

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF)	
AMERICAN ELECTRIC POWER COMPANY, INC.,)	
KENTUCKY POWER COMPANY AND LIBERTY)	CASE NO.
UTILITIES CO. FOR APPROVAL OF THE)	2021-00481
TRANSFER OF OWNERSHIP AND CONTROL OF)	
KENTUCKY POWER COMPANY)	

ORDER

On January 4, 2022, Liberty Utility Co. (Liberty), Kentucky Power Company (Kentucky Power), and Kentucky Power’s parent entity, American Electric Power Company, Inc. (AEP) (collectively, Joint Applicants) filed an application requesting approval to transfer the ownership of all outstanding common stock of Kentucky Power and AEP Kentucky Transmission Company, LLC (Kentucky Transco) from AEP to Liberty pursuant to KRS 278.020(6) and KRS 278.020(7).¹

The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General); Kentucky Industrial Utility Customers, Inc. (KIUC); LS Power Development, LLC (LS Power); Sierra Club; and Walmart Inc. (Walmart) are intervenors in this matter. The Attorney General and KIUC (jointly, Attorney General/KIUC) had a witness sharing agreement that was filed in the case record. Joint Applicants responded to multiple rounds of discovery. Attorney General/KIUC, LS Power,

¹ Kentucky Transco is not a jurisdictional utility subject to Commission regulation under KRS 278.010(3), so Liberty is not seeking Commission approval for the purchase of Kentucky Transco. However, it is part of the transaction between AEP and Liberty.

and Walmart filed witness testimony and responded to discovery. An evidentiary hearing was held on March 28-29, 2022. The Joint Applicants and Attorney General/KIUC filed their respective responses to post-hearing data requests. On April 12, 2022, Joint Applicants, Attorney General/KIUC, Walmart, LS Power filed their respective post-hearing briefs.² Also on April 12, 2022, Joint Applicants filed a copy of the bridge power coordination agreement (Bridge PCA), under which AEP Service Corp. (AEPSC) will provide interim power coordination services related to Kentucky Power's participation in PJM Interconnection, LLC (PJM) along with AEP operating company subsidiaries. On April 18, 2022, Joint Applicants, Attorney General/KIUC, and Sierra Club filed their respective post-hearing response briefs. LS Power and Walmart filed notices that they would not file a response brief. The matter now stands submitted to the Commission for a decision.

LEGAL STANDARD

KRS 278.020(6) and KRS 278.020(7) both require a person acquiring ownership or the right to control a regulated utility to obtain the Commission's approval of the acquisition. KRS 278.020(6) provides that the Commission shall approve a proposed acquisition or transfer of control if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service. KRS 278.020(7) provides that the Commission shall approve a proposed acquisition of a utility if the

² Due to a system outage, the Commission's electronic filing system and email system were down part of the day on April 12, 2022, resulting in confidential versions of some briefs being filed on April 13, 2022. All briefs, redacted and unredacted, will be deemed filed on April 12, 2022 because the technical issue was not within the control of the filers.

Commission finds that the acquisition is in accordance with law, for a proper purpose, and consistent with the public interest.

JOINT APPLICANTS

Liberty, a Delaware corporation, is an indirect subsidiary of Algonquin Power & Utilities Corp. (Algonquin). Algonquin is publicly traded on the New York and Toronto stock exchanges. Liberty owns 30 regulated electric, natural gas, water, and wastewater utilities serving approximately 1,200,000 residential, commercial, and industrial customers.³ Liberty currently provides electric service to approximately 271,000 customers in Missouri, Kansas, Arkansas, Oklahoma, New Hampshire, and California through three companies, Empire District Electric Company (Empire District), Granite State Electric (Granite State), and CalPeco Electric.⁴

AEP is a public utility holding company incorporated in New York. AEP owns nine electric operating companies, including Kentucky Power, providing service to approximately 5.5 million customers through electric operating companies.⁵ Certain AEP operating companies (AEP East Operating Companies) are members of PJM Interconnection LLC (PJM), a regional transmission organization, and provide wholesale electric transmission services in PJM's AEP East transmission zone (AEP East Zone).⁶ AEP also owns transmission companies, including Kentucky Transco, and generation companies that do not have certified territories.⁷

³ Application, paragraph 7.

⁴ Application, paragraph 7.

⁵ Application, paragraph 3.

⁶ Direct Testimony of Stephan T. Haynes (filed Jan. 4, 2022) (Haynes Direct Testimony) at 4.

⁷ Haynes Direct Testimony at 4.

Kentucky Power, a Kentucky corporation, is a wholly owned subsidiary of AEP. Kentucky Power provides electric service to approximately 165,000 customers in 20 Eastern Kentucky counties: Boyd, Breathitt, Carter, Clay, Elliott, Floyd, Greenup, Johnson, Knott, Lawrence, Leslie, Letcher, Lewis, Magoffin, Martin, Morgan, Owsley, Perry, Pike, and Rowan.⁸ Kentucky Power also supplies electric power at wholesale to other utilities and municipalities in Kentucky. Kentucky Power owns and operates the 260 MW Big Sandy natural gas plant in Lawrence County, Kentucky; a 50 percent undivided interest in the 1,560 MW Mitchell coal-fired plant in Marshall County, West Virginia; and has a purchase power agreement (Rockport UPA) that expires in December 2023.⁹

OVERVIEW OF PROPOSED TRANSACTION

Liberty proposed to acquire Kentucky Power's and Kentucky Transco's common stock, via a stock purchase agreement, at a purchase price of \$2.846 billion, which included the assumption of \$1.221 billion in debt.¹⁰ Of the \$2.846 billion, AEP will net \$1.400 billion in cash after taxes and transaction fees, which AEP plans to reinvest in renewable energy in other AEP subsidiaries, none of which are in Kentucky.¹¹ The purchase price included a \$585 million acquisition premium paid by Liberty to AEP, which

⁸ Application, paragraph 4.

⁹ Application, paragraph 4. AEP subsidiary Wheeling Power also owns a 50-percent interest in the Mitchell plant. See Case No. 2021-00421 *Electronic Application of Kentucky Power Company for Approval of Affiliate Agreements Related to the Mitchell Generating Station* for information regarding the ownership and operations of the Mitchell plant.

¹⁰ Application, paragraph 12.

¹¹ KIUC March 28-29, 2022 Hearing Exhibit (KIUC Hearing Exhibit) 10. In AEP's Form 10-K SEC filing for 2021, AEP stated that the \$1.400 billion cash proceeds would be used to eliminate equity needs in 2022 for investments in renewables. KIUC Hearing Exhibit, unnumbered page 5.

represented the amount of the purchase price above Kentucky Power's net book value. Attorney General/KIUC proposed that AEP return \$578 million of the acquisition premium to Kentucky Power and its ratepayers to offset past and future harm from AEP's management of Kentucky Power.

Liberty's parent, Algonquin, will finance the acquisition through \$620 million raised through common equity and \$1.10 billion raised through hybrid securities.¹² The acquisition price includes both Kentucky Power and Kentucky Transco. Although the acquisition price does not break out the value of each entity, Liberty stated that based upon 2020 year-end plant, the estimated break out based on rate base, is \$2.664 billion for Kentucky Power, representing 93.6 percent of the purchase price, and \$0.182 billion for Kentucky Transco, representing 6.4 percent of the purchase price.¹³

The purchase agreement requires the transaction to close by October 26, 2022, but the closing date is extended by six months if all regulatory approvals are not timely received. Kentucky Power customers will not have financial responsibility if the transaction does not close.¹⁴

¹² Joint Applicants' Response to Commission Staff's First Post-Hearing Request for Information (filed April 8, 2022) (Staff's First Post-Hearing Request), Item 1; Joint Applicants' Response to Commission Staff's Second Post-Hearing Request (filed Apr. 15, 2022) (Staff's Second Post-Hearing Request), Item 1. The Commission takes administrative notice that, in Algonquin's 40-F filing with the SEC, Algonquin completed on January 18, 2022, an offering of \$400 million (Canadian) of 5.25 percent fixed notes and \$750 million 4.75 percent fixed notes, both due on January 18, 2082, and completed a common share offering on November 8, 2021, that grossed \$800 million (Canadian), with the net proceeds for the notes and share offering used to partially finance the proposed acquisition of Kentucky Power. See Algonquin 40-F Filing (filed Mar. 4, 2022), <https://www.sec.gov/Archives/edgar/data/1174169/000117416922000021/a2022aif.htm>

¹³ Joint Applicants' Response to Commission Staff's First Request for Information (filed Jan. 24, 2022) (Staff's First Request), Item 37.

¹⁴ Joint Applicants' Response to Staff's First Request, Item 42.

Liberty subsidiaries are organized by region. Kentucky Power will be in its own region, with future acquisitions of utilities in nearby states included in Kentucky Power's region.¹⁵ Future acquisitions have not been publicly identified.¹⁶

Liberty's corporate model relies on decentralized decision-making and local control, with some centralized services, such as treasury, information technology, insurance, and risk management. Liberty plans to repatriate certain AEPSC roles back to Kentucky, with an estimated 100 new jobs in the Kentucky Power service territory at an expected cost of \$11.4 million.¹⁷ Liberty will retain all current employees with the same or similar compensation and benefits.¹⁸ Apart from Kentucky Power's current President and Chief Operating Officer D. Brett Mattison, who will remain with AEP, Kentucky Power's current management team will remain.¹⁹ The new president will be David Swain, who, prior to the role of Integration Leader for the acquisition, served as the president of Liberty's Central Region, which includes Empire District—a Liberty subsidiary that provides electric, natural gas, and water service to 333,000 customers in Missouri, Kansas, Oklahoma, Illinois, Iowa, and Arkansas, and is a participant in the Southwest Power Pool (SPP).²⁰

¹⁵ Direct Testimony of Peter Eichler (filed Jan. 4, 2022) (Eichler Direct Testimony) at 13.

¹⁶ March 28, 2022 Hearing Video Transcript (HVT) at 4:17:41.

¹⁷ Joint Applicants' Response to Staff's First Request, Item 19.

¹⁸ Joint Applicants' Response to Staff's First Request, Item 2.

¹⁹ Joint Applicants' Response to Staff's First Request, Item 2a; Application, paragraph 26, footnote 6; and Direct Testimony of David Swain (filed Jan. 4, 2022) (Swain Direct Testimony) at 10. This of course is exempting Kentucky Power executives who also serve as AEP executives, such as Kentucky Power and AEP CEO Nick Akins.

²⁰ Swain Testimony at 1–2; and the Direct Testimony of Drew Landoll (Landoll Testimony) (filed Jan. 4, 2022) at 2.

Post-closing, Liberty's board of directors will consist of two Liberty management directors, Arun Banskota, president and chief executive officer of Algonquin, who will also serve as board chair; and Johnny Johnston, chief operating officer of Algonquin; and up to four independent directors, with one of the independent directors reserved for a resident in Kentucky Power's service territory.²¹

Liberty projected that \$75.8 million in annual generation, transmission, and corporate services currently performed by AEPSC will be provided under Liberty ownership for \$67.0 million, which includes the labor costs for up to 100 new jobs.²²

Liberty and AEPSC entered into a Transmission Services Agreement (TSA) for AEPSC to provide generation, transmission, and corporate services at cost, plus a 35 percent adder for specified services for up to 24 months.²³ The 35 percent represents indirect costs; AEPSC charged AEP affiliates 45.58 percent for indirect costs between October 2020 and September 2021.²⁴ Liberty initially planned for a third-party vendor to provide PJM market operation services, but instead will use AEPSC during the transition.²⁵

Liberty executed a Bridge PCA with AEPSC and AEP affiliates for capacity needs through 2023/2024 PJM Planning Years through participation in PJM Fixed Resource

²¹ Joint Applicants' Response to Staff's First Request, Item 33; Mar. 28, 2022 HVT at 4:18:50.

²² Joint Applicants' Response to Staff's First Request, Item 17, JA_R_STAFF_1_17_Atachment_Project Nickel Allocations.xlsx; and Joint Applicants' Response to Commission Staff's Second Request for Information (filed Feb. 14, 2022) (Staff's Second Request), Item 5.

²³ Application, Exhibit 5, Stock Purchase Agreement, Exhibit A, Transition Services Agreement, Exhibit B, Reimbursable Costs; and Joint Applicants' Response to Staff's Second Request, Item 18.

²⁴ Joint Applicants' Response to Staff's Second Request, Item 18.

²⁵ Joint Applicants' Response to Staff's Second Request, Item 9.

Requirement (FRR) with other AEP utilities.²⁶ This period covers Kentucky Power's PJM FRR commitment period after the transaction closes. Kentucky Power will retain its right, title, and interest in generation-related transactions performed on its behalf, and allocations of benefits and liabilities such as FRR obligations and capacity market (RPM) sales, FRR charges and credits, RPM charges and credits, settlements, and PJM assigned costs. AEPSC will monitor, operate, and dispatch Kentucky Power's transmission system for up to 24 months through the Bridge PCA.²⁷

Kentucky Power will remain a transmission owner and load serving entity (LSE) in PJM and the AEP East Zone in PJM through January 1 of the calendar year after Kentucky Power is no longer a party to AEP's FRR plan.²⁸ Kentucky Power will be treated as a non-affiliated entity in the AEP East Zone cost allocation methodology, subject to a 1-CP-PJM cost allocation, rather than the 12-CP cost allocation for AEP East entities.²⁹ Liberty committed to evaluate future participation in PJM, including whether to remain in the same role, change its role, or exit PJM.³⁰

Prior to closing, AEP's master leases for equipment must be replaced with alternative lease arrangements on substantially the same terms, or Kentucky Power will purchase.³¹ Negotiations were continuing and a resolution has not yet been reached.³²

²⁶ Bridge PCA (filed Apr. 13, 2022).

