

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Application Of Kentucky Power Company)
For A General Adjustment Of Its Rates)
For Electric Service; (2) An Order)
Approving Its 2014 Environmental)
Compliance Plan; (3) An Order)
Approving Its Tariffs And Riders; And)
(4) An Order Granting All Other)
Required Approvals And Relief)

ORIGINAL

Case No.
2014-00396

* * *

Transcript of May 5, 2015, hearing before David
L. Armstrong, Chairman; James W. Gardner,
Vice-Chairman; and Daniel E. Logsdon, Jr.,
Commissioner, at the Kentucky Public Service
Commission, 211 Sower Boulevard, Frankfort, Kentucky
40602-0615.

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C O N T E N T S

1		<u>Page</u>
2		
3	Appearances ^ CK	5
4	Testimony of GREGORY G. PAULEY	
5	Direct Examination by Mr. Overstreet	11
6	Cross-Examination by Mr. Nguyen	11
7	Examination by Chairman Armstrong	19
8	Examination by Commissioner Logsdon	21
9	Examination by Vice-Chairman Gardner	24
10	Testimony of JOHN MCMANUS	
11	Direct Examination by Mr. Gish	28
12	Cross-Examination by Mr. Nguyen	29
13	Examination by Commissioner Logsdon	34
14	Examination by Vice-Chairman Gardner	36
15	Cross-Examination by Mr. Cook	42
16	Reexamination by Vice-Chairman Gardner	43
17	Testimony of RANIE K. WOHNHAS	
18	Direct Examination by Mr. Overstreet	45
19	Cross-Examination by Mr. Williamson	47
20	Cross-Examination by Mr. Cook	49
21	Cross-Examination by Mr. Kurtz	72
22	Cross-Examination by Mr. Nguyen	76
23	Examination by Vice-Chairman Gardner	106
24	Recross-Examination by Mr. Kurtz	127
25	Reexamination by Vice-Chairman Gardner	128
	Redirect Examination by Mr. Overstreet	131
	Reexamination by Vice-Chairman Gardner	138
	Testimony of WILLIAM E. AVERA	
	Direct Examination by Mr. Garcia	140
	Cross-Examination by Mr. Cook	142
	Cross-Examination by Mr. Spenard	148
	Redirect Examination by Mr. Garcia	153
	Testimony of J. RANDALL WOOLRIDGE	
	Direct Examination by Mr. Cook	158
	Cross-Examination by Mr. Garcia	160
	Cross-Examination by Mr. Kurtz	164
	Cross-Examination by Ms. Vinsel	169

C O N T E N T S
(Continued)

1		
2		
3	Testimony of JOHN A. ROGNESS	
	Direct Examination by Mr. Overstreet	175
4	Cross-Examination by Mr. Nguyen	176
	Examination by Vice-Chairman Gardner	180
5	Redirect Examination by Mr. Overstreet	182
		185
6	Testimony of AMY J. ELLIOTT	
	Direct Examination by Mr. Gish	186
7	Cross-Examination by Mr. Nguyen	187
	Examination by Vice-Chairman Gardner	189
8	Redirect Examination by Mr. Gish	193
9	Testimony of EVERETT G. PHILLIPS	
	Direct Examination by Mr. Overstreet	196
10	Cross-Examination by Mr. Spenard	197
	Examination by Commissioner Logsdon	213
11	Examination by Vice-Chairman Gardner	219
	Redirect Examination by Mr. Overstreet	223
12	Recross Examination by Mr. Kurtz	228
13	Testimony of JEFFREY B. BARTSCH	
	Direct Examination by Mr. Satterwhite	230
14	Cross-Examination by Mr. Cook	231
	Redirect Examination by Mr. Satterwhite	234
15	Testimony of ANDREW R. CARLIN	
16	Direct Examination by Mr. Garcia	236
	Cross-Examination by Mr. Cook	240
17	Testimony of JEFFREY D. LAFLEUR	
18	Direct Examination by Mr. Gish	243
	Cross-Examination by Mr. Cook	245
19	Cross-Examination by Mr. Kurtz	248
	Cross-Examination by Mr. Nguyen	250
20	Recross-Examination by Mr. Kurtz	257
21	Testimony of ALEX E. VAUGHAN	
	Direct Examination by Mr. Gish	261
22	Cross-Examination by Mr. Williamson	262
	Cross-Examination by Mr. Nguyen	265
23	Examination by Commissioner Logsdon	268
	Examination by Vice-Chairman Gardner	270
24	Redirect Examination by Mr. Gish	270
25		

C O N T E N T S
(Continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Testimony of RALPH C. SMITH	
Direct Examination by Mr. Cook	272
Cross-Examination by Mr. Satterwhite	274
Cross-Examination by Mr. Kurtz	275
Cross-Examination by Ms. Vinsel	286
Cross-Examination by Mr. Malone	289
Redirect Examination by Mr. Cook	293
 Concluding Remarks	 294
 Notary Certificate	 301
 <u>Exhibits</u>	
AG Exhibit 1	80
AG Exhibit 2	80
AG Exhibit 3	157
KPCO Exhibit 1	157
KPCO Exhibit 2	164
AG Exhibit 4	164
AG Exhibit 5	235
AG Exhibit 6	235
AG Exhibit 7	260

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1 (Hearing commenced at 10:06 a.m.)

2 VICE-CHAIRMAN GARDNER: So we're on the record.
3 Welcome. This is Case Number 2014-00396, the case of
4 Kentucky Power Company for an increase in rates and
5 other relief.

6 As Chairman Armstrong said, my name is Jim
7 Gardner, and obviously Chairman Armstrong is here, and
8 to my right, your left, is our newest Commissioner,
9 Commissioner Dan Logsdon.

