COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY POWER COMPANY FOR APPROVAL OF AFFILIATE AGREEMENTS RELATED TO THE MITCHELL GENERATING STATION	))))	CASE NO. 2021-00421

ORDER

On November 19, 2021, Kentucky Power Company (Kentucky Power) filed an application requesting Commission approval of an ownership agreement (Ownership Agreement), and operations and maintenance agreement (O&M Agreement) (jointly, Mitchell Agreements) between Kentucky Power and its affiliate, Wheeling Power Company (Wheeling Power), to replace an existing operating agreement (Operating Agreement) for the Mitchell Generating Station (Mitchell). The Mitchell Agreements transfer Kentucky Power's duties as the operator of Mitchell to Wheeling Power and establish terms for Wheeling Power's future buyout of Kentucky Power's interest in Mitchell. Kentucky Power requested approval of the Mitchell Agreements by February 17, 2022, but was advised that the Commission could not complete a robust investigation of the issues presented and enter an Order by that date.

The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General) and Kentucky Industrial Utility Customers, Inc. (KIUC) (jointly, Attorney General/KIUC) are intervenors in this matter and jointly sponsored witness testimony and data requests. The parties filed written testimony and responded to data requests. A formal hearing was held on March 1, 2022. An informal conference was held on March 9, 2022, to discuss revisions to the Ownership Agreement proposed by Kentucky Power. On March 15, 2022, Kentucky Power filed an amended application that included a revised Ownership Agreement. A second formal hearing was held on March 30, 2022. Kentucky Power responded to post-hearing data requests. On April 14, 2022, Kentucky Power and Attorney General/KIUC filed their respective post-hearing briefs. On April 21, 2022, Kentucky Power and Attorney General/KIUC filed their respective response briefs. This matter now stands submitted for a decision.

LEGAL STANDARD

Kentucky Power stated that it filed its request to approve the Mitchell Agreements in accordance with the Commissions October 8, 2021 and October 28, 2021 Orders in Case No. 2021-00370.[1] In the October 8, 2021 Order, the Commission stated that Kentucky Power should "promptly seek modifications" to the existing Mitchell Operating Agreement should Wheeling Power begin construction of a project to comply with the federal effluent limitations guidelines (ELG). This is because in Case No. 2021-00004,[2] the Commission denied Kentucky Power's request to construct the ELG compliance project at Mitchell, and thus Kentucky Power was not authorized to recover any funds expended to construct the ELG compliance project.

In the October 28, 2021 Order, the Commission took administrative notice that Kentucky Power's parent, American Electric Power Company, Inc. (AEP), announced on

[1] Case No. 2021-00370, *Electronic Investigation of the Service, Rates and Facilities of Kentucky Power Company* (Ky. PSC Oct. 8, 2021), Order (October 8, 2021 Order); Case No. 2021-00370, Order (Ky. PSC Oct. 28, 2021) (October 28, 2021 Order).

[2] Case No. 2021-00004, *Electronic Application of Kentucky Power Company for Approval of a Certificate of Public Convenience and Necessity for Environmental Project Construction at the Mitchell Generating Station, an Amended Environmental Compliance Plan, and Revised Environmental Surcharge Tariff Sheets* (Ky. PSC July 15, 2021), Order (July 15, 2021 Order).

October 26, 2021, that it entered into an agreement to sell Kentucky Power to Liberty Utilities Co. (Liberty). Because of the Commission's statutory authority to ensure that Kentucky Power continues to provide safe, adequate, and reliable service, the Commission found that Kentucky Power should request Commission approval prior to any change to the Mitchell Operating Agreement.

KRS 278.2207, which governs transactions between a utility and an affiliate such as the potential sale of Kentucky Power's interest in Mitchell to Wheeling Power, requires that services and products provided to an affiliate by the utility be priced at the greater of net book value or market value, or, if applicable, priced in compliance with U.S. Department of Agriculture, Securities and Exchange Commission, or Federal Energy Regulatory Commission (FERC) approved cost allocation methodology.