²⁷ Mar. 28, 2022 HVT at 11:53:40.

²⁸ Joint Applicants' Response to Staff's First Request, Item 46; and Eichler Direct Testimony at 34.

²⁹ Joint Applicants' Response to KIUC's First Request for Information (filed Jan. 24, 2022) (KIUC's First Request), Item 33.

³⁰ Application, paragraph 33; and Joint Applicants Response to Staff's First Request, Item 2.

³¹ Haynes Direct Testimony at 9.

³² Mar. 28, 2022 HVT at 12:30:40.

Liberty identified Kentucky Power's current mutual sharing and assistance agreements that will be maintained, which include the Edison Electric Institute's (EEI) spare transformer equipment program agreement, and potentially the Grid Assurance LLC Subscription Agreement.³³ Certain affiliate agreements with AEP subsidiaries may be continued on a short-term basis for transition purposes and would be replaced by affiliate agreements with Liberty subsidiaries.³⁴

COMMITMENTS

Liberty provided post-merger commitments, which are attached as Appendix A to this order. The agreements included corporate governance; employee retention, compensation, and benefits; community involvement; economic development; and customer service activities, including reopening up to two customer walk-in centers.

Liberty stated that the costs associated with the proposed acquisition would not have the effect of increasing Kentucky Power's rates because Liberty would not seek to recover in rates, now or in the future, the transaction premium or one-time transition costs.³⁵ Liberty committed that Kentucky Power will maintain rates in effect at the close of the proposed transaction and will honor the stay-out provision agreed to by Kentucky

³³ Joint Applicants' Response to Staff's Second Request, Item 13.

³⁴ Joint Applicants' Response to Staff's Second Request, Item 13; and Rebuttal Testimony of Peter Eichler (filed Mar. 18, 2022) (Eichler Rebuttal Testimony) at 25.

³⁵ Joint Applicant's Response to Staff's First Request, Items 2 and 3.

Power in Case No. 2020-00174,³⁶ which requires Kentucky Power to not file for a general rate adjustment until filing new rates effective in January 2024.³⁷

Liberty committed that Kentucky Power and its ratepayers will not incur any additional costs, liabilities, or obligations in conjunction with the proposed transaction; will not incur additional indebtedness or pledge assets to finance the proposed transaction; will not bear costs associated with operating Liberty subsidiaries; and will not be required to pledge assets to finance the debt or purchases of any affiliates.³⁸

Liberty committed to evaluate the benefits and costs of Kentucky Power's participation in PJM and to explore alternatives.³⁹ Kentucky Power will continue to maintain its role in PJM as a load serving entity (LSE) and remain in the AEP East Zone through January 1 of the calendar year after it is no longer a party to AEP's FRR plan.⁴⁰ Liberty confirmed that it must obtain Commission approval prior to leaving PJM.⁴¹

Before the March 28-29, 2022 hearing, Liberty proposed a \$40 million fuel adjustment clause (FAC) bill credit and a three-year deferral of the Big Sandy Decommissioning Rider (BSDR) while pursuing legislative enactment of securitization,

³⁶ Case No. 2020-00174, *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* (Ky. PSC Jan. 13, 2021), Order at 32.

³⁷ Haynes Direct Testimony at 16, Eichler Direct Testimony at 35; and Joint Applicants' Response to Staffs First Request, Item 1.

³⁸ Joint Applicants' Response to Staff's First Request, Items 2 and 3; and Eichler Direct Testimony at 7.

³⁹ Joint Applicants' Response to Staff's First Request, Item 2; and Eichler Direct Testimony at 7.

⁴⁰ Joint Applicants' Response to Staff's First Request, Items 2, 3 and 46; and Eichler Direct Testimony at 34.

⁴¹ Joint Applicants' Response to Staff's First Request, Item 8.

which Liberty projected would result in a 14 to 16 percent temporary rate reduction for residential customers.⁴²

PARTIES' ARGUMENTS ON KRS 278.020(6)

Joint Applicants asserted that Liberty had the financial, technical, and managerial abilities to provide reasonable service. In briefing, Sierra Club argued that Joint Applicants filed sufficient evidence that Liberty had the financial, technical, and managerial ability to provide reasonable service. The Attorney General/KIUC disputed that Liberty had the technical ability to provide reasonable service. None of the remaining intervenors directly addressed these standards in filed testimony or in briefing.

Financial ability to provide reasonable service

Joint Applicants' Arguments. Liberty argued that it had the financial ability to provide reasonable service as documented by the case record, which includes Liberty's 2020 audited financial statements, unaudited 2021 financial statements, credit ratings, an independent assessment of Liberty's cost-allocation manual, and Securities and Exchange Commission (SEC) report of foreign private issued filings for Algonquin, Liberty's ultimate parent that files consolidated SEC filings that include Liberty.⁴³ Liberty has a BBB rating by Standard & Poor's (S&P) and Fitch Ratings, Inc. (Fitch); Liberty asserted that no change to its credit rating would result from Algonquin financing the acquisition.⁴⁴

⁴² Eichler Rebuttal Testimony at 4.

⁴³ Joint Applicants' Response to Staff's First Request, Items 9-12.

⁴⁴ Joint Applicants' Response to Staff's First Request, Item 11.

Liberty asserted that Kentucky Power's capital structure would remain the same as it is now until new base rates are established with an effective date of January 2024, and that Liberty's capital structure will not be allocated to Kentucky Power.⁴⁵ Liberty maintained that Liberty and Algonquin's access to and experience with debt and equity capital markets provide additional evidence of Liberty's financial ability to provide reasonable service. Liberty stated that it raised \$1.28 billion for acquisitions and growth since 2012, that Liberty and Algonquin took on \$5.1 billion of debt and equity in past five years, and that Liberty increased its bank credit facility from \$200 million to \$500 million and extended the facility for a new five-year term.⁴⁶

Liberty stated that, post-closing, Kentucky Power will transition from AEP's money pool to Liberty's money pool (Money Pool) for short-term financing. Liberty noted that the cost of AEP's money pool was 0.32 percent for nine months ending September 30, 2021, and the cost of Liberty's Money Pool for the same period was 0.27 percent.⁴⁷

Liberty explained that it uses a bottom-up methodology for allocating capital investment funds to subsidiaries. Each regulated utility's management team conducts a planning process that compiles recommended needs for capital expenditures based upon customer need, safety requirements, regulatory requirements, and discretionary projections.⁴⁸ Liberty further explained that each project requires a business case to demonstrate prudence. Each subsidiary's president determines which projects will be

⁴⁵ Joint Applicants' Response to Staff's First Request, Items 13-15.

⁴⁶ Application, paragraph 20.

⁴⁷ Joint Applicants' Response to Staff's First Request, Item 58; and Joint Applicants' Response to KIUC's First Request, Item 17.

⁴⁸ Joint Applicants' Response to Staff's First Request, Item 16.

forwarded to the utility's board for a determination, with projects approved by the board next forwarded to Liberty's executive management for determinations for capital allocations.⁴⁹

Intervenors' Response. In briefing, Sierra Club argued that Joint Applicants filed sufficient evidence that Liberty had the financial ability to provide reasonable service. None of the remaining intervenors directly addressed this standard in filed testimony or in briefing.

Technical ability to provide reasonable service

Joint Applicants' Arguments. In support of the argument that it has the technical ability to provide reasonable service to Kentucky Power ratepayers, Liberty described its experience in planning, constructing, and operating smaller regulated utilities in different jurisdictions that have challenging economic conditions like Kentucky Power's service territory. Liberty highlighted decreased operations and maintenance (O&M) costs and increased safety after Liberty acquired utilities similar to Kentucky Power.

Liberty projected that, post-transition, the centralized services allocated to Kentucky Power would total approximately \$67.0 million for the same services provided by AEPSC for \$75.8 million. Of the \$67.0 million, \$33.9 million are directly incurred generation, transmission, and corporate services provided by Liberty's centralized services and \$33.1 million in corporate shared services costs allocated in accordance with Algonquin's cost allocation manual. Liberty maintained that its subsidiaries receive a detailed description of allocations and that the subsidiaries can challenge the allocations

⁴⁹ Joint Applicants' Response to Staff's First Request, Item 16.

for accuracy and appropriateness, with local financial personnel working with corporate counterparts to resolve allocation challenges.

Liberty asserted that its experience with Empire District (a vertically integrated electric utility subject to regulation by Missouri, Kansas, Oklahoma, and Arkansas public service commissions) demonstrates that Liberty has the technical ability to operate an electric utility that compares to Kentucky Power's service territory. Empire District serves approximately 177,000 customers in 106 communities in 4 states; owns and operates 6,359 miles of distribution lines and 1,288 miles of transmission lines; and owns and operates 1,754 MW total generation with 600 MW wind, 540 MW combined cycle natural gas, 242 MW coal, 235 MW natural gas/fuel oil, 121 MW single cycle natural gas, and 16 MW hydroelectric generation.⁵⁰ In comparison, Kentucky Power has 165,000 customers, with 10,074 miles of distribution lines and 1,263 miles of transmission lines; and 1,468 MW total generation between 1,075 MW owned and 393 MW from the Rockport UPA.⁵¹ Liberty asserted that it achieved significant O&M savings to Empire District's customers after Liberty acquired Empire District, and increased safety and outage incidents.⁵²

Liberty asserted that its experience with regional transmission operator Southwest Power Pool (SPP) demonstrates that Liberty has the technical ability regarding Kentucky Power's participation in PJM. As a generation and transmission owner in SPP, Empire District operates its own transmission control center using its own personnel, not a third-

⁵⁰ Application, paragraph 23.

⁵¹ Haynes Direct Testimony at 5-6.

⁵² Landoll Direct Testimony at 10-14; Eichler Direct Testimony at 15-18.

party vendor.⁵³ Liberty contended that, during the 24 months that AEPSC will provide transmission control services in accordance with the Bridge PCA, Liberty will develop the skills, expertise, and personnel to take on those responsibilities in PJM prior to the termination of the Bridge PCA.

Liberty maintained that its experience with vegetation management tailored to each of its regulated utility subsidiaries' terrain, customer density, and weather conditions, established its ability to provide reasonable vegetation management services in Kentucky Power's service territory.⁵⁴ Liberty similarly detailed its experience with integrated resource planning (IRP) and environmental compliance in its regulated utility subsidiaries.

Liberty described its experience developing renewable energy transitions, explaining that it evaluates the opportunities for developing or acquiring renewable energy in the context of IRP.⁵⁵ With the Rockport UPA expiring in December 2023 and Kentucky Power's interest in Mitchell ending in December 2028, Liberty stated that it assumed a mix of renewable projects and short-term purchase power agreements would be needed through 2028, and that it will evaluate generation and capacity needs through the IRP process.⁵⁶ Liberty acknowledged that its initiative termed "greening the fleet" in Liberty's Central Region, which focuses on the replacement of retiring fossil fuel-fired resources with renewable energy, can result in upfront investment and argued that the investment

⁵³ Joint Applicants' Response to Staff's First Request, Item 40; Joint Applicants' Response to Attorney General's Second Request (filed Feb. 14, 2022) (Attorney General's Second Request), Item 11; and Mar. 28, 2022 HVT at 12:31:33.

⁵⁴ Eichler Direct Testimony at 5; and Landoll Direct Testimony at 3-9.

⁵⁵ Eichler Direct Testimony at 5; and Joint Applicants' Response to Staff's First Request, Item 39.

⁵⁶ Joint Applicants' Response to Attorney General's Second Request, Item 15.

can result in customer savings over time.⁵⁷ Liberty explained that, in its Central Region, Liberty's subsidiaries made approximately \$600 million in investments in renewable energy that resulted in estimated \$125 million in customer savings over 20 years.⁵⁸

As noted above, Liberty and AEPSC executed a TSA for AEPSC to provide centralized generation, transmission, and corporate services for up to 24 months after the transaction closes. Liberty argued that the TSA provided a necessary glide path to transition from services embedded in AEPSC to provision of the same services by Kentucky Power personnel located in Kentucky Power's service territory.⁵⁹

Intervenors' Responses. Attorney General/KIUC's witness Lane Kollen disputed that Liberty has the technical ability to provide reasonable service because Liberty must subcontract the provision of service to AEPSC through the TSA.⁶⁰ Mr. Kollen argued that by exiting AEP, Kentucky Power, under Liberty, is essentially creating a new utility that is locally based and operated on a stand-alone basis.⁶¹ Mr. Kollen asserted that Liberty will have to acquire physical and intangible assets and retain skilled employees to provide reasonable service by the end of the TSA, which presents a considerable risk and cost exposure to Kentucky Power ratepayers.⁶²

In briefing, Sierra Club argued that Joint Applicants filed sufficient evidence that demonstrates Liberty has the technical ability to provide reasonable service. Other than

⁵⁷ Joint Applicants' Response to KIUC's First Request, Item 76.

⁵⁸ Joint Applicants' Response to KIUC's First Request, Item 76.

⁵⁹ Eichler Rebuttal Testimony at 4.

⁶⁰ Direct Testimony of Lane Kollen (filed Feb. 21, 2022) (Kollen Direct Testimony) at 55-56.

⁶¹ Kollen Direct Testimony at 55-56.

⁶² Kollen Direct Testimony at 55-56.

Attorney General/KIUC and Sierra Club, none of the remaining intervenors directly addressed this standard in filed testimony or in briefing.

Managerial ability to provide reasonable service

Joint Applicants' Argument. In addition to the issues set forth above, Liberty asserted that its decentralized managerial approach, with local management in control of day-to-day operations, benefits customers because Kentucky Power executives can operate with autonomy to serve the needs of Kentucky Power's customer base, as well as retain first-hand knowledge of those needs.⁶³ As noted above, Kentucky Power's board of directors would include two company representatives and at least three independent directors, with one seat reserved for an independent director from Kentucky Power's service area. one independent member from Kentucky Power service area.