10 Mr. Overstreet, can we have appearances of
11 counsel?

12 MR. OVERSTREET: Certainly. Thank you, Mr.
13 Vice-Chairman.

14 My name is Mark Overstreet. I'm with the law
15 firm of Stites & Harbison, 421 West Main Street,
16 Frankfort, Kentucky.

17 Appearing with me here today is my partner, Ken
18 Gish, of Stites & Harbison, Lexington.

19 Also appearing with me today are Matthew
20 Satterwhite and Hector Garcia, both of whom have been
21 admitted pro hac vice.

22 VICE-CHAIRMAN GARDNER: Okay.

23 MR. OVERSTREET: And I'm here on behalf of
24 Kentucky Power Company.

25 VICE-CHAIRMAN GARDNER: Thank you, Mr.

1 Overstreet.

2 MR. COOK: Good morning, Mr. Vice-Chairman.

3 On behalf of the Attorney General, Lawrence Cook,
4 Jennifer Hans, Angela Goad, and with us today to
5 monitor is Stefanie Kingsley, 1024 Capital Center Drive
6 here in Frankfort, Suite 200.

7 VICE-CHAIRMAN GARDNER: Thank you..

8 MR. WILLIAMSON: Thank you, Commissioner. Good
9 morning, Chairman. Good morning, Commissioner.

10 My name is Derrick Williamson. I'm here with
11 cocounsel Don Parker, and Carrie Harris is cocounsel as
12 well. We're with the law firm Spilman Thomas & Battle,
13 and we're representing Walmart Stores East and Sam's
14 East.

15 VICE-CHAIRMAN GARDNER: Thank you. Welcome.

16 MR. KURTZ: Morning, Your Honors.

17 Mike Kurtz, Kurt Boehm, and Jody Cohn for KIUC.
18 The KIUC members who take service from Kentucky Power
19 are Marathon Petroleum, AK Steel, Air Liquide, Air
20 Products, EQT Gas, and Calgon Carbon. Thank you.

21 VICE-CHAIRMAN GARDNER: Thank you, Mr. Kurtz.

22 Mr. --

23 MR. MALONE: Morning, Commissioners. Matthew
24 Malone, law firm of Hurt, Deckard & May, 127 West Main,
25 Lexington, Kentucky 40507, here on behalf of Kentucky

1 School Boards Association.

2 VICE-CHAIRMAN GARDNER: Thank you, Mr. Malone.
3 Mr. Nguyen.

4 MR. NGUYEN: Good morning, Your Honor.

5 Quang Nguyen, David Spenard, and Nancy Vinsel on
6 behalf of the Commission.

7 VICE-CHAIRMAN GARDNER: I know that if -- all the
8 pro hac vice motions have not -- the orders have not
9 been signed, and those will -- those will be signed.
10 And I understand there are some confidentiality motions
11 that are outstanding; is that correct?

12 MR. OVERSTREET: Yes, Your Honor. The Company
13 has some -- had some confidentiality motions that are
14 outstanding, and I think both the Attorney General and
15 the Company have certain sort of technical motions to
16 deviate. I don't think any of that should affect the
17 flow of this proceeding.

18 VICE-CHAIRMAN GARDNER: Okay.

19 MR. COOK: Agree.

20 VICE-CHAIRMAN GARDNER: I know there's the motion
21 to approve the partial settlement. Are there any other
22 motions that are outstanding at this time?

23 MR. NGUYEN: Other than what you've just stated,
24 Your Honor, I don't --

25 VICE-CHAIRMAN GARDNER: Okay. Thank you.

1 Now we're going to give folks who are here from
2 the public who may want to make comment, this would be
3 people, nonparties, non -- people who are not with any
4 parties.

5 Is there anyone here who would like to make a
6 public comment? We have a microphone up front. Don't
7 be shy if you're here.

8 Okay. And if someone shows up, then -- later,
9 we'll take a quick break from the regular evidentiary
10 hearing and take those public comments, otherwise we'll
11 proceed.

12 I guess, Mr. Overstreet, would you like to begin?

13 MR. OVERSTREET: Yes. Thank you, Mr.
14 Vice-Chairman.

15 The Company calls as its first witness Gregory G.
16 Pauley, President and Chief Operating Officer of
17 Kentucky Power Company.

18 GREGORY G. PAULEY, having been first duly sworn,
19 testified as follows:

20 VICE-CHAIRMAN GARDNER: Please have a seat.
21 State your full name.

22 THE WITNESS: Gregory G. Pauley.

23 VICE-CHAIRMAN GARDNER: And with whom are you
24 employed and what position?

25 THE WITNESS: Kentucky Power Company, and

1 president and COO.

2 VICE-CHAIRMAN GARDNER: Mr. Overstreet, you may
3 ask.

4 MR. OVERSTREET: Thank you, Mr. Vice-Chairman.

5 DIRECT EXAMINATION

6 By Mr. Overstreet:

7 Q. Mr. Pauley, did you cause to be filed in the
8 record of this proceeding testimony, direct testimony
9 and certain answers to data requests?

10 A. Yes, sir.

11 Q. And do you have any corrections or updates to
12 those responses?

13 A. I do not.

14 Q. And if you were asked those same questions here
15 this morning, would your answers be the same?

16 A. They would.

17 MR. OVERSTREET: I have no further questions at
18 this time.

19 MR. WILLIAMSON: No questions, sir.

20 MR. COOK: No questions at this time.

21 MR. KURTZ: No questions.

22 MR. NGUYEN: Just a few questions, Your Honor.

23 CROSS-EXAMINATION

24 By Mr. Nguyen:

25 Q. Good morning, Mr. Pauley.

1 A. Good morning.

2 Q. Can you refer to page -- I believe it's page 9 of
3 your testimony, and then I'll also point you to the
4 response to Commission Staff's third data request, item
5 number 11. It deals with the economic development
6 initiatives that --

7 A. Yes. I'm looking for item number 11, so --

8 Q. Sure.

9 MR. OVERSTREET: May I approach the witness and
10 provide him with the response?

11 VICE-CHAIRMAN GARDNER: Yes, you may.

12 A. Okay. Thank you. Yes, sir.

13 Q. In your testimony you had indicated that Kentucky
14 Power has started the Kentucky Power Economic
15 Advancement Program; is that correct?