BACKGROUND

Kentucky Power and Wheeling Power, both wholly owned subsidiaries of AEP, each own an undivided 50 percent interest in Mitchell, which is located in Moundsville, West Virginia. Kentucky Power's interest in Mitchell is subject to the jurisdiction of this Commission; Wheeling Power's interest in Mitchell is subject to the jurisdiction of the West Virginia Public Service Commission (WVPSC).[3]

The existing Mitchell Operating Agreement was effective on December 31, 2014, and governs the operation, maintenance, and joint ownership rights and obligations of Kentucky Power and Wheeling Power. Under the existing agreement, Kentucky Power is the Mitchell operator and most permits are held in Kentucky Power's name. Each utility

[3] Wheeling Power filed an application with the WVPSC for approval of the same Mitchell Agreements that are the subject of this proceeding. That proceeding, WVPSC Case No. 21-0810-E, is pending as of the date of this Order.

is entitled to an equal share of the Mitchell capacity and energy; each are responsible for all O&M costs, which are apportioned based on each utility's proportionate share of Mitchell dispatch; and each are responsible for capital improvements, apportioned on their percentage of ownership.

Kentucky Power asserted that the existing Mitchell Operating Agreement needed to be revised due to the Commission's October 8, 2021 and October 28, 2021 Orders in Case No. 2021-00370, and due to conflicting decisions by this Commission and WVPSC regarding projects to comply with coal combustion residuals (CCR) and ELG environmental rules. In Case No. 2021-00004, the Commission approved Kentucky Power's request for a Certificate of Public Convenience and Necessity (CPCN) for CCR facilities, and denied a CPCN for ELG facilities, prohibiting the recovery of any of the proposed ELG-related costs from Kentucky Power ratepayers.[4] The WVPSC approved CPCNs for both projects. Under revised ELG rules, Mitchell has to be compliant with ELG rules or retire by December 31, 2028. Kentucky Power asserted that Wheeling Power expected to continue operating Mitchell through 2040, which is the retirement date based upon Mitchell's service life.[5] Kentucky Power claimed that the Mitchell Agreements were necessary to designate Wheeling Power as operator and to transfer permits into Wheeling

[4] Case No. 2021-00004, (Ky. PSC July 15, 2021). The Commission found that Kentucky Power failed to meet its burden of proof to establish that the ELG compliance project was the most reasonable, least cost option, or that it was reasonable and cost-effective. Among other things, the Commission concluded that Kentucky Power's valuation of alternatives to the proposed ELG project overstated costs, and thus skewed the results to artificially depict the ELG project as the least cost alternative to address a capacity shortfall if Mitchell were to be retired in December 2028.

[5] Hearing Video Transcript (HVT) of the March 1, 2022 Hearing at 2:21:40.

Power's name to start construction on the ELG compliance project while complying with the Commission's Order in Case No. 2021-00004.[6]

Kentucky Power also asserted that the Commission required Kentucky Power and Wheeling Power to accelerate the approval of revisions to the Mitchell Operating Agreement in the October 8, 2021 and October 28, 2021 Orders in Case No. 2021-00370.

MITCHELL AGREEMENTS

The existing Operating Agreement includes provisions for operator responsibilities; apportionment of capacity and energy; facility replacements, additions, and retirements; working capital; fuel investment; apportionment of station costs; governance by an operating committee; and a dispute resolution process. The new O&M Agreement includes provisions for operator responsibilities; parties' obligations and rights; budgets and reports; limitations on authority; compensation and payment; and termination of the agreement. The new Ownership Agreement includes provisions for ownership and operations; apportionment of capacity and energy; plant replacements, additions, and retirements; working capital; fuel investment; apportionment of station costs; governance through an operating committee; transfers and buyouts; and dispute resolution. The new O&M and Ownership Agreements contain cross references to each other.