Although executives working in Kentucky Power's service territory control the day-to-day operations, Liberty explained that it provides limited centralized services, designed for economies of scale and work efficiency.⁶⁴ The shared services include treasury, information technology, insurance, and risk management. As noted above, Liberty projected that, in the first full year under Liberty's ownership, centralized services and allocated costs would be approximately \$67.0 million, as opposed to \$75.8 million for the centralized services and allocated costs provided by AEPSC.

Intervenors' Responses. In briefing, Sierra Club argued that Joint Applicants filed sufficient evidence that Liberty had the managerial ability to provide reasonable service.

⁶³ Swain Direct Testimony at 4.

⁶⁴ Swain Direct Testimony at 3-4.

None of the remaining intervenors directly addressed this standard in filed testimony or in briefing.

PARTIES' ARGUMENTS ON KRS 278.020(7)

Joint Applicants asserted that the proposed transaction was in accordance with the law, for a proper purpose, and in the public interest. Attorney General/KIUC argued that the proposed transaction was not in the public interest because the proposed transaction would result in financial harm to Kentucky Power ratepayers. Attorney General/KIUC further argued that if the proposed transaction was approved, then it should be conditioned upon AEP making certain make-whole provisions to offset alleged past and future financial harm to Kentucky Power ratepayers. In briefing, Sierra Club argued that Joint Applicants filed sufficient evidence that the proposed acquisition is in accordance with the law, for a proper purpose, and in the public interest. In briefing, Walmart argued that the proposed transaction is in the public interest. LS Power did not directly address these standards in filed testimony or in briefing.

Accordance with the law

Joint Applicants' Arguments. Joint Applicants filed board minutes and board presentations indicating that AEP's and Liberty's boards approved the transaction, along with the Stock Purchase Agreement signed by the Joint Applicants.

In addition to approval from this Commission, the proposed transaction is subject to approval under the federal Hart-Scott-Rodino Antitrust Improvement Acts (Hart-Scott-Rodino); federal Committee on Foreign Investment in the United States (CFIUSA); Federal Energy Regulatory Commission (FERC); Federal Communications Commission (FCC); West Virginia Public Service Commission (WVPSC); and the United States District

Court for the Southern District of Ohio (Southern District of Ohio) for an environmental consent decree. Liberty received required approvals from Hart-Scott-Rodino and CFIUSA.⁶⁵ FCC license transfers will be completed before the transaction closes.⁶⁶ FERC proceedings related to the acquisition, Mitchell Operating and Ownership Agreements, and OATT; the WVPSC proceeding regarding the Mitchell Operating and Ownership Agreements; and the Southern District of Ohio proceeding are all pending.⁶⁷ As a publicly traded company, Algonquin will file annual financial reports with the SEC on a consolidated basis.

Intervenors' Responses. In briefing, Sierra Club argued that Joint Applicants filed sufficient evidence that supports the proposed acquisition is in accordance with the law. None of the remaining intervenors directly addressed this standard in filed testimony or in briefing.

For a proper purpose

Joint Applicants. The proper purpose of an electric utility is to provide adequate, efficient and reasonable service to its customers. In demonstration of its ability to provide adequate, efficient and reasonable service to Kentucky Power customers, Liberty pointed to its experience owning and operating regulated electric utilities with similar characteristics as Kentucky Power and evidence of decreased O&M costs and increased safety after acquisition of utilities similar to Kentucky Power, as described above.

⁶⁵ Joint Applicants' Response to Staff's First Request, Item 24; and Joint Applicants' Supplemental Response to Staff's First Request, Item 24 (filed Feb. 14, 2022).

⁶⁶ Joint Applicants' Response to Staff's First Request, Item 24; and Joint Applicants' Supplemental Response to Staff's First Request, Item 24.

⁶⁷ Joint Applicants' Response to Staff's First Request, Item 24; and Joint Applicants' Supplemental Response to Staff's First Request, Item 24.

Liberty stated that the proposed transaction would benefit Kentucky Power and its customers because Liberty has committed to operate Kentucky Power with local management and control with local customer service representatives, with enhanced service to customers familiar with service area, local economy, geography, local issues, and an additional walk-in customer service office. Liberty noted that the Stock Purchase Agreement contains explicit provisions regarding the transition of day-to-day operations to ensure adequate, efficient and reasonable service.

While it has not completed an in-depth evaluation, Liberty discussed several distribution system investments that Liberty asserted would reduce outages. Liberty explained that Kentucky Power's 34.5 kV circuits are longer circuits that expose a higher number of circuit miles between stations to risks of outages due to fallen trees, environmental, animal, and similar outage risks.⁶⁸ Liberty explained that underbuilding 34.5 kV circuits with 12 kV lines would increase reliability by sectionalizing the system so that if there were an outage, fewer customers would be impacted on what are now long radial feeds, which would lower the cost of emergency recovery.⁶⁹ Referencing the 2009 IKE and ICE storm outages that resulted in a regulatory asset still on Kentucky Power's books, Liberty discussed how similar outages could be prevented through hardening investments, and that increases in distribution capital investments can reduce distribution O&M investments.⁷⁰

⁶⁸ Joint Applicants' Response to Staff's First Request, Item 61; Joint Applicants' Response to Staff's Second Request, item 19; and Mar. 28, 2022 HVT at 4:53:21, 4:53:41.

⁶⁹ Joint Applicants' Response to Staff's First Request, Item 61; Joint Applicants' Response to Staff's Second Request, item 19; and Mar. 28, 2022 HVT at 4:53:21, 4:53:41.

⁷⁰ Mar. 28, 2022 HVT at 4:54:44-4:57:34. IKE refers to the September 2008 Windstorm resulting from Hurricane Ike and ICE to the January 2009 Ice Storm, both of which resulted in widespread outages

Intervenors' Responses. In briefing, Sierra Club argued that Joint Applicants filed sufficient evidence that supports the proposed acquisition is for a proper purpose. None of the remaining intervenors directly addressed this standard in filed testimony or in briefing.

In the public interest

Joint Applicants' Arguments. Liberty argued that the proposed transaction is in the public interest because it will benefit Kentucky Power's customers. Liberty asserted that commitments made in this proceeding would benefit customers in the following ways:

- There would be no rate increase to customers from the transaction before the stay-out period agreed to in Case No. 2020-00174 for Kentucky Power to not file a rate case until a filing with rates effective in January 2024;
- Liberty and Kentucky Power will not recover one-time transaction costs or the acquisition premium in rates;
- Local operational control, headquarters in Ashland, and customer services provided by employees located in Kentucky Power's service area who are familiar with local issues, needs, and resources;
- 100 new jobs in Kentucky Power's service territory;
- Continuity of management and service with current employees, who are familiar with the system and its customers;
- Greater access to debt and equity capital markets;

of significant duration. Among the recommendations made from the IKE and ICE Report was that utilities should consider upgrading to heavy loading standards, where for example, it might be beneficial to shorten span lengths when building lines in treed areas, such as much of Kentucky Power's service territory, to improve the ability of those lines to sustain the weight of fallen vegetation. IKE and ICE Report (Ky. PSC Nov. 19, 2009), Report at 3

- Implementing tools and processes, with performance indicators, for evaluation of customer feedback to train call center staff and improve customer service
- Continuing partnerships and working relationships with economic development leaders within the communities served by Kentucky Power, and continuing existing support of charitable organizations and employee participate in local community groups

In rebuttal testimony filed prior to the March 28-29, 2022 hearing, Liberty proposed what it termed as a rate holiday as further evidence that the proposed acquisition is in the public interest.⁷¹ The terms of the proposed \$40 million FAC credit and BSDR deferral are discussed in greater detail below.

Intervenors' Responses. Only Walmart and Attorney General/KIUC filed testimony and briefing regarding the public interest prong of the legal standard for acquisitions. In briefing, Sierra Club argued that Liberty's ability to provide reliable, lower-cost and job-fostering service is consistent with the public interest.

Walmart asserted that Liberty's commitment to be net carbon free by 2050 is not contrary to the public interest and that the Commission should find that it is in the public interest for Liberty to convene a stakeholder group, including Walmart, to consider future renewable energy offerings.⁷²

Attorney General/KIUC argued that Joint Applicants failed to demonstrate that the proposed acquisition is in the public interest and should be denied due to alleged past

⁷¹ Eichler Rebuttal Testimony at 13-16, 27-28.

⁷² Direct Testimony of Lisa V. Perry (filed Feb. 21, 2022) (Perry Direct Testimony) at 6-9; and Walmart's Post-Hearing Brief (filed Apr. 12, 2022) at 1, 2-5, and 7.

and future financial harm to Kentucky Power ratepayers. Attorney General/KIUC further argued that if the acquisition is approved, the Commission should condition approval on AEP using \$578 of the \$585 acquisition premium to mitigate alleged past and future financial harm and increased risk, which is discussed below.

Attorney General/KIUC and their witnesses identified the following areas of alleged financial harm to Kentucky Power: (1) loss of economies of scale; (2) financing costs related to sales of receivables; (3) financing costs from tax effects; (4) loss of shared inventory; (5) impact of potential credit downgrade; (6) underinvestment in distribution system; and (7) transmission cost subsidies.

Attorney General/KIUC and their witness Lane Kollen argued that leaving AEPSC's centralized services would result in increased operational and administrative expenses from the loss of economies of scale.⁷³ Attorney General/KIUC and Mr. Kollen maintained that Kentucky Power would function as a stand-alone utility post-closing, and that AEPSC provided centralized services on a cost-effective manner at a lower cost than Liberty could provide on a stand-alone basis.⁷⁴ Attorney General/KIUC asserted that Liberty's claims regarding operational savings post-closing as compared to AEPSC service costs were based on unsupported assumptions.⁷⁵ Attorney General/KIUC and Mr. Kollen projected that Kentucky Power's non-fuel O&M, administrative, and general expenses would increase by 5 to 10 percent if the acquisition were approved,

⁷³ Kollen Direct Testimony at 22-28; and Attorney General/KIUC's Post-Hearing Brief (filed Apr. 12, 2022) at 23-24.

⁷⁴ Kollen Direct Testimony at 22-28; and Attorney General/KIUC's Post-Hearing Brief at 23-24.

⁷⁵ Attorney General/KIUC's Post-Hearing Brief at 25.

representing financial harm to Kentucky Power ratepayers equal to \$83.9 million on a net present value basis that should be mitigated through a proposed Cost Mitigation Credit.⁷⁶

Attorney General/KIUC and Mr. Kollen further argued that Kentucky Power's current practice of selling its receivables to AEP Credit, Inc. accelerates the receipt of cash, which significantly reduces Kentucky Power's cash working capital requirements and the related financing costs by displacing common equity, long-term debt, and associated financing costs.⁷⁷ Because Liberty will not sell receivables, Attorney General/KIUC and Mr. Kollen argued that Kentucky Power will incur financing costs that would otherwise be displaced. Mr. Kollen estimated that annual financing costs would increase by an average of \$2.1 million and that, over ten years, the financing costs would be approximately \$15.3 million on a net present value basis that should be mitigated through a proposed Cost Mitigation Credit.⁷⁸

Attorney General/KIUC and Mr. Kollen argued that Kentucky Power's financing costs would increase due to the loss of AEP's net operating loss (NOL) reimbursement, which is made under AEP's tax allocation agreement.⁷⁹ Mr. Kollen explained that each year it has an NOL, Kentucky Power records an increment to the prior-year asset NOL accumulated deferred income tax (ADIT) for the current year NOL, and records AEP NOL reimbursements as a credit to the NOL ADIT. As a result, Kentucky Power finances the NOL ADIT, but does not incur financing costs or include the NOL ADIT in rate base.

⁷⁶ Kollen Direct Testimony at 22-28; and Attorney General/KIUC's Post-Hearing Brief at 23-24.

⁷⁷ Kollen Direct Testimony at 28-30; and Attorney General/KIUC's Post-Hearing Brief at 31-32.

⁷⁸ Kollen Direct Testimony at 28-30; and Attorney General/KIUC's Post-Hearing Brief at 31-32.

⁷⁹ Kollen Direct Testimony at 30-34; and Attorney General/KIUC's Post-Hearing Brief at 32-34.

Attorney General/KIUC and Mr. Kollen argued that the loss of NOL reimbursement would increase Kentucky Power's annual financing costs by an average of \$4.2 million, or \$27.8 million on a net present value basis over the next ten years, and that this increase should be mitigated through a proposed Cost Mitigation Credit.⁸⁰

Attorney General/KIUC and Mr. Kollen next argued that Kentucky Power will have increased financing costs under Liberty's management due to the loss of the shared inventory and shared parts agreement with other AEP affiliates.⁸¹ Mr. Kollen explained that the AEP affiliates share materials and capitalized spare parts among AEP utility affiliates, which ensures availability and reduces the investment and related financing costs, but Liberty does not have a similar agreement between its subsidiaries. Attorney General/KIUC and Mr. Kollen calculated that the average annual increase in financing costs for the inventory investment is \$1.9 million, with a cost of \$13.9 million over the next ten years on a net present value basis that should be mitigated through a proposed Cost Mitigation Credit.⁸²

Attorney General/KIUC and Mr. Kollen asserted that S&P will downgrade Kentucky Power's long-term debt to BBB from BBB+ if the acquisition closes.⁸³ Mr. Kollen argued that the sole reason for the downgrade is because Kentucky Power's post-closing credit rating would align with Liberty's and Algonquin's, which Kollen claimed has a weaker credit rating than AEP. Attorney General/KIUC and Mr. Kollen maintained that approving

⁸⁰ Kollen Direct Testimony at 30-34; and Attorney General/KIUC's Post-Hearing Brief at 32-34.