16 A. Yes, sir.

17 Q. Okay. Can you explain, describe what that
18 program is?

19 A. That program was the result of the Mitchell
20 agreement that we consummated here a couple years ago
21 where we agreed to provide \$200,000 per year for
22 economic development purposes to the Lawrence County
23 area and contiguous counties, and the total commitment
24 over those five years was \$1 million, to be allocated
25 on a \$200,000 per year basis.

1 Q. Okay. And there was another additional \$33,000
2 of shareholder going towards job training; is
3 that correct?

4 A. That is correct. We have an agreement with the
5 Ashland Community and Technical College with regard to
6 a contribution there, and I think the Big Sandy
7 Community College with regard to that 15 -- or the half
8 of the \$33,000 for job training and things that we can
9 do to help workers learn energy efficiency applications
10 so they can be employed.

11 Q. And that was for a five-year term; is that --

12 A. That was for five years too. Thank you.

13 Q. Okay. And so that initiative started in 2014; is
14 that correct?

15 A. Yes. We are in the second year of that.

16 Q. Okay. So the first year, 2014, you collected --
17 or the shareholder funding contribution was, in
18 aggregate, \$233,000?

19 A. Yes, it was.

20 Q. Okay. And then you mentioned that there were
21 three projects, development grants, that were
22 beneficiaries of the funds?

23 A. Yes.

24 Q. Okay. And then --

25 A. Yes, there were three.

1 Q. Okay. And then in reference to the response to
2 Staff's third data request, item number 11, do you see
3 that?

4 A. Yes, sir. I have it.

5 Q. Okay. You listed -- are these the three? The
6 Big Sandy Area Development District, the City of
7 Paintsville, and the Louisa Chapter of Kentucky
8 Southeast Chamber of Commerce, those were the three
9 organizations or entities that received fundings?

10 A. That is correct.

11 Q. Okay. And can you explain the process by which
12 Kentucky Power selected these three organizations or
13 entities to provide those funds?

14 A. Sure. I would be happy to. Consistent with the
15 idea that we wanted to share this -- the stockholder
16 money with those locations in the -- in and around
17 Louisa and Lawrence County, we met with all economic
18 development participants in that area and explained
19 that we needed them to submit a grant application, and
20 that grant application is to -- is to be reviewed by
21 not only employees of the Company, but as well as
22 representatives from the Kentucky Association of
23 Economic Development, as well as the Kentucky Economic
24 Development Cabinet.

25 We did a weighing process, number one, on the

1 benefits of their request, and then, number two, on
2 jobs and the total purpose of economic development.
3 And through the weight process or the weighting process
4 that was done by the committee, a decision was made as
5 to where to allocate that money the first time around.

6 Q. Okay.

7 A. And that same process is being used in year two.

8 Q. And I may not have heard you, but were there
9 other entities or organizations that sought these funds
10 as well, or were these just the three that sought the
11 economic development funds for --

12 A. Subject to check -- I understand your question.
13 Subject to check, I think there were probably six that
14 were submitted with regard to the first year, and based
15 on their content and based on what the purpose of that
16 money was to be used for, the committee decided that
17 the money could be better spent in the three areas
18 here.

19 Q. Okay. The six includes the three that are listed
20 in this response?

21 A. Yes, sir.

22 Q. Okay. Do you know what the other three --

23 A. I know that one was O'bleness Hospital. Or no,
24 excuse me, not O'bleness, Bellefonte Hospital, and they
25 wanted some equipment for their surgery. I cannot

1 remember the other two.

2 Q. Okay. Would this have been provided -- there's
3 annual reporting requirements associated --

4 A. Absolutely.

5 Q. Okay.

6 A. All of them are; yes, sir.

7 Q. Would those have been included in the annual
8 reporting that was filed or submitted?

9 A. I would think that it would have been. We would
10 have shown the entire process to you.

11 Q. Okay. Just to make sure, could you provide those
12 three additional --

13 A. Sure.

14 Q. -- organizations --

15 A. Yeah, subject to check --

16 Q. -- as a post-hearing data request?

17 A. -- I'm sure that we will be happy --

18 MR. OVERSTREET: Yes, we'll be pleased to do
19 that --

20 MR. NGUYEN: Okay.

21 MR. OVERSTREET: -- as a post-hearing data
22 request.

23 MR. NGUYEN: Okay. Thank you.

24 A. Happy to.

25 Q. Now, for the current year, has there been any

1 disbursements of the economic development funds for any
2 economic development projects for 2015 so far?

3 A. Would you repeat your question, please?

4 Q. For the year 2015 to date --

5 A. Okay.

6 Q. -- has there been any economic development funds
7 disbursed to any organizations?

8 A. Okay. We are in the process of identifying who
9 those recipients will be, and we hope to make that
10 announcement next week.

11 Q. Okay. And going back to your direct testimony,
12 you also indicated that Kentucky Power has also
13 recently partnered with 12 local banks to provide
14 \$75 million in local bank financing --

15 A. Yes, sir.

16 Q. -- for upcoming capital projects. Can you
17 briefly describe what that partnership involves and
18 what the capital project entails?

19 A. Yes. I'd be happy to. Historically when our
20 company needs money, we go to a number of constituents
21 to get that money for capital projects and all that,
22 but we instituted recently within the total AEP family
23 the opportunity to use local banks to acquire capital
24 from them to be more involved with our communities, to
25 let the local money work for us with regard to the

1 capital projects that we wanted to participate in.