As initially proposed in the Ownership Agreement, Wheeling Power would purchase Kentucky Power's ownership interest in Mitchell on or before December 31, 2028, unless an earlier retirement occurred. If negotiations for a purchase price were not successful, the Ownership Agreement included a backstop mechanism that the purchase price for Kentucky Power's interest would be fair market value, minus a capital

[6] Direct Testimony of D. Brett Mattison (Mattison Direct Testimony) (filed Nov. 19, 2021) at 8–9.

expenditure (CapEx) adjustment, less decommissioning costs plus a coal inventory adjustment. The fair market value would be determined by a group of three appraisers, with dispute resolution provisions addressing the appointment of appraisers and appraiser valuations.

Kentucky Power would share in capital expenditures with an in-service date through December 31, 2028, including CCR upgrades, but capital expenditures with an in-service date after December 31, 2028, would be allocated entirely to Wheeling Power. If a non-ELG capital expenditure has a depreciable life that extends beyond December 31, 2028, the Ownership Agreement included a formula for Kentucky Power to pay a portion of the costs between the reasonably anticipated in-service date and December 31, 2028. A technical expert would be engaged to determine which capital expenditures are ELG related.

Other provisions include establishing a capital and operating budget between the effective date of the Mitchell Agreements and December 31, 2028; the ownership interest and voting rights remain 50/50; and the Mitchell Operating Committee continues to consist of three members: one representative each for Kentucky Power and Wheeling Power with voting rights; and an AEPSC representative, who is a non-voting member.

Under the proposed Operating Agreement, Wheeling Power would take over from Kentucky Power as operator of Mitchell, managing day-to-day operations, including dispatch, environmental and NERC compliance. The Operating Agreement addresses operator responsibilities, and budgeting and reporting processes.

Responding to parties’ concerns regarding the fair market value buyout and decommissioning cost provisions, and to reduce the potential for inconsistent decisions between this Commission and WVPSC, Kentucky Power proposed, in rebuttal testimony and in its amended application, an alternative buyout proposal that removed the fair market value provision as the backstop mechanism if negotiations failed and replaced it with a unit swap.[7]

Under the alternate proposal, if Kentucky Power and Wheeling Power are unable to execute an agreement for Wheeling Power to purchase Kentucky Power's interest by December 21, 2024, then the two Mitchell generating units would be divided with Kentucky Power taking one unit and Wheeling Power taking the other. Kentucky Power asserted that each of the units has the same nominal generating capacity of 800 MW each and that the Operating Committee could determine a fair division of the interests.[8] Under a unit swap proposal, the unit ownership would have to be finalized by May 2025 to meet the PJM Interconnection, LLC (PJM) capacity planning cycle.[9]

Kentucky Power explained that establishing the December 31, 2024 date for mutually accepted sale terms would allow the parties to obtain necessary regulatory approvals for unit disposition no later than May 1, 2025, which would allow the parties to meet the PJM capacity market auction rules, and allow the transaction to be consummated by December 31, 2028.[10]

The unit swap mechanism would be required under the following conditions: (1) if Kentucky Power and Wheeling Power cannot execute a buyout agreement by December

[7] Rebuttal Testimony of Stephen Haynes (Haynes Rebuttal Testimony) (filed Feb. 9, 2022) at R31-36; Kentucky Power Post-Hearing Brief (filed Apr. 14, 2022) at 17–18.

[8] Haynes Rebuttal Testimony at R33.

[9] Haynes Rebuttal Testimony at R33-34.

[10] Haynes Rebuttal Testimony at R33; Stephan T. Haynes Supplemental Testimony (Haynes Supplemental Testimony) (filed March 15, 2022) at 6 and 8.