⁸¹ Kollen Direct Testimony at 33-34; and Attorney General/KIUC's Post-Hearing Brief at 34.

⁸² Kollen Direct Testimony at 33-34; and Attorney General/KIUC's Post-Hearing Brief at 34.

⁸³ Kollen Direct Testimony at 34-35; and Attorney General/KIUC's Post-Hearing Brief at 35.

the acquisition would result in an average annual increase in financing costs of \$0.2 million, with a \$7.3 million increase in financing costs over ten years on a net present value basis that should be mitigated through a proposed Cost Mitigation Credit.⁸⁴

Attorney General/KIUC and Mr. Kollen asserted that AEP underinvested in Kentucky Power's distribution capital expenditures and distribution maintenance, as evidenced by comparisons of Kentucky Power's actual distribution capital expenditures and maintenance expense, and by reliability measurements.⁸⁵ Mr. Kollen noted that Liberty's due diligence indicated that Kentucky Power's distribution capital expenditures is below industry standards and was a driver of Kentucky Power's poor reliability performance.⁸⁶ Mr. Kollen measured Kentucky Power's distribution system capital expenditures and maintenance expenditures based upon distribution plant investment as a multiple of depreciation expense and distribution expense per customer between 2011 and 2020. Mr. Kollen asserted that these metrics reflect that Kentucky Power substantially underinvests in distribution capital expenditures as compared to other Kentucky investor-owned utilities (IOU) and that Kentucky Power's distribution maintenance expense is significantly greater than other Kentucky IOUs. Attorney General/KIUC and Mr. Kollen argued that AEP had a business reason to underinvest in Kentucky because Kentucky Power distribution investments earn a lower ROE than

⁸⁴ Kollen Direct Testimony at 34-35; and Attorney General/KIUC's Post-Hearing Brief at 35.

⁸⁵ Kollen Direct Testimony at 45-54; and Attorney General's Post-Hearing Brief at 16-23.

⁸⁶ Kollen Direct Testimony at 46. See also Joint Applicants' Response to KIUC's First Request, Item 76.

FERC-regulated AEP transmission companies in other jurisdictions.⁸⁷ Attorney General/KIUC and Mr. Kollen explained that:

A dollar invested by AEP in its Kentucky distribution system in 2021 earned a 6.2% return on equity, is applied to an equity capital structure of 43% and is recovered through base rates with the associated regulatory lag. In contrast, a dollar invested by AEP in any of its FERC-regulated Transcos earns a 10.35% return on equity, is applied to an equity capital structure of 55% and is recovered through a formula rate using a forecasted test year including a true-up with no regulatory lag.⁸⁸

Attorney General/KIUC asserted that AEP's underinvestment in Kentucky Power resulted in AEP obtaining a higher purchase price for Kentucky Power, alleging that Liberty was attracted to the opportunity for greater rate base growth from the necessary capital investments than would occur if Liberty bought a utility with good working infrastructure.⁸⁹ Attorney General/KIUC pointed out that AEP and Kentucky Power made reliability commitments in Case No. 99-149⁹⁰ that neither AEP nor Kentucky Power complied with.

Based upon the underinvestment in the distribution system and failure to maintain the commitments, Attorney General/KIUC contended that AEP should be required, as a condition of the acquisition, to contribute funds towards remedying its distribution underinvestment.⁹¹ Mr. Kollen calculated that Liberty would incur at least \$203 million in

⁸⁷ Kollen Direct Testimony at 52-53; and Attorney General/KIUC Post-Hearing Brief at 19.

⁸⁸ Kollen Direct Testimony at 52; and Attorney General/KIUC's Post-Hearing Brief at 19.

⁸⁹ Attorney General/KIUC's Post-Hearing Brief at 16 and 19-20.

⁹⁰ Case No. 99-149, *Joint Application of Kentucky Power Company, American Electric Power Company, Inc. and Central and South West Corporation Regarding a Propose Merger* (Ky. PSC June 14, 1999).

⁹¹ Attorney General/KIUC's Post-Hearing Brief at 20-22.

distribution capital expenditures over the next ten years and \$151.0 million in increased distribution maintenance expense arising from Kentucky Power's alleged underinvestment in the distribution system, for a total of \$354.0 million over ten years on a net present value basis that this amount should be mitigated through a proposed Cost Mitigation Credit.

Finally, Attorney General/KIUC and their witness Stephen J. Baron argued that Kentucky Power ratepayers subsidize other AEP subsidiaries' transmission investment through the AEP East transmission allocation.⁹² Mr. Baron calculated that the total amount of the subsidy between 2017 and 2022 is approximately \$66.0 million, representing the difference between costs allocated to Kentucky Power through AEP East transmission allocation and Kentucky Power's actual transmission costs.⁹³ Mr. Baron explained that, post-closing, Kentucky Power will continue to be a member of the AEP East Transmission Zone (AEP East Zone) as a non-affiliated participant and will continue to pay AEP East zonal transmission rates that are based on the combined transmission investment of AEP operating companies rather than on each affiliate's own discrete transmission costs. Mr. Baron noted that, although Kentucky Power will be allocated the costs on a 1 CP basis as a non-AEP entity, rather than the current 12 CP basis as an AEP entity, Kentucky Power ratepayers will continue to pay at least an additional \$15 million per year over the next five years if it does not withdraw from the AEP PJM transmission zone.⁹⁴ Based on the \$15 million per year calculation, Attorney

⁹² Direct Testimony of Stephen J. Baron (filed Feb. 21, 2021) (Baron Direct Testimony) at 12-13; Attorney General/KIUC's Post-Hearing Brief at 12-13.

⁹³ Baron Direct Testimony at 5, 12-18.

⁹⁴ Baron Direct Testimony at 25.

Kentucky/KIUC and Mr. Baron asserted that the Commission should require AEP to contribute \$15 million per year for the next five years to mitigate the financial harm and that the \$15 million total should flow through Kentucky Power's Purchase Power Adjustment (PPA) tariff each year for five years.⁹⁵

Joint Applicants' Reply. Joint Applicants rejected Attorney General/KIUC's arguments that Liberty does not have the technical ability to provide reasonable service and that the acquisition is not in the public interest.

Regarding Liberty's technical ability to provide reasonable service and Attorney General/KIUC's argument regarding the TSA, Liberty argued that TSAs are common, especially for entities such as AEP and Kentucky Power, and provided examples of recent acquisitions that included such agreements.⁹⁶ Liberty asserted that the TSA provided a glide path to separate core functions embedded in AEPSC and that it was unrealistic to expect a separation of core functions to occur immediately upon the acquisition closing.

Liberty responded to each of the Attorney General/KIUC's arguments that the acquisition is not in the public interest. Regarding economies of scale, Liberty argued that Mr. Kollen's argument was based on speculation and ignored key facts. Liberty stated that its business model combines centralized shared services with local day-to-day management and customer service. Liberty argued that its business model results in lower costs, as evidenced by the 30 regulated utilities it owns and operates and through documents filed into the case record of this proceeding.⁹⁷ Liberty maintained that it

⁹⁵ Baron Direct Testimony at 36; and Attorney General/KIUC Post-Hearing Brief at 14-15.

⁹⁶ Eichler Rebuttal Testimony, Exhibit PE-R2.

⁹⁷ Rebuttal Testimony of Jill Schwartz (filed Mar. 18, 2022) (Schwartz Rebuttal Testimony at 6; Rebuttal Testimony of Dmitry Balashov (filed Mar. 18, 2022) (Balashov Rebuttal Testimony) at 9-10.

analyzed potential savings by identifying services that would be provided locally by Kentucky Power and services provided on a shared service basis, arguing that Liberty's analysis is more comprehensive in scope and granular in the level of detail than depicted by Mr. Kollen.⁹⁸

Regarding receivables, Liberty argued that Mr. Kollen relied upon incorrect assumptions that resulted in a flawed conclusion. Liberty asserted that the sale of receivables increases Kentucky Power's costs because Kentucky Power is charged 2.8 percent interest for the sale of receivables, and that Mr. Kollen did not include this cost in his calculation.⁹⁹ Liberty explained that it collects receivables and does not sell them, using Liberty's Money Pool for any cash working capital needs and borrowing only the amount needed for cash working capital needs at Liberty's short-term debt rate for the Money Pool, which was 0.27 percent for the 12 months ended December 31, 2021.¹⁰⁰ Liberty asserted that ending the sale of receivables will decrease costs to ratepayers because Kentucky Power will not be charged 2.8 percent interest for the sale of receivables and that cash working capital needs will be addressed through Liberty's Money Pool, which has a significantly lower interest rate.

Regarding financing costs from tax effects, AEP and Liberty argued that Mr. Kollen's analysis is flawed because it is based on inaccurate assumptions and overlooks relevant Internal Revenue Service (IRS) normalization rules. AEP maintained that the

⁹⁸ Balashov Rebuttal Testimony at 6; Schwartz Rebuttal Testimony at 7; Liberty's Response to Staff's First Request, Item 17.

⁹⁹ Rebuttal Testimony of Michael Mosindy (filed Mar. 18, 2022) (Mosindy Rebuttal Testimony) at 4–5.

¹⁰⁰ Mosindy Rebuttal Testimony at 4–5.

financial forecast estimates that Kentucky Power will generate taxable income starting in 2024, and thus the NOL reimbursement would not be available to Kentucky Power.¹⁰¹ Liberty asserted that, based on the potential IRS normalization consistency rules violation of past ratemaking treatment for NOL ADIT, it would include the NOL ADIT in rate base in a future rate case, which is consistent with FERC guidance.¹⁰²

Joint Applicants argued that Mr. Kollen's analysis regarding the alleged loss of shared inventory ignored the fact that, post-closing, there will not be a material change to Kentucky Power's inventory sharing options. Joint Applicants argued that Mr. Kollen failed to consider that Wheeling Power, as the operator of Mitchell, will continue to have access to the AEP inventory sharing agreement and that Kentucky Power's Big Sandy natural gas unit does not have any shared inventory with other AEP affiliates.¹⁰³ AEP argued that Kentucky Power is a net provider of inventory supplies to AEP affiliates, transferring an average of \$932,000 in inventory per year in 2020 and 2021, which would result in a benefit of reduced financing costs averaging \$58,000 per year, or \$0.42 million on a net present value basis over ten years.¹⁰⁴ Liberty asserted that it has a robust supply chain management based upon its ownership of 30 regulated utilities, and in

¹⁰¹ Rebuttal Testimony of James X. Llende (filed Mar. 18, 2022) (Llende Rebuttal Testimony) at R7–R8.

¹⁰² Rebuttal Testimony of Mickael D. McCuen (filed Mar. 18, 2022) (McCuen Rebuttal Testimony) at 5–8; See also FERC Opinion No. 173.

¹⁰³ Rebuttal Testimony of Stephan T. Haynes (filed Mar. 18, 2022) (Haynes Rebuttal Testimony) at 8–9; Balashov Rebuttal Testimony at 21–22.

¹⁰⁴ Haynes Rebuttal Testimony at 9–10.

emergencies, equipment could be shared with Kentucky Power from other Liberty subsidiaries.¹⁰⁵

Regarding a potential downgrade, Joint Applicants argued that Mr. Kollen's analysis was flawed and speculative. Liberty asserted that because it provides financing to affiliates rather than have each utility seek third-party financing and because it seeks financing from the U.S. 144a market, its affiliates receive more attractive pricing for long-term debt.¹⁰⁶ Liberty pointed to a \$600 million offering in the U.S. 144a market in September 2020 that was almost three times oversubscribed and resulted in a low rate of 2.05 percent on a ten-year offering.¹⁰⁷ Liberty maintained that Mr. Kollen based his conclusion on the concept that Liberty would issue \$100 million in new long-term debt each year for ten years, and that this assumption is not supported by the case record nor has Liberty announced plans to do so.¹⁰⁸

Regarding the alleged underinvestment in distribution capital expenditures and distribution maintenance, Joint Applicants argued that Mr. Kollen's analysis contained multiple flaws and used selective data with inaccurate results. Joint Applicants asserted that Kollen oversimplified his metrics by relying only on customer count in computing Kentucky Power's distribution maintenance costs.¹⁰⁹ AEP noted that its customer count declined by over 5 percent and sales declined by 28 percent during the period used by

¹⁰⁵ Balashov Rebuttal Testimony at 21–22.

¹⁰⁶ Mosindy Rebuttal Testimony at 6.

¹⁰⁷ Mosindy Rebuttal Testimony at 6.

¹⁰⁸ Mosindy Rebuttal Testimony at 7.

¹⁰⁹ Balashov Rebuttal Testimony at 12–20; and Rebuttal Testimony of Brian K. West (filed Mar. 18, 2022) (West Rebuttal Testimony) at R2-R12.

Mr. Kollen, which was the result of a significant losses in the coal and steel industries.¹¹⁰ AEP asserted that this contrasted with the other investor-owned utilities in Mr. Kollen's comparison, which are in an area of Kentucky that experienced economic growth and an increased customer count.¹¹¹ AEP explained that growing customer populations require the construction of new distribution facilities, which increased the ratio of distribution system capital investment to depreciation expense. AEP contrasted this with Kentucky Power's declining or flat customer count, which limited the construction of new distribution infrastructure.¹¹²

Joint Applicants further asserted that drivers of distribution maintenance costs include peak demand, system line miles, service area size, and customer density; thus, basing costs only on customer counts is inaccurate. Joint Applicants claimed that urban electric utilities have a higher load and customer density, which requires fewer distribution lines, poles, and maintenance; but areas such as Kentucky Power have lower customer density with more lines and poles and lines in greater length.¹¹³ Joint Applicants maintained that, in areas with lower customer density such as Kentucky Power, when a new customer connects in a rural location that is several miles away from the closest customer, the system must be expanded at greater capital and maintenance cost than in a dense urban area.¹¹⁴ Similarly, Joint Applicants asserted that growing customer populations require the construction of new distribution facilities, which increased the ratio

¹¹⁰ West Rebuttal Testimony at R4.