2 The purpose of it was to identify who would be
3 interested in working with us with regard to that, a
4 commitment on their part as to how much money they
5 would be willing to provide to that -- to that source
6 of income that we could use when we needed it. And we
7 received an outstanding response with regard to the
8 banks in our service territory. And obviously that
9 whole process was approved by the Commission with
10 regard to having that line of credit open to us.

11 We have not identified any projects to date that
12 that money would be used for. It is available to us as
13 we need it.

14 Q. And you mentioned that the economic development
15 funds, that's solely from shareholder contribution as a
16 result of the Mitchell case. Those were to serve, is
17 it Louisa and the contiguous areas?

18 A. Lawrence County and contiguous counties, yes.

19 Q. Lawrence County and contiguous counties to
20 Lawrence County?

21 A. Yes.

22 Q. Whereas the proposal in this case with respect to
23 the per-meter charge, the \$0.15 per-meter charge going
24 to economic development as well and a matching
25 shareholder to that, that is not limited to just the --

1 well, it's more broad. It's to serve the entire
2 Kentucky service -- Power service territory; is that
3 correct?

4 A. That is correct. That would be identified for
5 the 20 counties that we serve in Eastern Kentucky.

6 Q. Okay. So the shareholder -- the shareholder
7 contributions as a result of the Mitchell case, will
8 that be accounted for separately and apart from the
9 per-meter fees that are going to be deposited into the
10 economic development fund proposed in this case?

11 A. Yes.

12 Q. Are those going to be separated?

13 A. Two separate issues.

14 MR. NGUYEN: Okay. Those are all the questions I
15 have. Thank you.

16 A. Yes.

17 VICE-CHAIRMAN GARDNER: Mr. Malone, I neglected
18 to ask if you had any questions of this witness.

19 MR. MALONE: No questions, Your Honor.

20 VICE-CHAIRMAN GARDNER: Chairman.

21 EXAMINATION

22 By Chairman Armstrong:

23 Q. Good morning, Mr. Pauley.

24 A. Good morning, Chairman.

25 Q. I am interested in the price of your stock. How

1 is it doing?

2 A. I think our stock has been doing well.

3 Q. Can you give me an example?

4 A. An example?

5 Q. Yes.

6 A. Well, I think currently it's about 57 or 58, and
7 we've had -- from the perspective of AEP as a whole,
8 that stock has done well. We've been blessed.

9 Q. And can you put that in percentages? From the
10 time of the decision here to now, the increase in your
11 stock?

12 A. The decision for -- I'm sorry. I'm not with you
13 on that.

14 Q. The Mitchell decision.

15 A. Oh, the Mitchell decision?

16 Q. Yes.

17 A. I think from that decision as a whole, it's
18 probably gone up. I cannot give you percentages, but I
19 know that our stock has been -- has been on a steady
20 increase. I think at one time it got up to about 60,
21 and it's down now to about 57. But I'm -- again,
22 that's reflecting of the 11 states in which we operate
23 in and the seven operating companies and our barge
24 operations.

25 Q. So there's no corporate malaise, so to speak, as

1 a result of Mitchell?

2 A. No. I think from a corporate perspective we're
3 pleased that we were able to and you approved our
4 acquisition of Mitchell, because it certainly is in the
5 best interest of our customers, sir.

6 Q. It's good news?

7 A. It is good news.

8 VICE-CHAIRMAN GARDNER: Mr. Logsdon.

9 COMMISSIONER LOGSDON: Oh, hey. Thank you.

10 EXAMINATION

11 By Commissioner Logsdon:

12 Q. Mr. Pauley, I just have a few questions about --

13 A. Good morning, Commissioner.

14 Q. -- SOAR, the Shaping Our Appalachian Region
15 initiative that the Governor and Congressman Rogers are
16 undertaking. I know you are participating in that.

17 A. We are on a committee, yes.

18 Q. Okay. How many counties --

19 COMMISSIONER LOGSDON: And if you don't know
20 offhand, if you can just get back to me on this, Mark.

21 Q. How many counties in your footprint are a part of
22 the SOAR initiative? All of them or --

23 A. I believe, Commissioner, based on what I
24 understand, is that it's the Appalachian Regional group
25 that's there, and all 20 of my counties are engaged

1 with that. We're 20 like of 53 or 54 counties.

2 Q. Okay.

3 MR. OVERSTREET: Mr. Commissioner, that's my
4 understanding too, but we will confirm that with a
5 post-hearing data request.

6 COMMISSIONER LOGSDON: Thanks, Mark.

7 Q. Does Kentucky Power as yet have a financial
8 commitment to SOAR at this point?

9 A. I don't -- I don't think we've established a
10 financial commitment there yet.

11 Q. But I know one of your managers serves on a
12 committee.

13 A. Yes, sir.

14 Q. I think it's on here.

15 A. Yes, sir.

16 Q. Okay. And then briefly, you know, what are your
17 general impressions of what you've seen so far of that,
18 of the SOAR initiative?

19 A. I think it's a great initiative, Mr.
20 Commissioner. I do believe -- I don't think it's
21 surprising to anyone here that as a result of what's
22 happened, both at the federal level and on the
23 environmental with coal, that it has adversely impacted
24 Eastern Kentucky. I praise both the congressman and
25 the governor for working together on that. My

1 perception is is that it will be as good as the
2 participants in it. I like to think of it as a think
3 tank to help identify what's -- what purposes are there
4 and all that.

5 We are also going to be actively engaged in One
6 East Kentucky, which basically focuses more on our --
7 on our service territory. That's being led by former
8 Governor Patton.

9 And we want to stay active in both, because
10 what's good for one is good for the other, because we
11 need to work as best we can to let that rising tide
12 raise all ships.