31, 2024; (2) if the requisite regulatory approvals have not be received by May 1, 2025; or (3) if the parties terminate the buyout agreement.[11] The unit swap would be consummated no later than December 31, 2028, after receipt of applicable regulatory approvals.[12] The unit swap terms would be negotiated by the Operating Committee and, if the Operating Committee cannot reach an agreement, then Article 12 dispute process applies.[13]

The Article 12 dispute resolution process includes that, if the Operating Committee does not reach agreement May 1, 2025, the parties will refer the dispute to binding arbitration administered by American Arbitration Association. The arbitration judgment is final and binding upon parties and not subject to appeal or review and may be entered in any court having jurisdiction. The Ownership Agreement provides that the Article 12 dispute resolution process is the sole and exclusive remedy for unit swap disputes. Kentucky Power asserted that, once the arbitration judgment is reached, that it would bring the decision to this Commission and other regulatory bodies for necessary regulatory approval.[14]

In briefing, Kentucky Power stated that, just as Wheeling Power had with the WVPSC, that Kentucky Power offered to remove all provisions governing the transfer of Kentucky Power's interest in Mitchell that are contained in Section 9.6 and related provisions, such as Article 12 unit swap dispute resolutions and definitions. Kentucky

[11] Haynes Supplemental Testimony at 9.

[12] Haynes Supplemental Testimony at 9.

[13] Haynes Supplemental Testimony at 11; Kentucky Power's Response to Commission Staff's First Request for Information (filed Dec. 22, 2021), Item 9e.

[14] Kentucky Power's Post-Hearing Brief (filed Apr. 14, 2022) at 39–41.

Power explained that it made this new offer based upon concerns raised by Attorney General/KIUC and by the Commission at the March 30, 2022 hearing. Kentucky Power further explained that it recognized that it could be reasonable "to wait until there are more facts in the future, when the usefulness of the plant beyond 2028 is better known, before defining the commercial structure for any future transaction."[15] Under the latest alternative, the Ownership Agreement could be approved without the buyout provision, which would allow Wheeling Power to become the plant operator and the CCR/ELG projects to be constructed within the prohibitions on ratepayer funding of the ELG project in accordance with the July 15, 2021 Order in Case No. 2021-00004.

Kentucky Power also proposed that the Commission could approve both the unit swap proposal and the removal of the buyout provision as dual options to increase the likelihood that this Commission and the WVPSC would enter Orders that found some common agreement.

In their initial post-hearing brief, Attorney General/KIUC argued that the Commission should reject the O&M Agreement and reauthorize the existing Operating Agreement with limited, necessary modifications, which would be sufficient for Wheeling Power to continue to operate Mitchell.[16] Attorney General/KIUC further argued that, if Liberty's acquisition of Kentucky Power were approved, then the Operating Agreement would have to be amended to reflect necessary changes because Kentucky Power would no longer be an AEP affiliate. Attorney General/KIUC asserted that the Commission should deny the Ownership Agreement because it is unnecessary, given that Mitchell can

[15] Kentucky Power's Post-Hearing Brief at 47.

[16] Attorney General/KIUC's Post-Hearing Brief (filed Apr. 14, 2022) at 3–5.

continue to be operated under a modified Operating Agreement.[17] Attorney General/KIUC further asserted that it is premature to approve a buyout structure of a future transaction that, if it occurred today, would be between affiliates, but if the acquisition is approved, would be between non-affiliates, because Kentucky statutory law treats transactions between affiliates differently that transactions between non-affiliates.[18] Finally, Attorney General/KIUC argued that the Ownership Agreement leaves too much power in the hands of the Operating Committee, encroaches on Commission jurisdiction, and lacks necessary details, such as decommissioning costs and tax consequences of the buyout provision.