¹¹¹ West Rebuttal Testimony at R4–R7.

¹¹² West Rebuttal Testimony at R6.

¹¹³ Balashov Rebuttal Testimony at 15.

¹¹⁴ Balashov Rebuttal at 15.

of distribution system capital investment to depreciation expense.¹¹⁵ Joint Applicants contrasted this with Kentucky Power's declining or flat customer count, which limited the construction of new distribution infrastructure.¹¹⁶

Liberty prepared an analysis for distribution maintenance costs per line mile and per square mile of service territory for the same investor-owned utilities used in Kollen's comparison, which reflected that Kentucky Power's distribution maintenance costs are in line with other investor-owned utilities.¹¹⁷

Finally, regarding transmission costs, AEP argued that AEP's wholesale transmissions costs and formula are approved by FERC, and thus are just and reasonable rates. AEP further argued that Kentucky Power utilizes more than just the Kentucky Power in-state transmission system to provide customers with adequate, efficient and reasonable service, and looking only at Kentucky Power's transmission cost of service is inappropriate and insufficient.

Liberty stated that it expects transmission system operations costs to be consistent with costs under AEP ownership and the AEP East Transmission Zone costs that Kentucky Power incurs as a load service entity (LSE).

ATTORNEY GENERAL/KIUC'S \$578 MILLION CREDIT

Attorney General/KIUC's witnesses Mr. Kollen and Mr. Baron proposed that AEP be required to pay Liberty a total of \$578 million from the \$585 acquisition premium.¹¹⁸

¹¹⁵ West Rebuttal Testimony at R10-11.

¹¹⁶ West Rebuttal Testimony at R10-11

¹¹⁷ Balashov Rebuttal Testimony at 14.

¹¹⁸ Baron Direct Testimony at 9.

Proposed is a payment of \$101.5 million from AEP to Kentucky Power to pay off the \$42.5 million balance of Kentucky Power's 2021 ice storm damage regulatory asset and \$59 million for the Rockport UPA deferral regulatory asset.¹¹⁹ Mr. Kollen and Mr. Baron also recommended that AEP pay Kentucky Power ratepayers \$75 million for transmission cost subsidies paid by the ratepayers and to refund this through the purchased power adjustment (PPA) rider. For the balance of the \$578 million, or \$401.5 million, the Attorney General/KIUC, Mr. Kollen, and Mr. Baron requested that it be returned to customers under a Cost Mitigation Credit as compensation for past and future harm.¹²⁰

Attorney General/KIUC's witness Mr. Baron argued that Attorney General/KIUC are not attempting to "share in the acquisition premium that AEP negotiated for its shareholders," but instead requesting that part of the premium "be used to mitigate the harm to consumers that the acquisition will cause."¹²¹ Attorney General/KIUC asserted that the Commission had plenary rulemaking authority under KRS 278.030 and KRS 278.040 to establish the riders to mitigate the alleged harm, and that the Commission previously approved similar riders to flow through credits from merger savings.¹²²

Storm damage Regulatory Asset and Rockport UPA Deferral

Attorney General/KIUC's witnesses Mr. Kollen and Mr. Baron proposed that \$42.5 million of the acquisition premium be used to pay off Kentucky Power's 2021 ice storm

¹¹⁹ Baron Direct Testimony at 10.

¹²⁰ Baron Direct Testimony at 34, 36, and 38.

¹²¹ Baron Direct Testimony at 8.

¹²² Attorney General/KIUC's Supplemental Response to Commission Staff's First Request for Information (filed Mar. 17, 2022), Item 4.

regulatory asset.¹²³ Mr. Kollen claimed that the significant damage that occurred due to three successive ice storms and snowstorms in 2021 were largely due to Kentucky Power's underinvestment in its distribution system.

Similarly, Mr. Kollen and Mr. Baron recommended that AEP pay \$59.0 million to Kentucky Power to pay of the Rockport purchased power expense regulatory asset to compensate for the risks and harms to Kentucky Power ratepayers from the acquisition.¹²⁴

Transmission costs

As discussed above, Attorney General/KIUC's witness Mr. Baron asserted that Kentucky Power ratepayers paid approximately \$15 million per year in subsidies to AEP subsidiaries in the AEP East Zone. Mr. Baron recommended that AEP repay Kentucky Power customers \$15 million per year for five years, for a total of \$75 million, to offset the \$75 million that Kentucky Power ratepayers would continue to pay the first five years after the acquisition closes.¹²⁵ Mr. Baron recommended that the \$75 million be returned to Kentucky Power ratepayers as a credit in Kentucky Power's Tariff Purchase Power Agreement (PPA).

Cost mitigation credit

Attorney General/KIUC's witnesses Mr. Kollen and Mr. Baron recommended that the Commission approve a cost mitigation credit of \$401.5 million amortized over a ten-

¹²³ Baron Direct Testimony at 34, 36, and 38; and Kollen Direct Testimony at 53-54.

¹²⁴ Kollen Direct Testimony at 19 and 60; and Baron Direct Testimony at 34.

¹²⁵ Baron Direct Testimony at 27 and 34.

year period, using the same type of mechanism used in Case No. 2018-00035¹²⁶ to flow a credit back to customers in a cost mitigation credit rider.¹²⁷ Mr. Baron and Mr. Kollen argued that the rider could be used to allocate the total risk and cost mitigation amounts from the increase operating expenses that they argue will arise as a result of the transaction.

Below is a summary of the Attorney General/KIUC's position:

American Electric Power Company, Inc. Kentucky Power Company Liberty Utilities Co. AG and KIUC Summary of Increased Costs Due to the Liberty Acquisition Subject to Compensation from AEP and Excluding Incremental Liberty Costs Subject to Conditions Case No. 2021-00481 (\$ Millions)		Harm Calculated by AG and KIUC
I. Increased Costs Due to Lost Economies and Other Benefits As Result of De-Affiliation from AEP		
Increased Costs Due to Lost Economies from Centralized Services Presently Provided by AEPSC		\$ 83.932
Increased Financing Costs Due to Terminating the Sale of Receivables to AEP Credit, Inc.		15.316
Increased Financing Costs Due to Loss of AEP Reimbursement of Tax Effects of Net Operating Losses Pursuant to AEP Tax Allocation Agreement		27.833
Increased Financing Costs Due to Loss of Shared Inventory and Spare Parts With Other AEP Utility Affiliates		13.896
Increased Costs Due to Debt Downrating Caused by De-Affiliation from AEP		7.305
II. Increased Costs That Will Be Incurred to Remedy The Company's Historic Chronic Underinvestment Under AEP's Ownership		
Increased Costs Due to Additional Distribution Capital Investment		203.627
Increased Costs of Distribution Maintenance Expense Until Underinvestment Remedied		<u>150.955</u>
Total of Increased Costs Due to the Liberty Acquisition		<u>\$ 502.864</u>
III. Ongoing Transmission Costs to Subsidize Other AEP Utilities		<u>\$ 75.000</u>
Total Costs Subject to Compensation from AEP		<u>\$ 577.864</u>

¹²⁶ Case No. 2018-00035, Kentucky Industrial Utility Customers, Inc. v. Kentucky Power Company (Ky. PSC Jun. 28, 2018).

¹²⁷ Baron Direct Testimony at 35.

Joint Applicants' response

Joint Applicants argued that Attorney General/KIUC's arguments regarding increased operating costs and underinvestment in the distribution were without merit and should be rejected. Joint Applicants asserted that Attorney General/KIUC reverse-engineered the proposed financial penalty to be paid by AEP based upon Attorney General/KIUC's estimated acquisition premium and then fabricated alleged harms based on unsupported assertions and cherry-picked data and changed positions finding benefit in AEPSC services that were previously criticized as adversely impacting ratepayers.

AEP argued that Attorney General/KIUC's arguments that AEP should forfeit any portion of the acquisition premium was not based in fact or law. AEP asserted that Attorney General/KIUC overstated the financial gain from the acquisition and that the after-tax net gain of \$40 million was the appropriate measure of the financial benefit to AEP.¹²⁸ AEP asserted that Attorney General/KIUC's proposal reflected money paid as compensation for harm caused, and thus represented monetary damages.¹²⁹ AEP argued that the Commission did not have the statutory authority to award damages.¹³⁰ AEP next asserted that any order requiring AEP to pay Kentucky Power from the acquisition premium would be an attempt to confiscate corporate property, and thus would be a taking in violation of the Fourteenth Amendment of the U.S. Constitution, and Sections 13 and 242 of the Kentucky Constitution. AEP maintained that corporate assets, including the gain on the acquisition, belong to the corporation and not to customers.

¹²⁸ Haynes Rebuttal Testimony at R5; and Joint Applicants Post-Hearing Brief (filed Apr. 12, 2022) at 60-61.

¹²⁹ Joint Applicants' Post-Hearing Brief at 54.

¹³⁰ Joint Applicants' Post-Hearing Brief at 54-55.

Walmart's response

Walmart was the only intervenor to address the proposed cost mitigation credit, arguing that the Commission should reject Attorney General/KIUC's proposed offsets as punitive because, as supported by testimony at the March hearing, the transaction will not go forward if the Commission adopts Attorney General/KIUC's position. Walmart encouraged the Commission to adopt reasonable amounts of monies to be returned to customers that would not jeopardize the proposed acquisition.

LIBERTY'S PROPOSED BILL REDUCTIONS

In rebuttal testimony, Liberty proposed to create approximately \$144.1 million in temporary bill reductions for Kentucky Power ratepayers through a \$40 million credit to offset FAC costs and a three-year deferral of the BSDR, with an estimated net present value of \$104.1 million in savings. Liberty estimated that the total bill impact for the \$40 million FAC credit and BSDR three-year deferral would be between \$21-\$30/month, or 14 to 16 percent bill reduction for average residential customers.

\$40 million FAC Credit

Liberty proposed to provide a rate offset benefit to Kentucky Power ratepayers in the form of a \$40 million credit. Liberty termed the credit the "Eastern Kentucky Fuel Relief Fund" and proposed to apply the credit to the FAC charge, with the expectation that the credit would be exhausted in 12 to 18 months.¹³¹ The credit would be applied any month that the FAC adjustment factor is positive.¹³² The \$40 million credit would be

¹³¹ Eichler Rebuttal Testimony at 15.

¹³² In accordance with 807 KAR 5:056(1), the FAC is a monthly adjustment to ratepayer's bills based upon fuel and power purchase costs as compared against a baseline approved in a rate case or two-year FAC review. The FAC adjustment factor is cost of fuel and power purchase costs and sales, compared against the baseline fuel and power purchase costs and sales.

funded in equal parts by Liberty shareholders and AEP shareholders. Liberty proposed to allocate the funds according to the following table:

Customer Class	Total Credits Provided
Residential – Heat	\$21,587,124
Residential – Non-Heat	\$8,412,876
General Service	\$6,000,000
Large General Service (MW, SL, LGS)	\$2,000,000
Industrial (IGC and IRP)	\$2,000,000
Total	\$40,000,000

Attorney General/KIUC recommended two modifications to the proposed \$40 million FAC credit. First, Attorney General/KIUC asserted that the credit should be distributed on a nondiscriminatory basis to nonresidential customers and that the credit should be distributed over a 12-month period. Attorney General/KIUC argued that, as proposed, the \$40 FAC credit improperly discriminates against customers.¹³³ Attorney General/KIUC explained that the FAC is collected on a per-kilowatt-hour basis among all customers, without differentiating between tariff schedules. Attorney General/KIUC calculated that, based on the proposed amounts and amounts billed to each customer class, the credit is projected to be divided between the customer classes as follows: \$15.57/MWh credit to residential customers; \$10.91/MWh to General Service (Commercial and Industrial); \$3.54/MWh to Large General Service (Commercial and Industrial); and \$0.99/MWh to Industrial Service Commercial and Industrial).¹³⁴

Second, Attorney General/KIUC argued that residential and nonresidential customers should receive the same credit, but that it could be reasonable to treat the

¹³³ KRS 278.170 prohibits any discrimination between classes of service doing a like and contemporaneous service under substantially the same conditions.

¹³⁴ Attorney General/KIUC's Post-Hearing Brief at 10.

classes differently. Attorney General/KIUC asserted that the differences between nonresidential customers classes—namely, the demand level and service voltage—is not sufficient to justify the discrepancy in amounts received under the proposed credit.

BSDR deferral

Liberty proposed the BSDR referral to provide rate relief while Liberty pursues changes in Kentucky law to allow for securitization of the remaining balance of the decommissioning costs for Big Sandy Unit 2. The BSDR would continue to build and accrue interest at the rate authorized by the Commission, which is at a WACC of 7.5 percent. If securitization is not enacted, then the current levelized deferral amount would be reinstated, which would extend the term of the BSDR by almost 11 years¹³⁵ and increase the amount due because the interest would continue to accrue during the three-year deferral.

Joint Applicants stated that AEP will reduce the purchase price paid by Liberty by \$3.5 million to assist Liberty in funding the carrying cost on the three-year BSDR deferral.

Attorney General/KIUC argued that the BSDR deferral was a “pay me now, pay me later” offer because potential securitization benefits are speculative, based upon a change in Kentucky law for which there is no certainty will occur.¹³⁶ Attorney General/KIUC further argued that the one-time, short-term savings offered by Liberty falls short of offsetting the alleged financial harm to Kentucky Power ratepayers.¹³⁷

¹³⁵ See Joint Applicants’ Response to Commission Staff’s Post-Hearing Request for Information, Item 4. The BSDR is currently levelized through June 1, 2040 and the proposal to maintain the current annual level of amortization if securitization is not secured would extend the BSDR through approximately April 1, 2051.