13 Q. And you alluded to the economic situation in East
14 Kentucky.

15 A. Yes, sir.

16 Q. You do serve a tough area economically. I was
17 wondering, we've seen the co-ops -- and I know you're
18 differently situated than a co-op, obviously, but we've
19 seen some co-ops have some good success with prepaid
20 metering. Is that something you guys have looked into?
21 Have you tried it in the past? And I know LG&E had a
22 program in the past and got away from it. Is that
23 something you-all are looking at?

24 A. I can't speak specifically to prepaid metering
25 and all that. I do know that we are constantly looking

1 for ways in which we can help our customers with regard
2 to all of this. We do a lot of R&D work that is
3 designed to see what's most efficient, encouraging
4 energy efficiency, encouraging demand side management,
5 and a lot of that has to do with cost and how to -- how
6 to apply that cost and what our customers would be
7 interested in.

8 MS. LOGSDON: Okay. That's all the questions.
9 Thanks, Mr. Pauley.

10 A. You're welcome. Thank you.

11 EXAMINATION

12 By Vice-Chairman Gardner:

13 Q. Mr. Pauley, I just have one question. The
14 settlement agreement has this one sentence, and I'll
15 just read it to you. It's a short sentence, and it's
16 on page 25, 28(b). It says, (Reading) This settlement
17 agreement shall not have any precedential value in this
18 or any other jurisdiction.

19 So does -- so I realize this is a little trickier
20 since it's not a unanimous settlement, but what this --
21 tell me, does this clause mean that if, for example, we
22 approve the -- say a cybersecurity regulatory asset
23 that -- as you-all are proposing, does -- would that
24 mean that you-all and any other utility could not say
25 that, "Hey, this Commission approved that as part of

1 this settlement"?

2 In other words, you could not use this as a basis
3 in a future proceeding? Is that your understanding of
4 what that clause means.

5 MR. OVERSTREET: Mr. Vice-Chairman, may I address
6 that, since I'm the author of that sentence?

7 VICE-CHAIRMAN GARDNER: Sure.

8 A. I'll defer to my counsel.

9 VICE-CHAIRMAN GARDNER: Sure.

10 MR. OVERSTREET: That is standard language, and
11 the intent is not -- this Commission's orders have
12 precedential value. We are not trying to knock the
13 legs out from the precedential value of this
14 Commission's order. What it -- what it's intended to
15 do is that, given the fact that all parties to the
16 settlement have compromised their stated positions, the
17 fact that we entered into that settlement with that
18 compromise cannot be used in a later proceeding to say,
19 "Well, you accepted that here," you know, and that sort
20 of thing.

21 VICE-CHAIRMAN GARDNER: So the answer is yes?

22 MR. OVERSTREET: Your orders have compromise in
23 the fact that if this Commission, for example, were to
24 approve the NERC cybersecurity, I would expect that
25 that would be cited by other AEP companies in other

1 jurisdictions in the context of a settlement.

2 VICE-CHAIRMAN GARDNER: But not back here with
3 respect to a different -- I mean, you -- another
4 utility in Kentucky would not be allowed to use that
5 language with respect --

6 MR. OVERSTREET: I think another -- if this --
7 I'm not here to instruct the Commission on the -- on
8 its orders, but I think if the Commission approved the
9 cybersecurity -- approved the settlement agreement as
10 proposed, that that would have whatever precedential
11 value an approval of a settlement agreement has. A
12 different set of facts, the Commission could do
13 whatever it wanted.

14 VICE-CHAIRMAN GARDNER: So we would not be
15 obligated to approve it for someone else because we've
16 approved it in this case?

17 MR. OVERSTREET: That would be my understanding,
18 but maybe Mr. Nguyen wants to weigh in on it, but
19 that's my understanding.

20 VICE-CHAIRMAN GARDNER: Okay. All right.

21 MR. OVERSTREET: That's my understanding.

22 VICE-CHAIRMAN GARDNER: Thank you, Mr.
23 Overstreet.

24 That's all the questions I have. Do you have any
25 redirect?

1 MR. OVERSTREET: No redirect, Your Honor.

2 VICE-CHAIRMAN GARDNER: Thank you.

3 MR. WILLIAMSON: No questions.

4 VICE-CHAIRMAN GARDNER: Questions, Mr. Nguyen.

5 MR. NGUYEN: No further questions.

6 VICE-CHAIRMAN GARDNER: Mr. Malone, any
7 questions? Mr. Malone.

8 MR. MALONE: No questions, Your Honor.

9 VICE-CHAIRMAN GARDNER: Thank you, Mr. Pauley.

10 THE WITNESS: Thank you.

11 VICE-CHAIRMAN GARDNER: You're free to go.

12 CHAIRMAN ARMSTRONG: Mr. Overstreet, your next
13 witness.

14 MR. OVERSTREET: Thank you. Mr. Vice-Chairman,
15 we'd like to call John McManus, and Mr. Gish will
16 present him.

17 JOHN MCMANUS, having been first duly sworn,
18 testified as follows:

19 VICE-CHAIRMAN GARDNER: Please have a seat.
20 State your name.

21 THE WITNESS: My name is John McManus.

22 VICE-CHAIRMAN GARDNER: And with whom are you
23 employed?

24 THE WITNESS: I'm employed with American Electric
25 Power Service Corporation as Vice President of

1 Environmental Services.

2 VICE-CHAIRMAN GARDNER: And what is your business
3 office, please?

4 THE WITNESS: It's One Riverside Plaza, Columbus,
5 Ohio.

6 VICE-CHAIRMAN GARDNER: Okay. Thank you.

7 You may ask, Mr. Gish.

8 MR. GISH: Okay. Thank, Mr. Vice-Chairman.

9 DIRECT EXAMINATION

10 By Mr. Gish:

11 Q. Mr. McManus, did you have submitted in this case
12 direct testimony and responses to data requests?

13 A. Yes, I did.

14 Q. And do you have any updates to your direct
15 testimony or your data requests?

16 A. I have one update related to an EPA regulation,
17 and there is discussion at the bottom of page 11 and
18 the top of page 12 of EPA's coal combustion residuals
19 rule. At the time the testimony was filed, that rule
20 had not been issued as final. It was anticipated to be
21 issued in December. The EPA did issue it in December.
22 It's now been published in the Federal Register. It
23 goes into effect six months after publication, so that
24 rule will go into effect in October of this year.

