

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of:

| | |
|--|---------------------|
| The Application Of Kentucky Power Company For:) | |
| (1) The Approval Of The Terms And Conditions) | |
| Of The Sixth Amendment To The Renewable) | |
| Energy Purchase Agreement For Biomass Energy) | |
| Resources Between The Company And) | Case No. 2015-00190 |
| ecoPower Generation-Hazard, LLC;) | |
| (2) Authorization To Enter Into The Sixth) | |
| Amendment to The Agreement; (3) The Grant Of) | |
| Certain Declaratory Relief; And (4) The Grant Of) | |
| All Other Required Approvals And Relief) | |

VERIFIED APPLICATION

Kentucky Power Company (“Kentucky Power” or the “Company”) applies to the Public Service Commission of Kentucky (“Commission”) for approval of the Sixth Amendment to the Renewable Energy Purchase Agreement For Biomass Energy Resources (“REPA”) between Kentucky Power and ecoPower Generation-Hazard LLC (“ecoPower”). Kentucky Power seeks an Order (i) approving the terms and conditions of the Sixth Amendment to the REPA; (ii) approving and authorizing Kentucky Power to enter into the Sixth Amendment to the REPA; and (iii) granting all other required relief and approvals. In addition, Kentucky Power seeks a Declaratory Order pursuant to 807 KAR 5:001, Section 19 that none of the Second through the Seventh Amendments to the REPA have altered or changed the Commission’s October 10, 2013 Order in Case No. 2013-00144 (“REPA Approval Order”), including the conclusion in the REPA Approval Order that concurrent recovery of costs associated with the REPA through Kentucky retail rates via a monthly rider is appropriate. In support thereof Kentucky Power states:

Introduction

1. On October 10, 2013, following extensive discovery and an evidentiary hearing occurring on August 28 and 29, 2013, the Commission issued an Order approving Kentucky Power's Amended Application in Case No. 2013-00144, the terms and conditions of the REPA, and the Company's request to recover costs for the purchase of renewable energy via the proposed Tariff B.E.R.¹ Ordering Paragraph 7 of the REPA Approval Order provided: "In the event Kentucky Power's credit rating is negatively impacted by the REPA, causing Kentucky Power to increase its common equity position, Kentucky Power shall hold its ratepayers harmless should such an event occur." The Sixth Amendment to the REPA, that is the subject of this Application, shifts the financial risk imposed by Ordering Paragraph 7 from the Company to ecoPower.

Applicant

2. Kentucky Power was organized in 1919 under the laws of the Commonwealth of Kentucky.² The Company's mailing address is 101A Enterprise Drive, P.O. Box 5190, Frankfort, Kentucky 40602-5190, and its electronic mail address is kentucky_regulatory_services@aep.com. Kentucky Power is engaged in the generation, purchase, transmission, distribution and sale of electric power. The Company serves approximately 170,000 retail customers in the following 20 counties of eastern Kentucky: Boyd, Breathitt, Carter, Clay, Elliott, Floyd, Greenup, Johnson, Knott, Lawrence, Leslie, Letcher, Lewis, Magoffin, Martin, Morgan, Owsley, Perry, Pike and

¹ Order, *In the Matter of: Application of Kentucky Power Company for Approval of the Terms and Conditions of the Renewable Energy Purchase Agreement for Biomass Energy Resources between the Company and ecoPower Generation-Hazard LLC; Authorization to Enter into the Agreement; Grant of Certain Declaratory Relief; and Grant of All Other Required Approvals and Relief*, Case No. 2013-00144 (Ky. P.S.C., October 10, 2013).

² A certified copy of the Company's Articles of Incorporation and all amendments thereto was attached to the Joint Application in *In the Matter Of: The Joint Application Of Kentucky Power Company, American Electric Power Company, Inc. And Central And South West Corporation Regarding A Proposed Merger*, P.S.C. Case No. 99-149. The May 22, 2015 Kentucky Power "Certificate of Existence" issued by the Secretary of State of the Commonwealth of Kentucky is filed as EXHIBIT 6 to this Application.

municipalities in Kentucky for resale. Kentucky Power is a utility as that term is defined at KRS 278.010. [807 KAR 5:005, Section 14].

3. Kentucky Power is a direct, wholly-owned subsidiary of American Electric Power Company, Inc. (“AEP.”) AEP is a multi-state public utility holding company whose operating companies provide electric utility service to customers in parts of eleven states – Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia. AEP is not a party to this proceeding.