¹³⁶ Attorney General/KIUC’s Post-Hearing Brief at 8-9.

¹³⁷ Attorney General/KIUC Post Hearing Brief at 9.

FUTURE PARTICIPATION IN PJM

In accordance with Liberty's commitments, Kentucky Power will evaluate whether it will continue to participate in PJM, and if so, the nature of Kentucky Power's participation. One question presented by the parties is whether Kentucky Power should be a standalone zone in PJM, but that cannot occur absent a change in the Consolidated Transmission Owners Agreement (CTOA), Section 7.5, which requires a supermajority of transmission owners.¹³⁸ Further, the CTOA contains a prohibition on establishing future zones that are smaller than the current zones; a Kentucky Power zone would be smaller, and thus would require a similar change to the CTOA¹³⁹.

Liberty filed testimony from two consultants with RTO experience who argued that additional study was required to evaluate Kentucky Power's future relationship with PJM and whether Kentucky Power could become a standalone zone given legal and technical impediments.¹⁴⁰

LS Power's witness Thomas Hoatson explained that LS Power opposes Kentucky Power remaining in PJM as an FRR member and that Kentucky Power should transition to a participant in PJM's capacity market.¹⁴¹

¹³⁸ Rebuttal Testimony of Steven R. Herling (filed Mar. 18, 2022) (Herling Rebuttal Testimony) at 5.

¹³⁹ Joint Applicants' Response to Staff's Second Request, Item 14.

¹⁴⁰ Herling Rebuttal Testimony at 10–11; and Rebuttal Testimony of Jeff Plewes (filed Mar. 18, 2022) at 5, 10–11.

¹⁴¹ Direct Testimony of Thomas Hoatson (filed Feb. 22, 2022) (Hoatson Direct Testimony) at 4–11.

DISCUSSION AND FINDINGS

Kentucky's legislature determined that it is in the public interest that the Commonwealth be divided into geographical service areas to be served by a single retail electric supplier in each of the designated service areas.¹⁴² The Commission has the statutory authority to authorize a retail electric supplier to serve a designated area.¹⁴³ The Commission also has the statutory authority to authorize a different retail electric supply to serve the designated area if the existing retail electric supplier fails to provide adequate service and does not correct that failure as required by the Commission.¹⁴⁴

A retail electric supplier is awarded the right to serve a specific area as a privilege conditioned upon the responsibility to provide adequate, efficient and reasonable service, as defined by statutes and Commission regulations. In other words, just as a regulated utility has the right to collect fair, just and reasonable rates approved by the Commission that provide the utility a reasonable opportunity to earn a fair return on capital invested to serve the public, the regulated utility has the obligation to, among other things, invest sufficient capital to provide adequate, efficient and reasonable service.

The legal standards applicable to the Commission's review of a proposed acquisition, KRS 278.020(6)–(7), are central to the regulatory principles that an acquisition must not harm a utility's ratepayers, either financially or in terms of service, and the costs cannot exceed the benefits of the acquisition. Each of the six prongs of the

¹⁴² KRS 278.016.

¹⁴³ KRS 278.018.

¹⁴⁴ KRS 278.018(3).

legal standards¹⁴⁵ must be met; if Joint Applicants fail to satisfy any one of the legal standards, the acquisition must be denied.

Based upon the case record and for reasons discussed in greater detail below, the Commission concludes that most of the legal standards have been met in the Joint Applicant's proposal, but that the proposed acquisition is in the public interest only with the modifications discussed below, which include a mitigation of \$30 million to Kentucky Power ratepayers who subsidize the transmission investments of other AEP entities, an imbalance that will continue so long as Kentucky Power remains in the AEP East Zone under the existing transmission agreements, and who would otherwise shoulder the financial burden for necessary upgrades to Kentucky Power's distribution system that resulted from AEP's lack of sufficient investment and failure to comply with Commission directives and suggestions to improve the distribution system. But for this acquisition, the Commission would have addressed these issues, and still may, in Case No. 2021-00370 or in another proceeding pursuant to KRS 278.018(3), regarding whether Kentucky Power is providing adequate service to its customers. Without these mitigation measures, the proposed transaction is not in the public interest.

KRS 278.020(6)

The Commission notes that Attorney General/KIUC was the only party to challenge Liberty's ability to provide reasonable utility service in Kentucky Power's service territories. No party challenged Liberty's financial or managerial ability to provide reasonable utility service. Whether intervenors contest an applicant's evidence, the

¹⁴⁵ Financial ability to provide reasonable service, technical ability to provide reasonable service, managerial ability to provide legal service, the acquisition is in accordance with the law, the acquisition is for a proper purpose, and the acquisition is in the public interest.

applicant has the burden of proof and must provide substantial evidence of record upon which the Commission makes findings of fact and conclusions of law. The Commission cannot defer to uncontested evidence to determine whether the legal standards have been met. The Commission must review the record and apply the Commission's expertise and knowledge to make an independent decision whether the legal standards were met, and that the acquisition should be approved.

Based upon a review of the case record and being otherwise sufficiently advised, the Commission finds that Liberty satisfied the legal standard that it has the financial, technical, and managerial ability to provide reasonable service. The case record contains sufficient evidence that Liberty and its parent, Algonquin, are financially strong companies, as documented in regulatory filings, credit ratings, and financial statements. The evidence also includes commitments that Kentucky Power will not be required to guarantee the credit of any Liberty affiliates, pledge any of its assets, or incur additional indebtedness to finance this transaction. Under Liberty's management, Kentucky Power's current capital structure will not change until new base rates are set in January 2024, and Liberty will not allocate its own capital structure to Kentucky Power. The Commission expects that Liberty's and Algonquin's record in accessing capital from financial markets will be a benefit to Kentucky Power and its customers.

The Commission has long had significant concern regarding costs that are allocated for shared corporate services, particularly the jurisdictional utility's ability to challenge such allocations. As a result of various mergers and acquisitions over the years, Kentucky utilities are being allocated a greater number of expenses but spend almost no time or effort reviewing the accuracy and appropriateness, or level, of allocated

costs. In Case No. 2021-00183, the Commission required that an employee of Columbia Gas of Kentucky, Inc. (Columbia Kentucky) perform a thorough review of costs allocated to Columbia Kentucky on a recurring basis.¹⁴⁶ Because of the Commission's considerable concern regarding allocated costs, the Commission finds that Kentucky Power shall require an employee who understands the allocation of expense, is familiar with profit and loss, and is familiar with cost allocations from Liberty and Algonquin to perform a thorough review of costs allocation to Kentucky Power on a recurring basis. Failure to institute such review will require the Commission to evaluate and possibly investigate the issue in a separate proceeding.

The Commission is not persuaded by Attorney General/KIUC's argument that entering into the TSA indicates that Liberty does not have the technical ability to provide reasonable service. The Commission notes that Kentucky Power has been an AEP subsidiary since 1922, with AEPSC providing many core functions for Kentucky Power. Given the length of time, degree of involvement, and expansive nature of services provided by AEPSC to Kentucky Power, it is reasonable to conclude that some transition services would be required for a successful transition to a new owner. The Commission weighed the evidence of record regarding Liberty's technical ability to provide service, including that Liberty currently provides reasonable electric service through Liberty's regulated electric utility subsidiaries, and finds that Liberty provided sufficient evidence that it has the technical ability to provide reasonable service.

¹⁴⁶ Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revisions; Issuance of a Certificate of Public Convenience and Necessity; And Other Relief* (Ky. PSC Dec. 28, 2021). See also Case No. 2016-00162, *Application of Columbia Gas of Kentucky, Inc. for an Increase in Base Rates* (Ky. PSC Dec. 22, 2016), Order at 10-11 (requiring Columbia Kentucky to closely monitor costs allocated from its parent entity).

Similarly, the Commission weighed the evidence regarding Liberty's managerial ability to provide reasonable service as demonstrated by Liberty's provision of reasonable electric service through its regulated electric utility subsidiaries and finds that Liberty provided sufficient evidence that it has the managerial ability to provide reasonable service.

The Commission notes that Liberty was nonresponsive to certain data requests, which resulted in additional data requests being issued. For example, in response to Commission Staff's Post-Hearing Request for Information, Liberty failed to provide the specific information requested regarding financing commitments or file publicly available financing documents as requested by the Commission Chairman at the March hearing, referring instead to a confidential document filed into the case record as a 353 page, unbookmarked document. A second post-hearing request for information had to be issued to address those issues. The Commission reminds Liberty that it is responsible for its responses to discovery requests. Liberty, as an applicant, bears the burden of proof and that there is no statutory or regulatory presumption that Liberty should receive the benefit of the doubt in its filings. The Commission expects Liberty to respond in all candor with a full and complete response to discovery requests and any other Commission inquiry.

KRS 278.020(7)

The Commission notes that no party disputed that the proposed acquisition was in accordance with the law and was for a proper purpose. Based upon a review of the record, the Commission finds that the proposed acquisition is in accordance with the law and for a proper purpose because it has been approved by Liberty's and AEP's respective

boards and all necessary regulatory and judicial approvals have either been received or are pending. To document that currently pending regulatory approvals are obtained, Joint Applicants shall, within ten days of receipt of each decision, file notice of regulatory and judicial approvals that are pending as of the date of this Order.

The Commission further finds that, based upon the case record, with the modifications discussed below the transaction is in the public interest. In past acquisition and transfer cases, Commission approval was based upon quantified savings and efficiencies supported by substantial evidence in the record.¹⁴⁷ Here, Joint Applicants did not provide sufficient evidence of quantifiable savings and efficiencies from the proposed acquisition. For example, Liberty stated that there would be \$8.9 million in annual savings under its management as opposed to AEP.¹⁴⁸ However, in the March 28, 2022 hearing, KIUC's counsel pointed out that the spreadsheet documenting the savings supported only \$7.6 million in savings and that Liberty's witness was unable to explain how Liberty derived the projected savings.¹⁴⁹ Although the evidence of record does not reflect savings through operational efficiencies on par with previous cases, with the modifications approved in this Order, the acquisition will benefit Kentucky Power ratepayers through

¹⁴⁷ See Case No. 2018-00369, *Electronic Joint Application of Aqua America, Inc., SteelRiver Infrastructure Fund North America LP, SteelRiver LDC Investments LP, LDC Parent LLC, LDC Funding LLC, LDC Holdings LLC, PNG Companies LLC, Peoples Gas Ky LLC, and Delta Natural Gas Company, Inc. for Approval of an Acquisition of Ownership and Control of PNG Companies LLC and Delta Natural Gas Company, Inc.* (Ky. PSC Mar. 20, 2019); Case No. 2017-00125, *Electronic Joint Application of PNG Companies LLC, Drake Merger Sub Inc., and Delta Natural Gas Company, Inc. for Approval of an Acquisition of Ownership and Control of Delta Natural Gas Company, Inc.* (Ky. PSC July 13, 2017); Case No. 99-149, *Joint Application of Kentucky Power Company, American Electric Power Company, Inc., and Central and South West Corporation Regarding a Proposed Merger* (Ky. PSC June 14, 1999); and Case No. 97-300, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of Merger* (Ky. PSC Sept. 12, 1997).

¹⁴⁸ Joint Applicants' Response to Staff's First Request, Item 17.

¹⁴⁹ March 28, 2022 HVT at 5:37:41-5:47:15.

mitigation of ratepayers' subsidization of other AEP affiliates' transmission investments and mitigation of distribution system investment necessary to remedy AEP's underinvestment in Kentucky Power's distribution system. Furthermore, Kentucky Power no longer being an affiliate of or managed by AEP will undoubtedly produce superior outcomes for customers as compared to the status quo.

As documented in this case and other cases, including Case No. 2020-00174 and Case No. 2021-00370, Kentucky Power ratepayers subsidize other AEP affiliates' transmission investment, and in particular, their "local" transmission facilities.¹⁵⁰ This is because, in the AEP East Zone, local transmission investment costs are socialized. Each AEP East operating company's revenue requirement is determined, and then the amounts are aggregated and divided by the number of operating companies to determine a single AEP East Zone revenue requirement. AEP admitted that Kentucky Power's annual transmission investment expense is greater than Kentucky Power's transmission cost of service.¹⁵¹ The issue with transmission cost allocation dates back decades when Kentucky Power's costs for the Hanging Rock/Jefferson transmission line were estimated at \$55 million, with Kentucky Power responsible for only 5 percent, but, after AEP obtained a "blended" cost allocation from FERC, the costs rose to \$123 million with Kentucky Power paying all the costs.¹⁵² Kentucky Power asserted that just because Kentucky Power pays more in transmission investment costs than its revenue

¹⁵⁰ See Baron Direct Testimony at 12-27; Case No. 2021-00370, September 15, 2021 Order at 3-5; and Case No. 2020-00174, Jan.13, 2021 Order at 63.

¹⁵¹ Rebuttal Testimony of Alex E. Vaughan (Vaughan Rebuttal Testimony) (filed Mar. 18, 2021) at R6; Mar. 29, 2022 HVT at 5:11:13.