25 Q. Thank you. And if I were to ask you the same

1 questions that are in your direct testimony and your
2 data requests, would you give the same answers as
3 updated just now?

4 A. Yes, I would.

5 MR. GISH: Thank you.

6 Mr. Vice-Chairman, the witness is available for
7 cross-examination.

8 VICE-CHAIRMAN GARDNER: Thank you. Mr. Kurtz.

9 MR. KURTZ: No questions.

10 MR. COOK: No questions.

11 MR. WILLIAMSON: No questions, Your Honor.

12 VICE-CHAIRMAN GARDNER: Mr. Malone, questions?

13 MR. MALONE: No questions, Your Honor.

14 VICE-CHAIRMAN GARDNER: Mr. Nguyen.

15 MR. NGUYEN: Yes, Your Honor. Thank you.

16 CROSS-EXAMINATION

17 By Mr. Nguyen:

18 Q. Good morning, Mr. McManus.

19 A. Good morning.

20 Q. Referring back to page 11 and page 12 of your
21 direct testimony with respect to the coal combustion
22 residual, which is now final, on page 12 you mention
23 that -- at the time you stated that the proposed CCR
24 rulemaking would require the conversion of most wet ash
25 impoundments to dry ash landfills and would also

1 require the relining or closing of any remaining ash
2 impoundment ponds, and that timeline was the first half
3 of 2020.

4 Is the rule as published, is that -- is that
5 deadline still the same?

6 A. The way that the final rule is written, it
7 doesn't explicitly require closure, but it establishes
8 a number of criteria related to groundwater, related to
9 where an impoundment is located in relation to wetlands
10 or an aquifer, and establishes criteria by which you
11 evaluate each impoundment. If it's determined that you
12 impact one of those criteria, then it starts a schedule
13 under which you may have to close.

14 And initially if you trigger one of the criteria,
15 you're supposed to stop operating that impoundment
16 within six months, but recognizing that you need an
17 alternative to dispose of the material. If you have to
18 do a conversion to a unit or build a landfill, it
19 allows time extensions of five years in order to find
20 or establish alternative disposal capacity and a
21 potential for an extension of that.

22 So in effect, given this is going into effect in
23 2015, it's roughly on the same schedule, but it's going
24 to be impoundment-specific depending on the -- each --
25 the circumstances for each impoundment.

1 Q. Okay. And with respect to the Big Sandy station,
2 any landfills that would be impacted by the rule?

3 A. Big Sandy currently has a fly ash pond for both
4 units. It has a bottom ash pond. Big Sandy will stop
5 burning coal by the end of this year, so the pond
6 becomes what's -- what EPA considers inactive and would
7 need to be closed under the provisions of this rule.

8 But the schedule for closing an inactive pond,
9 because you're no longer putting new material into it,
10 that schedule has more flexibility to it. But we would
11 anticipate closing the ponds at Big Sandy plant under
12 the provisions of this rule and under provisions of
13 state closure requirements.

14 Q. Do you know what that schedule is? You said
15 there's some flexibility in the closure schedule.

16 A. It's probably about, you know, the same amount of
17 time. It's -- the circumstance is a little different
18 in that you don't need to find alternative capacity.
19 We're no longer disposing of material in the pond.

20 Q. Okay. And what would closing the Big Sandy ash
21 ponds entail?

22 A. For the fly ash pond, the first step you have to
23 take is to remove any ponded water. So you drain the
24 pond and then you start to place a cover on the
25 remaining ash, grade the ash to a contour that you want

1 so that as you place the cover on it, you'll have
2 adequate drainage in the future. You don't want to
3 create a new pond because you haven't graded it
4 effectively.

5 You grade it, you put a final cover on and
6 install groundwater monitoring so that you can monitor
7 over time whether there's any flow through the ash into
8 the groundwater that might cause contamination.

9 Q. And I guess, if you know, rough estimate as to
10 what the cost would be to close the Big Sandy ash
11 ponds.

12 A. This is real rough --

13 Q. Sure.

14 A. -- and we can check it and confirm afterwards,
15 but maybe on the order of \$50 million.

16 Q. And then with respect to the Mitchell station,
17 the Connor Run pond --

18 A. Yeah.

19 Q. -- what impact does the CCR have on that?

20 A. Yeah, the Connor Run pond at Mitchell, as of June
21 we will no longer be putting material into that pond.
22 Mitchell has been converted to dry fly ash handling and
23 has a landfill, and we're in the process of working
24 with Murray Energy to transfer ownership of that pond
25 to Murray, in which case it would not be regulated

1 under this rule.

2 Q. Okay. So to the -- well, you said as of June of
3 this year the Connor pond will no longer be used as a
4 disposal site for any of the wet bottom ash and fly ash
5 produced by the Mitchell stations; is that correct?

6 A. Mitchell material is no longer going to the pond.
7 We also operate Kammer plant --

8 Q. Okay.

9 A. -- next to Mitchell.

10 Q. Okay.

11 A. It's the Kammer material that's going in the
12 pond, so that's not a, you know, Kentucky Power --

13 Q. Okay.

14 A. -- facility.

15 Q. So -- but as of right now, there are no Mitchell
16 wastes going into the Connor Run pond?

17 A. There's no fly ash or bottom ash going to the
18 pond. I believe there may still be some blowdown from
19 the cooling water towers, and we're in the process of
20 reconfiguring that system so that material goes
21 someplace else and not to Connor Run.