Non-Party Entities

4. ecoPower Generation-Hazard LLC (“ecoPower”) is a limited liability company organized under the laws of the Commonwealth of Kentucky, with its principal office located at 1265 Manchester Road, Lexington, Kentucky. ecoPower is a wholly owned subsidiary of ecoPower Generation LLC. By order dated May 18, 2010, ecoPower was authorized by the Kentucky State Board on Generation and Electric Transmission Siting to construct the nominal 58.5 MW (net) biomass power generating facility (“ecoPower facility”) and the associated 69 kV nonregulated transmission line in Perry County, Kentucky. ecoPower is the counterparty to the REPA approved by the Commission in the REPA Approval Order.

APPLICATION FOR APPROVAL PURSUANT TO KRS 278.271 AND KRS 278.300 OF THE SIXTH AMENDMENT TO THE REPA

(a) The Commission’s Approval Of The REPA, The First Amendment, And Tariff B.E.R.

5. On April 10, 2013, Kentucky Power submitted a verified application in Case No. 2013-00144 seeking an Order from the Commission: (i) approving of the terms and conditions of the REPA; (ii) approving and authorizing Kentucky Power to enter into the REPA; (iii) declaring that the concurrent recovery by means of a monthly rider or surcharge to Kentucky Power’s rates

of all costs associated with the REPA is appropriate; and (iv) granting all other required relief or approvals.

6. Thereafter, on July 3, 2013, Kentucky Power filed with the Commission a Motion to Amend Application and to Deviate from Filing Requirements. In the Amended Application, Kentucky Power sought approval of a new Biomass Energy Rider (Tariff B.E.R.) to recover its costs for the purchase of renewable energy under the REPA. Additionally, on June 28, 2013, the Company and ecoPower entered into the First Amendment to the REPA. The First Amendment extended from October 15, 2013 to November 15, 2013, the date by which the Commission Approval Order, as defined in the REPA, was required to be received.

7. Receipt of a Commission Approval Order is a condition precedent to the Company's obligations under the REPA. A Commission Approval Order is defined in the REPA to mean:

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

The REPA Approval Order provided approvals (i) through (iii) in the definition of Commission Approval Order, albeit with conditions unsatisfactory to the Company as described below. Approval (iv) in the definition of Commission Approval Order was provided in the Commission's October 7, 2013 Order in Case No. 2012-00578 (the "Mitchell Transfer Order").

8. The Commission issued the REPA Approval Order on October 10, 2013. The REPA Approval Order granted the relief requested in the Company's application. In addition, Ordering Paragraph 7 of the REPA Approval Order provided that "[i]n the event Kentucky

Power's credit rating is negatively impacted by the REPA, causing Kentucky Power to increase its common equity position, Kentucky Power shall hold its ratepayers harmless should such an event occur."

9. Because Kentucky Power will not earn a return on the ecoPower REPA, Ordering Paragraph 7 imposed financial risk on the Company that was unacceptable to Kentucky Power. Without addressing this risk to the satisfaction of the Company, the condition precedent of receiving a Commission Approval Order could not be met.

10. In addition, both the REPA Approval Order and the Mitchell Transfer Order are currently being appealed by Kentucky Industrial Utility Customers, Inc. and the Attorney General, respectively. As a result, neither order is final and non-appealable and thus these additional requirements for a Commission Approval Order, as the term is defined in the REPA, and hence the satisfaction of a condition precedent to the Company's obligation under the REPA, have not yet been satisfied.

(b) Post-REPA Approval Order Amendments Of The REPA.

11. During the pendency of the REPA Approval Order and Mitchell Transfer Order appeals, and in response to the risk imposed on the Company by Ordering Paragraph 7, ecoPower and Kentucky Power began negotiations on a solution. On December 6, 2013 Kentucky Power and ecoPower executed the Second Amendment to the REPA. The Second Amendment extended key milestone dates in the REPA relating to the ability of Kentucky Power to terminate the REPA without financial penalty. On December 13, 2013, Kentucky Power filed for informational purposes with the Commission the Second Amendment to the REPA. As requested by the Company, the Commission placed the Second Amendment to the REPA in the Post-Case Referenced Correspondence File for Case No. 2013-00144.