¹⁵² *Kentucky Power Co. v. Kentucky Public Serv. Comm'n*, Ky. Ct. App. Case No 86-CA-1031, *4 (Ky. Ct. App. June 3, 1988).

requirement, does not indicate subsidization because Kentucky Power ratepayers use the entire AEP East system to obtain electric service. Kentucky Power provided no evidence to support this assertion. In contrast, there is substantial evidence of record, including AEP's admission, that Kentucky Power ratepayers have paid more in transmission costs through the allocation than ratepayers would have paid for only Kentucky Power's transmission investment.¹⁵³ AEP and Kentucky Power have been on notice for years about the Commission's concern on this and related issues.¹⁵⁴ As far back as 2018 this Commission noted that Kentucky Power's and AEP's interests are not aligned when it comes to transmission investment and its costs recovery and allocation, in addition to other FERC or PJM related activities.¹⁵⁵ Given the Commission's recognition of these issues, it "strongly encouraged" Kentucky Power to review its participation in the wholesale market to align the interests of the utility and its rates payers,¹⁵⁶ and put the utility on notice to address these transmission costs.¹⁵⁷ As indicated in Kentucky Power's 2020 rate case, "[f]ailure by Kentucky Power to take immediate steps to materially address [the issue with increasing transmission expenses as a result of investments elsewhere in the AEP East system] will force the Commission,

¹⁵³ See Baron Direct Testimony at 11, 18-20; and Joint Applicants' Response to Staff's First Post-Hearing Request, Item 2.

¹⁵⁴ Case No. 2017-00179, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs and Riders; (4) An Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) An Order Granting All Other Required Approvals and Relief* (Ky. PSC Jan. 18, 2018), Order at 52–54, and 74; Case No. 2020-00174, Jan. 13, 2021 Order at 60–64.

¹⁵⁵ Case No. 2017-00179, Jan. 18, 2018 Order at 74.

¹⁵⁶ Case No. 2017-00179, Jan. 18, 2018 Order at 74.

¹⁵⁷ Case No. 2020-00174, Jan. 13, 2021 Order at 63.

whether thought its statutory authority at the retail level or its advocacy at the wholesale level, to address these concerns itself.”¹⁵⁸ Now is the time for the Commission to accept its own invitation.

The Commission finds Attorney General/KIUC’s witness Mr. Baron’s calculation that Kentucky Power ratepayers pay approximately \$15 million per year credible because the calculation is supported by AEP data regarding actual revenue requirements for each of the AEP East operating companies. The Commission further finds that AEP should refund an amount reflecting the \$15 million annual subsidization over five years but will suspend three years of the refund conditioned on AEP actively seeking the best solution for Kentucky Power and its customers regarding Kentucky Power either establishing its own PJM zone, joining another PJM zone, or another solution that results in Kentucky Power and its customers receiving benefits commensurate with its cost of participation. The mechanism to return \$30 million to Kentucky Power ratepayers is addressed below. Failure by AEP and the other Joint Applicants to timely find a solution to this issue will result in the removal of the suspension of the three years’ subsidization amounts. The Commission expects the Joint Applicants to act immediately on this subject.

The substantial evidence of record also reflects that AEP underinvested in Kentucky Power’s distribution system. Liberty’s own due diligence discussed that Kentucky Power’s distribution system investment was beneath industry standards.¹⁵⁹ For decades, AEP made the business decision to invest capital in other jurisdictions in which it could obtain a higher return, to the detriment of providing adequate, efficient and

¹⁵⁸ Case No. 2020-00174, Jan. 13, 2021 Order at 63.

¹⁵⁹ Joint Applicants’ Response to KIUC’s First Request, Item 76.

reasonable service. In 1995, AEP and Kentucky Power appeared before a grand jury to address outages that AEP and Kentucky Power admitted were due to aging equipment.¹⁶⁰ The Commission has closely monitored AEP and Kentucky Power's distribution system since 1996.¹⁶¹ Due to that close monitoring, AEP and Kentucky Power invested significant capital. However, when service quality and reliability remained an issue, the Commission, in 2002 on its own motion, initiated a management audit, with the Management Audit Report issued in March 2003.¹⁶² After significant weather related outages in 2009, the Commission initiated a review that culminated in the IKE and ICE Report. In the IKE and ICE Report, recommendations included upgrading to heavy loading standards, particularly in areas or circuits that suffer repeated weather-related outages and to hardening the system, especially circuits serving critical infrastructure.¹⁶³ The IKE and ICE Report placed Kentucky Power on notice that additional investment would be needed in order to improve system reliability. However, the significant damage and outages that Kentucky Power's customers have experienced from subsequent storms shows that meaningful levels of additional and changed investment did not occur. AEP's choices in this regard have a meaningful impact on customers. Most recently, the \$43.561 million regulatory asset¹⁶⁴ for distribution repairs after weather events resulted in

¹⁶⁰ Final Report Focused Management Audit of the Hazard Service Area of American Electric Power (filed Mar. 24, 2003) (Management Audit Report) at 5.

¹⁶¹ Management Audit Report at 5.

¹⁶² Management Audit Report at 5.

¹⁶³ IKE and ICE Report (Ky. PSC Nov. 19, 2009), Report at 3.

¹⁶⁴ Case No. 2021-00129, *Electronic Application and Request for Decision by April 5, 2021 of Kentucky Power Company for an Order Approving Accounting Practices to Establish a Regulatory Asset Related to the Extraordinary Expenses Incurred by Kentucky Power Company in Connection with Three February 2021 Major Storm Events* (Ky. PSC Apr.5, 2021), Actual Total Jurisdictional Incremental Operations and Maintenance Costs (filed Jan. 18, 2022).

distribution system outages is a direct result of Kentucky Power's and AEP's choices regarding distribution investment. As discussed by Attorney General/KIUC, Kentucky Power's outages, as measured by SAIFI and SAIDI, are significantly above other Kentucky utilities, which results in significant reliability issues and poor service quality.¹⁶⁵ Liberty's forecast of capital expenditures indicates the need upgrading and hardening the system is still a significant issue that Kentucky Power only recently began to address.¹⁶⁶ To mitigate the impact of necessary distribution investments on Kentucky Power's ratepayers, the Commission finds that Kentucky Power shall establish a regulatory liability in the amount of \$43.561 million to offset the deferred distribution restoration expenses. The regulatory liability may be used to reduce rate base in Kentucky Power's next rate case and be amortized with the storm regulatory asset.

In its post-hearing brief, Kentucky Power argued that requiring it to forego any amount of the sale proceeds would be a violation of the Fourteenth Amendment of the U.S. Constitution and Sections 13 and 242 of the Kentucky Constitution. Kentucky Power argued that the sale proceeds are the property of AEP and its shareholders, and not the customers' property. Kentucky Power further argued that customers do not have any legal or equitable interest in property used "for [ratepayers'] convenience."¹⁶⁷ Kentucky Power ignores that, as the U.S. Supreme Court stated, the "partly public, partly private status of utility property creates its own set of questions" whether an action constitutes a

¹⁶⁵ Kollen Direct Testimony at 50-52; and Attorney General/KIUC's Post-Hearing Brief at 16-19.

¹⁶⁶ Joint Applicants' Supplemental Response to KIUC 1, Item 61, Attachment 3; KIUC Hearing Exhibit 4; Mar. 28, 2022 HVT at 4:54:44-4:57:34.

¹⁶⁷ Joint Applicants Post-Hearing Brief at 55-56 (*citing Bd. of Commrs. v. NY Tel. Co.*, 271 U.S. 23, 32 (1926)).

taking.¹⁶⁸ The Court noted that “[a]ll that is protected against, in a constitutional sense, is that the rates fixed by the Commission be higher than a confiscatory level.”¹⁶⁹ As a regulated utility monopoly, Kentucky Power has the right to charge fair, just and reasonable rates in return for the obligation to provide adequate, efficient and reasonable electric service by, among other things, making capital investments. Kentucky Power and AEP failed to uphold Kentucky Power’s obligation that accompanies its right as a regulated monopoly by making sufficient capital investment to provide adequate, efficient and reasonable service. Instead, AEP directed investment towards more lucrative AEP subsidiaries. The Commission concurs with Attorney General/KIUC that the acquisition premium in this acquisition is, in some measure, the result of AEP’s underinvestment in distribution infrastructure, which provides the acquiring entity the opportunity to increase its earnings through a return on capital investment to repair and upgrade the distribution system. AEP now wants to be financially rewarded for neglecting its obligation. Taking occurs when rates established by a Commission are so unjust as to be confiscatory.¹⁷⁰ In other words, when the value of a property is so destroyed that, for all practical purposes, it deprives the owner of the property without due process of law.¹⁷¹ That is not the case here.

Regardless, AEP’s Commission-required mitigation is unrelated to the premium paid for the purchase of Kentucky Power. These amounts are not a penalty, rather, they

¹⁶⁸ *Duquesne Light Co. V. Barasch*, 488 U.S. 299, 308 (1989).

¹⁶⁹ *Duquesne Light Co.*, 488 U.S. at 308 (citing *FPC v. Texaco, Inc.*, 417 U.S. 380, 391-392 (1974)).

¹⁷⁰ *Duquesne Light Co.*, 488 U.S. 299 at 306.

¹⁷¹ *Duquesne Light Co.*, 488 U.S. 299 at 308 (Citing *Covington & Lexington Turnpike Road Co. V. Sanford*, 164 U.S. 578, 597 (1896)).

are a reimbursement for the harm caused by AEP's ownership and now sale of Kentucky Power. They are not intended or premised on retribution, but rather are expected to be restorative in reversing anticipated and acknowledged destruction. How these amounts are funded are immaterial to the Commission as long as they are not directly or indirectly recovered from customers, which they shall not be. What matters is that the public interest, not the Joint Applicants' private interests, are served by the transaction. To be clear however, Liberty did not pay a premium over net book value to merely recover a WACC on Kentucky Power's current rate base. The value Liberty is willing to pay extra for comes from AEP selling a public good; namely a state-granted franchise to be the exclusive electric service provider, which includes the opportunity for significant investment in infrastructure and a regulatory scheme that provides the utility mechanisms to seek recovery of and on its investment. Nevertheless, Kentucky Law does not indicate that receipt of a premium for the sale of a utility with an exclusive certified territory is forbidden or repugnant. As such, the Commission finds no legal requirement, and is unpersuaded by the facts and evidence provided by parties, to penalize AEP by reducing its purchase price in this matter and applying that reduction to reduce Kentucky Power bills. Should the General Assembly wish that to be the case in sales of electric utilities, is it their constitutional prerogative to change the law accordingly.

\$40 million FAC Credit

As detailed above, Liberty proposed to provide a rate-offset benefit to Kentucky Power ratepayers in the form of a \$40 million credit. Termed as the "Eastern Kentucky Fuel Relief Fund," Liberty proposed to apply the credit to the FAC charge in the months that the FAC adjustment factor is positive.

The Attorney General/KIUC support the proposed FAC Credit but proposed two modifications. These modifications include removing the distinction between tariff schedules for the nonresidential rate classes so that the credit is distributed equally among all nonresidential tariff classes and to distribute the FAC Credit over a 12-month period rather than until the fund is exhausted. Regarding the distinguishing between the nonresidential tariff schedules, the Commission agrees that the nonresidential customers are similar in their nature of service and responsibility for FAC costs and believes that the FAC credit should mimic the current Tax Cut and Jobs Act (TCJA) Surcredit in which nonresidential rate classes receive the same credit. Therefore, the Commission finds that the Attorney General/KIUC's proposed modification to not distinguish between the nonresidential rate classes to be reasonable. Regarding the return period, as explained below, the Commission believes that the Eastern Kentucky Fuel Relief Fund should be modified and returned to customers over 18 months.

As proposed, the Eastern Kentucky Fuel Relief Fund allows for a FAC credit to be applied when the FAC is positive. However, due to the fact that the FAC is a variable component each month and can be positive or negative, applying the credit can be inconsistent and volatile as it varies with the market, and this can cause confusion amongst customers as well as lack transparency. Additionally, adding the credit to the FAC causes challenges in the tariff language. Therefore, the Commission believes setting up a surcredit, similar to the TCJA Surcredit that has a beginning and end, known kWh rebates, a larger winter rebate when bills are the highest for residential customers, and is a single line item on the customer's bill to be more transparent and measurable. Kentucky Power shall file through the electronic tariff system, a proposed tariff and rates

for the return of the \$40 million between July 1, 2022, and December 31, 2023, in which 75 percent is returned to the residential class and 25 percent to the nonresidential class by June 1, 2022.

As an example of a surcredit, the Commission estimates the following credits over an 18-month period, or from July 1, 2022, through December 31, 2023, applying the billing determinants used in the calculation of the TCJA Surcredit in Case No. 2020-00174:¹⁷²

	Residential (\$/kWh)	All Other (\$/kWh)
January – March and December	\$0.02338	\$0.00212
April - November	\$0.00100	\$0.00212

For the average residential customer using 1,400 kWh, these rates result in a credit of \$32.72 per month during the winter season and \$1.40 during the nonwinter season.

BSDR Deferral

The Commission recognizes that the proposed BSDR Deferral or “rate holiday” is a short-term benefit and if securitization is not enacted, this proposal will result in higher costs over time for ratepayers. With this deferral, there are two costs incurred: (1) carrying charges accrued during the three-year deferral; and (2) if securitization is not approved, a longer recovery period for the Big Sandy Retirement regulatory asset. The Commission finds that Liberty should share a portion of the costs and risks from the proposed deferral with ratepayers. This is especially so given that AEP agreed to decrease the sale price by \$3.5 million to offset any financial impact to Liberty from the BSDR deferral. To that end, the Commission finds that Kentucky Power ratepayers are responsible for only 50 percent of the carrying charges that will accrue during the three-year BSDR deferral, with

¹⁷² See Appendix B

the remainder the responsibility of the Joint Applicants, however they deem necessary, as long as the amounts are not recovered from customers, directly or indirectly. The Commission finds that the proposed BSDR Deferral is reasonable and necessary as modified.

Operating Kentucky Power and Kentucky Transco as separate entities

The Commission has expressed an ongoing concern that Kentucky Power's transmission needs should be met by Kentucky Power and not through Kentucky Transco or any other affiliates, AEP or otherwise. If Liberty determines that it is beneficial to Kentucky Power's ratepayers, Kentucky Power should seek to incorporate Kentucky Transco's rate base into Kentucky Power's rate base. Kentucky Power depends upon Kentucky Transco's investments to serve Kentucky Power's retail customers. This only makes sense. But for AEP's use of a state transmission company, Kentucky Transco's rate base would be part of Kentucky Power's regulated rate base and its net margins would offset Kentucky Power's base rates.