22 Q. Okay. And you mentioned that the Company is in
23 the process of perhaps transferring the ownership
24 rights to Connor Run to Murray Energy?

25 A. Yes.

1 Q. Do you know what the status of that --

2 A. I do not. I'm not involved directly in those
3 discussions.

4 Q. Okay. Is there anyone here that would have any
5 knowledge of that, of those discussions?

6 A. I'm not sure if Mr. LaFleur may be familiar with
7 it or not.

8 MR. NGUYEN: Okay. Those are all the questions I
9 have. Thank you.

10 COMMISSIONER LOGSDON: Oh, yeah. Thanks.

11 EXAMINATION

12 By Commissioner Logsdon:

13 Q. Mr. McManus, I just had a few clarifying
14 questions for me. I'm new, so forgive me if you gotta
15 help me out a little bit.

16 You talk in your testimony, your direct testimony
17 about the allowances you purchased for, for instance,
18 the Clean Air Interstate Rule.

19 A. Yes.

20 Q. How many of those -- how many of those types of
21 allowances are there?

22 A. The total number, I -- in terms of allowances, it
23 would include all of the power plants in all of the
24 states that are governed by that program.

25 Q. I apologize. I mean what -- I guess what

1 categories? Like there's one for the CAIR. Is
2 there -- so that's one. Is there one for -- how many
3 categories do you-all purchase allowances in?

4 A. Yeah, the allowance programs started with Title
5 IV. That was the Acid Rain Program. So there are
6 still SO2 allowances for Title IV.

7 The Clean Air Interstate Rule SO2 program was
8 based on using the Title IV allowances. And so we
9 already had those allocated, it was just that the ratio
10 of how you surrendered allowances would change.

11 The Clean Air Interstate Rule has been replaced
12 by the Cross-State Air Pollution Rule. That went into
13 effect at the beginning of this year. Under the
14 Cross-State Air Pollution Rule, that creates a new
15 allowance system, a new allowance allocation.

16 So the Title IV allowances are still there, but
17 they're used only for Title IV purposes. EPA created
18 new allocations for the Cross-State Air Pollution Rule
19 which go into effect now.

20 So the Clean Air Interstate Rule was kind of this
21 in-between program that EPA started but then was
22 remanded by the court, so that the allowances bought
23 under the CAIR program, and I believe there were
24 nitrogen oxide allowances, are not really usable under
25 the Cross-State Air Pollution Rule because it's a new

1 currency, in effect.

2 Q. Okay. And are those purchased at the operating
3 company level or at the corporate level?

4 A. At the operating company level.

5 Q. At the operating. Okay. And then I -- and this
6 may be too much to answer, but is there -- is there a
7 market? Who do you go to to purchase these allowances?

8 A. There is a market. There are brokers who
9 participate in the market, or you can do -- work
10 directly with another party, another utility that may
11 have allocations that came from EPA.

12 Q. Does the Company get allocations for allowances
13 from the EPA or do you always have to go out and buy?

14 A. You receive an allocation at each unit, at each
15 plant, and that allocation is at no cost the way EPA
16 structured the program. If you have enough allowances
17 to cover your emissions, then you're okay; if you're a
18 little short, then you can go to the market or to
19 another utility to purchase allowances.

20 COMMISSIONER LOGSDON: Okay. Thank you. That's
21 all.

22 EXAMINATION

23 By Vice-Chairman Gardner:

24 Q. Mr. McManus, let me follow up on the coal
25 combustion rule. The -- what the rule ultimately was

1 as it was published, how different from what you were
2 anticipating the rule to be was the rule that actually
3 came out?

4 A. It's generally the same. We anticipated that EPA
5 would classify these materials as nonhazardous waste,
6 and that's what they did. We anticipated that
7 ultimately, as a result of the rule, we would be moving
8 away from wet disposal of fly ash, at a minimum, and
9 that's, in effect, where this is going.

10 The -- it was not clear what we might have to do
11 with bottom ash ponds, and there's a little bit of
12 difference between the two rules on bottom ash ponds on
13 your ability to either demonstrate that your pond is
14 not having any impact on groundwater or another sort of
15 location restriction, as EPA calls it, or you may have
16 the opportunity to, in effect, clean out the bottom
17 ash, put a liner in the pond, and continue using that
18 pond. So that there's a little bit more flexibility, I
19 think, on bottom ash ponds.

20 It treats fly ash the way we anticipated.

21 Q. So it's a fair statement that, if anything, the
22 rule was as you expected, and perhaps in some of the
23 areas there was more flexibility than you had
24 necessarily anticipated?

25 A. In some areas there's a little more flexibility,

1 in some other areas -- and again what EPA refers to as
2 location restrictions. There's five criteria that they
3 call location restrictions. Those have the potential
4 to make the requirements a little bit more stringent.

5 Q. Okay. Going back to the Mitchell case, and I
6 be -- did you participate as a witness in that case?

7 A. I believe I did.

8 Q. Okay. And we issued that decision -- give me a
9 second. Taking longer than I wanted. In July of 2013,
10 so a little less than two years ago.

11 A. Yes.

12 Q. So did -- since that time -- since then to now,
13 is there -- in what the Company was anticipating then,
14 was -- were there additional costs related to the
15 Mitchell ash, the CCR, than what you-all had
16 anticipated?

17 A. I don't think so. At that time we were already
18 working on converting Mitchell to dry fly ash handling,
19 and that was because of an NPDES permit issue. The
20 NPDES permit is our water discharge permit, and the --
21 there were exceedances of at least one parameter in the
22 permit that led us to conclude that continuing to
23 dispose of fly ash in Connor Run would not allow us to
24 comply with the water permit.