In their response brief, Attorney General/KIUC rejected Kentucky Power's offer to withdraw the buyout provisions from the Ownership Agreement, arguing that removing the buyout provisions fails to cure the flaws in the Ownership Agreement. Attorney General/KIUC asserted that this Commission should base its decision on whether Kentucky Power met its burden of proof and not on the "hope" that WVPSC would approve the same Ownership Agreement terms that this Commission approves.[19]

DISCUSSION AND FINDINGS

As an initial matter, the Commission notes that amendments to the existing Mitchell Operating Agreement would have sufficed and, had Kentucky Power filed only an amended Operating Agreement, the Commission could have reached its decision on or

[17] Attorney General/KIUC's Post-Hearing Brief at 5.

[18] Attorney General/KIUC's Post-Hearing Brief at 5–6.

[19] Attorney General/KIUC's Response Brief (filed Apr. 21, 2022) at 5.

near the February 2022 date requested by Kentucky Power.[20] Kentucky Power asserted that the Commission required Kentucky Power and Wheeling Power to accelerate the approval of both the Operating and the Ownership Agreements in Case No. 2021-00370, October 8, 2021 and October 28, 2021 Orders.[21] This is a misreading of the Orders. First, there is no existing ownership agreement between Kentucky Power and Wheeling Power, only the existing Operating Agreement.[22] The October 8, 2021 Order stated that Kentucky Power and Wheeling Power should "promptly seek modifications" to the existing Operating Agreement if Wheeling moved forward with the ELG project. The October 28, 2021 Order required Kentucky Power to obtain this Commission's approval prior to any change to the existing Operating Agreement. Second, as discussed at a hearing in Case No. 2021-00370, amending the existing Operating Agreement to make Wheeling Power the Mitchell Station operator would have addressed most outstanding issues related to Wheeling Power constructing the ELG project.[23] This is especially so given the pending acquisition of Kentucky Power by Liberty.

In hearing testimony, AEP representatives stated that the agreements were needed to determine cost allocation, to designate Wheeling Power as Mitchell operator, and for disposition of Kentucky Power's undivided interest by December 2028.[24] Also in hearing testimony, AEP agreed that revisions to the existing Operating Agreement could

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[20] *See* HVT of the March 30, 2022 Hearing at 12:34:26.

[21] HVT of the March 1, 2022 Hearing at 10:17:33, 10:58:36, 11:01:53, and 12:01:41.

[22] HVT of the March 1, 2022 Hearing at 11:15:05. *Also see* Mattison Direct Testimony, at 4–5; and Kentucky Power's Response to the Attorney General/KIUC's First Request for Information (filed Dec. 22, 2021), Item 10.

[23] Case No. 2021-00370, HVT of the October 5, 2021 Hearing at 10:26:54.

[24] HVT of the March 1, 2022 Hearing at 12:01:38.

have addressed these issues, but that additional terms would have been needed.[25] The Commission concurs that changes to the existing Operating Agreement are needed regarding cost allocation and to designate Wheeling Power as operator. However, it is premature to address the disposition of Kentucky Power's undivided interest at this time. Rather than being necessary to comply with the Commission's orders, the Ownership Agreement is instead merely convenient for AEP to satisfy requirements it created as a result of its agreements related to the proposed Liberty Acquisition of Kentucky Power.

The Commission is concerned because this transaction was not the product of an arm's length agreement. Had the parties to the negotiation been Liberty, the entity who applied to purchase Kentucky Power, and Wheeling Power, the transaction might fairly be called an arm's length agreement because the transaction would have been between two unrelated and unaffiliated parties, acting independently and in their own self-interest. Here, however, the parties, Kentucky Power and Wheeling Power, are AEP affiliates, with overlapping management by Nicholas Akins, AEP and Kentucky Power CEO, and AEP EVP/COO Lisa Barton, who leads the activities of all AEP operating companies. Many of the terms regarding the future buyout are favorable to Wheeling Power at the expense of Kentucky Power and its ratepayers. Additionally, as has been noted in a separate proceeding, Kentucky Power's COO, who was actively involved in the negotiations of these documents, is not proposed to continue employment with Kentucky Power after the acquisition by Liberty, but rather, is expected to be reemployed by AEP.[26]

[25] HVT of the March 1, 2022 Hearing at 12:03:30.