Attorney General/KIUC's Acquisition Premium Mitigation

As detailed above, the Attorney General/KIUC's witnesses Mr. Kollen and Mr. Baron stated that the proposed transaction will result in increased costs from the loss of economies of scale and other benefits if Kentucky Power is no longer affiliated with AEP; increased costs that will be incurred to rectify AEP's underinvestment in distribution; and increased costs resulting from AEP's failure to resolve the transmission cost subsidies paid by Kentucky Power to other AEP utility affiliates.

The Commission has addressed the costs resulting from AEP's failure to resolve transmission cost subsidies paid by Kentucky Power to other AEP utility affiliates above.

Additionally, the Commission addressed the underinvestment in distribution and found that \$43.561 million should be placed as a regulatory liability to address the regulatory asset associated with the 2021 ice storm.

Regarding Attorney General/KIUC's argument of increased costs due to loss of economies of scale and other benefits that result from the de-affiliation from AEP, the Commission is not persuaded by Attorney General/KIUC's arguments. The Commission has reviewed the record in the instant case and prior cases discussed above and the 2003 management audits in which the Commission questioned AEP's management and concludes that AEP's management of Kentucky Power has not been effective nor responsive and a new decentralized management may be more appropriate for Kentucky Power. Such a management is more representative of neighboring electric cooperatives who face similar terrain, economics, and customer base. Additionally, the Commission suspects that the economies of scale that often accompany acquisitions and large companies may have been surpassed and diseconomies of scale may be occurring at AEP. Finally, the Commission notes that should Kentucky Power propose unreasonable financing costs or affiliate costs in subsequent matters, it is the Commission, not Kentucky Power, that dictates the costs used to determine base rates in the Commonwealth of Kentucky. Effective regulation by this Commission should serve as an adequate safeguard against Kentucky Power's costs increasing post-transaction to unreasonable levels, objectively or as compared to the utility's costs as a subsidiary of AEP.

IT IS THEREFORE ORDERED that:

1. Liberty's acquisition of Kentucky Power from AEP is approved subject to the modifications set forth in this Order.

2. Kentucky Power shall record a \$30 million regulatory liability for increased transmission expenses in 2022 and 2023.

3. Three years of the \$15 million annual subsidization of transmission costs is suspended conditioned on the Joint Applicants, including AEP, immediately and actively seeking the best solution for Kentucky Power and its customers regarding Kentucky Power either establishing its own PJM zone, joining another PJM zone, or another solution that results in Kentucky Power and its customers receiving benefits commensurate with its cost of participation.

4. Within five days of the closing of the acquisition, Liberty shall file a written notice setting forth the date of the acquisition.

5. Kentucky Power shall record a \$43.561 million regulatory liability for deferred distribution restoration expenses.

6. The \$40 million FAC Credit, as modified in the body of this Order, is approved.

7. The BSDR Deferral, as modified in the body of this Order, is approved.

8. Within ten days of receipt of regulatory and judicial decisions on pending applications, Joint Applicants shall file notice of all regulatory and judicial approvals that are pending as of the date of this Order.

9. Within 20 days of the closing of the acquisition, Liberty shall file the journal entries it proposes to record the acquisition. The acquisition shall be recorded in accordance with the Uniform System of Accounts.

10. Within 20 days of the closing of the acquisition, Liberty shall file a signed and dated tariff adoption notice in accordance with 807 KAR 5:011, Section 11.

11. Kentucky Power shall require an employee who understands the allocation of expense, is familiar with profit and loss, and is familiar with cost allocations from Liberty and Algonquin to perform a thorough review of costs allocation to Kentucky Power on a recurring basis.

12. All documents filed pursuant to ordering paragraphs 8, 9, 10, and 11 shall reference this case number and shall be filed in the post-case correspondence file.

13. Kentucky Power shall file through the electronic tariff system, a proposed tariff and rates for the return of the \$40 million between July 1, 2022, and December 31, 2023, in which 75 percent is returned to the residential class and 25 percent to the nonresidential class by June 1, 2022.

14. Within 90 days of completion of the transfer of Kentucky Power from AEP to Liberty, Kentucky Power shall file with the Commission a final annual report covering the reporting period of January 1, 2022, to the date of closing in addition to any outstanding annual reports for periods prior to the calendar year 2022.

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

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman

Commissioner



ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00481 DATED MAY 04 2022

SIX PAGES TO FOLLOW

Commitments Made by Liberty Utilities Co.

Commitments made in Application and Testimony of Peter Eichler

- Maintain Kentucky Power's head office in the service territory.
- Localize upwards of 100 utility operations jobs back to Kentucky Power.
- Within 2 years of the close of the transaction, Kentucky Power will evaluate the benefits and costs of its participation in the PJM, and to the extent appropriate, explore alternatives.
- Reopen a customer walk-in center in Ashland and at least one other community.
- Establish and maintain a Kentucky Power Company board of directors comprised of a majority of independent non-management members with at least one seat reserved for a business and/or community leader from Kentucky Power's service territory.
- Assume all regulatory commitments currently in force from prior Commission Orders for Kentucky Power.
- Not seek recovery of the transaction premium or transaction costs in Kentucky Power's rates.
- Continue to work with local and state governmental entities.
- Continue to promote economic development in Kentucky.
- The transaction will not impact or affect contractual relationships with municipal or wholesale customers of Kentucky Power.
- Obtain Commission approval before transferring Kentucky Power property, plant and equipment, consistent with KRS requirements.
- There will be no cross subsidization between Liberty's regulated businesses and Algonquin's non-regulated businesses.
- Kentucky Power will not transfer stock without Commission approval.

Commitments made in Stock Purchase Agreement¹

- Indemnify, defend and hold harmless past and present directors, officers, and employees of the Kentucky Power and Kentucky Transco for a period of 6 years, as set forth in more detail Section 4.12.
- Assume all obligations under the NSR Consent Decree relating to the Mitchell Interest and Big Sandy, as set forth in more detail in Section 4.13.
- For a period of no less than five years from the Closing Date, cause Kentucky Power to maintain its existing corporate headquarters in Kentucky and, other than in the ordinary course of its business, maintain its existing offices and service centers in Kentucky, as set forth in Section 4.21.
- Kentucky Power and Kentucky Transco employees, whether members of a collective bargaining agreement or not, who are employed by such company immediately prior to the closing will continue to be employed upon closing and will remain employed for a period of two years following the closing, as set forth in more detail in Section 5.3 or otherwise provide such employees severance as set forth in more detail in Section 5.6.
- Employees of Kentucky Power and Kentucky Transco will receive substantially similar, in the aggregate (provided base salary must be at least equal to the current base salary/wage rate), base salary or hourly wages, incentive compensation opportunities, retirement benefits, welfare benefits, and severance benefits as the same exist immediately prior to closing, as set forth in more detail in Section 5.4.
- Provide employees benefits regarding welfare plans, severance, continuing health care coverage, service credit, defined contribution plans, incentive awards, seller benefit plans, and workers compensation benefits, as set forth in more detail in Sections 5.5 through 5.13.
- Kentucky Power must maintain itself as a “Load Serving Entity” under the PJM Market Rules and remain included in the “AEP Zone” until the completion of all remaining “Planning Periods” for which Kentucky Power has committed to jointly participate in a “Fixed Resource Requirement Alternative” as set forth in more detail in Section 4.8(c).
- Kentucky Power and Kentucky Transco must within three business days cease using, and within 120 days remove, all trademarks and service marks of AEP within 120 days of closing as set forth in more detail in Section 4.10.

¹ For purposes of this document, the term “Commitment” as used in relationship to the Stock Purchase Agreement, is intended to mean commitments and assurances agreed to by Liberty Utilities Co. related to the post-acquisition operation of Kentucky Power. Nothing herein is intended to supersede or contradict the contractual obligations of the parties to the Stock Purchase Agreement.

Commitments made in response to KPSC 1-03

- All costs associated with the proposed transaction will not have the effect of increasing Kentucky Power's rates for electric service.
- Kentucky Power's ratepayers will not incur any additional costs, liability, or obligations, directly or indirectly, in conjunction with the proposed transaction. Provided however that Kentucky Power will enter into affiliate service agreements with Algonquin Power & Utilities Corp., Liberty Utilities (Canada) Corp., Liberty Utilities Co. and Liberty Service Corp. for the provision of certain services, and in that respect, will incur new liabilities. The costs of these services, however, will not result in any increase in costs to Kentucky Power customers.
- Kentucky Power will not incur any additional indebtedness or pledge any assets to finance any part of the purchase price paid by Liberty to acquire control of Kentucky Power.
- Kentucky Power's current level of community involvement, charitable contributions, low-income funding, and economic development in Kentucky Power's service territory will be maintained for two years following the close of the transaction so that the Company can best evaluate how to continue to support the community.
- Kentucky Power's customers will not be asked to contribute to costs associated with operating any Liberty subsidiary or affiliates.
- Kentucky Power will not guarantee the credit of any affiliate if the proposed transaction is approved.
- Kentucky Power will not be required to pledge any of its assets to finance the debt or any purchases of any affiliates if the proposed transaction is approved.
- Kentucky Power will not be required to grant liens or encumbrances, or otherwise pledge any of its assets, to finance any or all of the costs of the proposed transaction.
- Liberty will not utilize push-down accounting in any manner arising from the proposed transaction.
- Kentucky Power will give clear and conspicuous notice to Kentucky Power's customers prior to any change in service resulting from the proposed transaction.
- Liberty will commit to ring-fencing of Kentucky Power such that Kentucky Power would be insulated from Liberty's non-utility lines of business. To define "ring-fencing": Liberty will commit that Kentucky Power: (i) will not assume liability for the debts issued by Algonquin Power & Utilities Corp., Liberty Utilities Co., or any of their subsidiaries or affiliates; (ii) will maintain corporate officers who have a fiduciary duty to Kentucky

Power, and; (iii) will maintain separate books and records of Kentucky Power, all to provide sufficient ring fencing to Kentucky Power to insulate it from potential liability of from other affiliates.

Commitments Made in response to testimony

- Liberty's common equity ratio for rates effective in 2024 will be 45% and will only change for ratemaking purposes upon approval of the Commission in future rate cases.
- For any FERC filed affiliate agreements that will affect rates, Liberty will provide a copy to the Kentucky Public Service Commission 30 days prior to filing of all such affiliate agreements before they are filed at FERC and before they are executed.
- Liberty will file with the Kentucky Public Service Commission any agreements with AEP relating to services provided to Kentucky Power Company within 30 days of execution of any such agreements.
- Within sixty days of the close of the transaction, Kentucky Power Company will convene a stakeholder process for the development of one or more new renewable energy offerings to be proposed for Commission approval within one year of the close of the transaction.
- Liberty will enter into an arrangement to factor accounts receivable if doing so will bring savings to customers.
- Liberty will not seek to recover any transaction or one time transition costs (as defined by Liberty in testimony) from customers.
- Liberty will pursue securitization legislation focused on the facts and circumstances of Kentucky Power to lower the cost impact of the Big Sandy Decommissioning Rider and Mitchell Power Plant.
- Eastern Kentucky Fuel Relief Fund: Provide a rate offset benefit to customers with a value of \$40 million available to assist customers with their bills should the acquisition be approved. For clarity, these amounts would be utilized to offset high fuel charges and would effectively act as a credit to customer bills.
- Big Sandy Decommissioning Rider ("BSDLR"): In order to provide near term relief to customers, while we work on appropriate securitization legislation, we are proposing to defer the collection of the Big Sandy decommissioning rider for three years. Liberty would continue to accrue the carrying charge but defer collection of the surcharge from customers of the BSDLR costs until three years after the transaction closes. At the end of the three year period, assuming the enactment of securitization legislation, with reasonable parameters such as an interest rate of 3.5% and a 20 year term, the annual collections from customers would reduce from the current levelized charge of \$26.9M to approximately \$19.6M, thereby allowing further savings of \$7.2 million per year to inure to the benefit of customers from year four forward. If securitization legislation is not

feasible within 3 years, the current levelized charge of \$26.9M will be reinstated until the balance of the regulatory asset is extinguished.

- Liberty will hire a Vice President of Customer Advocacy to assist who will be on the local Kentucky Power management team

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00481 DATED MAY 04 2022

1	After tax gain		Total	18 month per	Annually
2	residential (75%)	\$	30,000,000	\$	1,666,667
3	non-residential (25%)	\$	10,000,000	\$	555,556
4	TOTAL	\$	40,000,000	\$	2,222,222
5					
6	Current Revenue*				
7	residential	\$	231,992,979		
8	non-residential	\$	279,565,732		
9		\$	511,558,711		
10					
11	Annual kWh Sales from 2020-00174 Rate Case*		Annual		
12	residential		1,992,407,328		
13	non-residential		3,142,308,667		
14			5,134,715,995		
15	Prorated Residential Sales**				
16	Winter - 40.4%		804,785,553		
17	non-winter - 59.6%		1,187,621,775		
18			1,992,407,328		
19					
20	Rate	Rate		Annual Credit	
21	Residential Winter	\$	0.02338	\$	18,815,886
22	Residential Non Winter	\$	0.00100	\$	1,187,622
23				\$	20,003,508
24				\$	3,508 over/(under)
25					
26	Non-residential	\$	0.00212	\$	6,661,694
27				\$	(4,972) over/(under)
28					
29				\$	26,665,202
30			over/(under)	\$	(1,464)

*2020-00174 KPSC_R_KPSC_2_16_attachment2.xlsx

**TCJA Tax Cut allocation

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