25 And so we had already embarked on the dry fly ash

1 conversion and construction of a landfill, might --
2 probably design at that time of a landfill, but the
3 intent to install a landfill to comply with the water
4 permit, but also recognizing that based on the proposed
5 CCR rule at the time, it would allow Mitchell to be in
6 compliance with the CCR rule as we expected.

7 And based on the final CCR rule, I think Mitchell
8 is still positioned well for it.

9 Q. And Mr. Nguyen asked you a ballpark high level
10 cost with respect to Big Sandy and compliance. Do you
11 have a similar ballpark with respect to Mitchell?

12 A. No, we don't, because we're anticipating that
13 Mitchell will -- well, that ownership of Connor Run
14 will be transferred to Murray and it won't be regulated
15 under this rule.

16 Q. So there would be no additional cost?

17 A. I'll correct that. For the bottom ash pond at
18 Mitchell, we will have to do something with that pond.
19 I don't have that -- that cost with me. Bottom ash
20 ponds tend to be much smaller and more manageable in
21 terms of making decisions as to removing the bottom
22 ash, putting a liner in, or looking for an alternative
23 approach to bottom ash.

24 Q. Okay. So -- all right. So it would not be as
25 significant as what you described for Big Sandy?

1 A. I don't believe it would be.

2 Q. Okay. Turning your attention to MATS, it's my --
3 the deadline for compliance was -- or to get an
4 extension was, I think, April 16th, and was there any
5 extension applied for and/or received on the Mitchell
6 facilities with respect to MATS?

7 A. No, not for Mitchell. The controls at Mitchell,
8 the scrubbers and the SCR systems in combination allow
9 us to comply with the MATS rule, and so we did not need
10 an extension at that plant.

11 Q. Okay. The reason why I asked, just to make sure,
12 was that in prior -- in your prior testimony and
13 others' testimony it was, "We expect to be in
14 compliance at" -- you know, there was that language,
15 and so I'm wanting to make sure that, in fact, it was
16 in compliance.

17 A. Yes.

18 Q. Okay.

19 A. That's the case.

20 Q. And one final question, Mr. McManus, and it has
21 to do with the clean power plan, and it has to do with
22 the physical location of the Mitchell plants in West
23 Virginia as opposed to Kentucky.

24 If the rule that -- the final rule that EPA comes
25 out with is identical with respect to at least this

1 issue, would that mean that that would have to be
2 counted in West Virginia and not Kentucky's?

3 In other words, they were -- that plant would be
4 part of any plan that they submit to EPA for approval,
5 Kentucky would not be doing that?

6 A. That's correct. If West Virginia -- again, based
7 on the proposed rule --

8 Q. Correct.

9 A. -- and assume sort of the structure remains the
10 same, West Virginia's plan would include Mitchell and
11 other plants in West Virginia. It would not be part of
12 Kentucky's plan. There is an opportunity for states to
13 work together on --

14 Q. Sure.

15 A. -- a multistate plan, in which case they -- if
16 Kentucky and West Virginia were to do that, they could
17 come up with some type of structure that in effect
18 pools the resources in both states.

19 We don't have any sense for whether those states
20 want to do a multistate plan or not. I think -- I
21 think everyone at this point is waiting on the final
22 rule to be issued sometime this summer and get a sense
23 for how EP -- what changes EPA may have made and then
24 assess what makes sense, a single state plan or
25 possibly partnering with states that are around you.

1 Q. Okay. So barring a change, that is not
2 Kentucky's problem for the clean power rule, but if
3 Kentucky has facilities that sell power to neighboring
4 states, such as some of the TVA plants in Kentucky,
5 that becomes Kentucky's problem, but Mitchell is not a
6 clean power plan problem for Kentucky unless there's
7 changes?

8 A. That's correct.

9 VICE-CHAIRMAN GARDNER: Okay. That's all I have.
10 Thank you, Mr. McManus.

11 Mr. Overstreet.

12 MR. OVERSTREET: Oh, I'm sorry.

13 VICE-CHAIRMAN GARDNER: I'm sorry. Mr. Gish.

14 MR. GISH: No -- no redirect.

15 VICE-CHAIRMAN GARDNER: Thank you. All right.

16 MR. COOK: I may have a couple questions.

17 CROSS-EXAMINATION

18 By Mr. Cook:

19 Q. I just want to clarify, Mr. McManus. Earlier you
20 said that Big Sandy will stop burning coal by the end
21 of this year. Am I correct in assuming that that means
22 Big Sandy 1 will stop burning coal?

23 A. Yeah. Big Sandy 2, we received an extension from
24 the MATS compliance deadline to June 1st.

25 Q. Okay.

1 A. But after June 1st, Big Sandy 2 won't be
2 operating. Big Sandy 1 will continue to operate. We
3 received a MATS extension for up to a year to
4 accommodate the schedule for converting the unit to
5 natural gas.

6 So it can continue to operate on coal up until
7 the outage begins for that conversion, and I'm not sure
8 exactly when that outage is. I think it starts in
9 November time frame.

10 Q. Do you know approximately how long that is --
11 that outage would last?

12 A. I do not.

13 MR. COOK: Okay. That's all.

14 VICE-CHAIRMAN GARDNER: Let me follow up on that
15 question.

16 REEXAMINATION

17 By Vice-Chairman Gardner:

18 Q. So you expect -- you do not expect Big Sandy 2 to
19 close or stop generating electricity prior to June the
20 1st?

21 A. That's the current plan. If something were to
22 happen to the unit, some type of equipment failure
23 that, you know, had any costs associated with it, we
24 likely would, you know, not try and bring the unit back
25 on because we're so close to June 1st now.