[26] Case No. 2021-00481, *Electronic Joint Application of American Electric Power Company, Inc., Kentucky Power Company and Liberty Utilities Co. for Approval of the Transfer of Ownership and Control of Kentucky Power Company* (filed Jan. 4, 2022), Direct Testimony of David Swain at 10.

However, with Kentucky Power's offer to withdraw Section 9.6, which contains the buyout provisions, and to withdraw provisions related to the buyout provision, including the buyout provision dispute resolution in Article 12 and in definitions, the matter of the buyout provision is moot.

Based upon a review of the case record and being otherwise sufficiently advised, the Commission finds that the buyout provision contained in Article 9.6 of the revised Ownership Agreement, and related provisions, including the unit swap dispute resolution provisions in Article 12 and the buyout provision-related definitions, are not reasonable for the reasons discussed above that establishing the structure of a future sale of Kentucky Power's interest is premature in light of the pending acquisition of Kentucky Power by Liberty, because the buyout terms were not negotiated as an arm's length transaction, as they would be if they were negotiated between non-affiliates; because the terms for the future sale of Kentucky Power's interest were not required by the Commission in order to continue operating Mitchell; and because the buyout provision is based on assumptions regarding future circumstances that are likely to change closer to the December 31, 2028 date when Kentucky Power's interest in Mitchell must terminate in accordance with the July 15, 2021 Order in Case No. 2021-00004.

In light of Kentucky Power's offer to withdraw Article 9.6, and all other provisions that address the unit swap and buyout provisions, including but not limited to the unit swap dispute resolution provisions in Article 12 and the buyout provisions in the definitions, the Commission finds that the Ownership Agreement and the O&M Agreement are reasonable, subject to modifications explicitly addressing costs that will be incurred to operate post-2028 but would not be incurred if Mitchell retired in 2028,[27] removing all references to the buyout provisions and including language that the Mitchell Agreements, and all terms related to future events, are subject to the jurisdiction of this Commission. With these modifications, the Commission finds that the Ownership Agreement and O&M Agreement are reasonable and should be granted.

The Commission is not persuaded by Attorney General/KIUC's argument that the Ownership Agreement awards too much power to the Operating Committee given that the Operating Committee's powers in the existing Operating Agreement are essentially the same in the Ownership Agreement in regards to Committee makeup, voting powers, scope of authority, and dispute resolution. Further, the Commission is not persuaded by Attorney General/KIUC's argument that the decommissioning costs should be addressed in greater detail in the Ownership Agreement. There is too much uncertainty regarding decommissioning costs to be reasonably determined at this time; the determination of decommissioning costs should be made when the costs are more certain, such as when sold or when Mitchell is decommissioned.

The Commission concurs with Attorney General/KIUC that the Ownership Agreement does not clearly provide for this Commission's jurisdiction in regulatory approvals needed in the future under the Ownership Agreement. Kentucky Power asserted that the revised Ownership Agreement expressly contains a broad statement in

[27] These costs were discussed in the direct testimony of Mark Becker in Case No. 2021-00004, wherein the analysis that the Commission based its decision to grant a CPCN for CCR compliance, but not ELG, "assumed . . . that other maintenance capital and landfill capital expense could be reduced in the 2023-2028 period immediately prior to retirement, creating customer savings." *See* Case No. 2021-00004, *Electronic Application of Kentucky Power Company for Approval of a Certificate of Public Convenience and Necessity for Environmental Project Construction at the Mitchell Generating Station, An Amended Environmental Compliance Plan, and Revised Environmental Surcharge Tariff Sheets* (filed Feb. 8, 2021), Direct Testimony of Mark A. Becker at 7.

