, the receipt of a Second Commission Approval
21 Order is also a condition precedent for Kentucky Power's obligations under the
22 ecoPower REPA. Second Commission Approval Order is defined as follows:

23 [A] final, non-appealable order from the Commission, among other things,
24 (i) approving the terms and conditions of the Amendments to this REPA,

1 without modification, (ii) declaring and affirming that none of the
2 amendments to this REPA have altered or changed the validity of the
3 Commission's October 10, 2013 Order in Case No. 2013-00144 which
4 found that concurrent recovery of costs associated with the REPA through
5 Kentucky retail rates via a monthly rider or monthly surcharge to
6 Purchaser's base rates is appropriate and (iii) approving and authorizing
7 Purchaser to enter into the Amendments to this REPA, which order is
8 satisfactory to Purchasers in all respects in its sole discretion, and (iv)
9 Purchaser determines that there is a Commission Approval Order.

10 The application in this case seeks an order encompassing items (i) through (iii) in
11 the definition of Second Commission Approval Order.

12 **Q. WOULD THE COMMISSION'S APPROVAL OF THE SIXTH**
13 **AMENDMENT MAKE THE REPA APPROVAL ORDER A**
14 **COMMISSION APPROVAL ORDER?**

15 A. Not entirely. While the Sixth Amendment to the ecoPower REPA transfers the
16 unacceptable financial risk associated with Ordering Paragraph 7 from the
17 Company to ecoPower, the REPA Approval Order and the Mitchell Transfer
18 Order both remain on appeal. Until such time as the REPA Approval Order and
19 the Mitchell Transfer Order are final and non-appealable, the Commission
20 Approval Order condition precedent is not met.

21 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

22 A. Yes.