Article 13.2 that Kentucky Power was required to obtain future approvals from this Commission, and the WVPSC, to effectuate future events arising from the Ownership Agreement.[28] Article 13.2 states, "This Agreement is subject to the regulatory authority of any State or Federal agency having jurisdiction." This language is not sufficiently clear that the terms contained in the Agreement are all subject to the regulatory authority of this Commission, or any State or Federal agency having jurisdiction. A plausible reading is that the approval of the Agreement is needed, but not for those provisions for future events not expressly subject to this Commission's authority, such as Article 12.6, which describes FERC jurisdiction. As set forth in the February 3, 2022 Order in Case No. 2021-00370, Kentucky Power and AEP have a history of pursuing FERC approval to preempt the Commission's jurisdiction, especially on issues that the Commission has ruled on that AEP believes were adverse to its private interest. For this reason, the Commission finds that the Ownership Agreement should be modified to reflect that the Ownership Agreement and all terms contained in the Agreement, including those addressing future events, are all subject to this Commission's jurisdiction.

Because Kentucky Power withdrew the proposal to use fair market value as a baseline for a purchase price for Kentucky Power's interest, the Commission will not address that issue. However, the Commission concurs with Attorney General/KIUC that KRS 278.2207 applies if Kentucky Power's interest in Mitchell is sold to Wheeling Power as an affiliate transaction.[29] For this reason, the Commission expects that, if Kentucky

[28] HVT of the March 30, 2022 Hearing at 12:23:26; Kentucky Power's Post-Hearing Brief at 39–41.

[29] In testimony filed in response to the original proposal, Attorney General/KIUC's witness, Lane Kollen, argued that basing the buyout price on the fair market value violated KRS 277.2207 because the buyout price did not establish a floor for the sale price as the greater of net book value or market value. *See* Direct Testimony of Lane Kollen (Kollen Direct Testimony) (filed Mar. 29, 2022) at 6–13.

Power's Mitchell interest is sold to Wheeling Power when both entities are affiliates, then the sale shall be priced at the greater of net book value or market value, with necessary adjustments, and is subject to the Commission approval. As evidenced in the case record, past sales of Mitchell among AEP affiliates were all made at net book value and AEP's cost allocation manual, which applies to both Kentucky Power and Wheeling Power, requires that sales between affiliates be at net book value.[30] Furthermore, given Kentucky Power's purchase of its interest in Mitchell at net book value, this Commission expects its sale to be at approximately net book value, as modified by necessity for certain capital costs related to Mitchell's joint ownership, including ELG costs. Given this expectation, this Commission believes it is reasonable for Kentucky Power to pay for its fair share of capital costs ahead of such a sale at net book value. To act otherwise would run the risk of making the transaction unfair to Wheeling Power and its customers. Kentucky Power customers should pay their fair share of capital costs between now and 2029, based on an expectation that Wheeling Power will buy Kentucky Power's interest in Mitchell at its remaining net book value post-2028. Any actions subsequent to this order that leads this Commission to believe its expectations regarding the sale of Mitchell will not occur at approximately net book value will require this Commission to reassess its position on the sharing, allocation and depreciation of costs and expenses subject to the relevant agreements discussed herein.

[30] Kollen Direct Testimony at 4 and 12–13. In Kentucky Power's Response to Attorney General/KIUC's Second Request for Information (filed Jan. 14, 2022), Item 1, Kentucky Power stated that there were three prior transfers of Mitchell between AEP subsidiaries and that all were made at adjusted net book value.

IT IS THEREFORE ORDERED THAT:

1. Kentucky Power's request for approval of the Mitchell Ownership Agreement and the Mitchell O&M Agreement, as contained in the March 15, 2022 amended application and the April 14, 2022 post-hearing brief, is granted subject to the modifications discussed in this Order.

2. Within 20 days of the date of this Order, Kentucky Power shall file the modified Mitchell Agreements, as approved in this Order, into the post-case correspondence file and reference this case number.

3. This case is closed and removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ENTERED

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SERVICE COMMISSION

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