12. On February 26, 2014, Kentucky Power and ecoPower executed the Third Amendment to the REPA. Like the Second Amendment, the Third Amendment to the REPA extended key milestone dates in the REPA relating to the ability of Kentucky Power to terminate the REPA without financial penalty allowing the parties to continue negotiations on a solution to the risk imposed by Ordering Paragraph 7 of the REPA Approval Order. On March 5, 2014, Kentucky Power filed for informational purposes with the Commission the Third Amendment to the REPA. As requested by the Company, the Commission placed the Third Amendment to the REPA in the Post-Case Referenced Correspondence File for Case No. 2013-00144.

13. On April 24, 2014, Kentucky Power and ecoPower executed the Fourth Amendment to the REPA. Like the Second and Third Amendments, the Fourth Amendment to the REPA extended key milestone dates in the REPA relating to the ability of Kentucky Power to terminate the REPA without financial penalty allowing the parties to continue negotiations on a solution to the risk imposed by Ordering Paragraph 7 of the REPA Approval Order. On July 15, 2014, Kentucky Power filed for informational purposes with the Commission the Fourth Amendment to the REPA. As requested by the Company, the Commission placed the Fourth Amendment to the REPA in the Post-Case Referenced Correspondence File for Case No. 2013-00144.

14. On July 25, 2014, Kentucky Power and ecoPower executed the Fifth Amendment to the REPA. Like the Second through Fourth Amendments, the Fifth Amendment to the REPA extended key milestone dates in the REPA relating to the ability of Kentucky Power to terminate the REPA without financial penalty allowing the parties to continue negotiations on a solution to the risk imposed by Ordering Paragraph 7 of the REPA Approval Order. On July 28, 2014, Kentucky Power filed for informational purposes with the Commission the Fifth Amendment to

the REPA. As requested by the Company, the Commission placed the Fifth Amendment to the REPA in the Post-Case Referenced Correspondence File for Case No. 2013-00144.

15. On January 21, 2015, Kentucky Power and ecoPower entered into the Sixth Amendment to the REPA. As with the Second through Fifth Amendments, the Sixth Amendment extends key milestone dates in the REPA relating to the ability of Kentucky Power to terminate the REPA without financial penalty. Additionally, the Sixth Amendment updated key facility development milestones. Finally, the Sixth Amendment includes new language expanding the amount and purpose of the Security Fund so that it may be used to mitigate risk to the Company in the event that Kentucky Power's credit rating is negatively impacted by the REPA. These provisions are described in more detail below. A copy of the Sixth Amendment to the REPA is included as **EXHIBIT RKW-1** to the testimony of Company Witness Wohnhas.

16. The Sixth Amendment to the REPA incorporates two primary types of changes to the agreement. First, the Sixth Amendment extends several of the milestone and deadline dates, preserving the Company's ability to terminate the REPA if certain conditions precedent are not met while allowing time for the pending appeals of the REPA Approval Order and Mitchell Transfer Order to run their course.

17. Second, the Sixth Amendment adds new language to the REPA relating to Ordering Paragraph 7 of the REPA Approval Order. The Sixth Amendment expands the amount and purpose of the Security Fund to allow Kentucky Power to draw from the Security Fund should: (i) the Company determine, in its sole discretion, that it could or may be required to increase its common equity position to mitigate the negative impact of the REPA on its credit rating; (ii) the Commission requires the Company to increase its common equity position due to the REPA (in whole or in part); or (iii) the Company is required to indemnify any third party,

including, without limitation, its customers, ecoPower, or the Commission for costs incurred as a result of the REPA, including the denial of any cost recovery by the Commission, in whole or in part, due to any increase in the Company's common equity or effectively the imposition of a reduced return on such increased common equity.

18. If Kentucky Power draws from the Security Fund as described in Paragraph 17 above, ecoPower must replenish the Security Fund to its pre-draw amount within ten business days of Kentucky Power making a draw. If ecoPower fails to replenish the Security Fund to its post-draw amount, the REPA will terminate without financial penalty to Kentucky Power. The Sixth Amendment to the REPA appropriately transfers the risk under Ordering Paragraph 7 of the REPA Approval Order from the Company to ecoPower.

19. On May 13, 2015, Kentucky Power and ecoPower entered into the Seventh Amendment to the REPA. The Seventh Amendment extended key milestone dates in the REPA relating to the ability of Kentucky Power to terminate the REPA without financial penalty and to file this application. A copy of the Seventh Amendment to the REPA is included as **EXHIBIT RKW-2** to the testimony of Company Witness Wohnhas for informational purposes only.

(c) The Requested Commission Approval of the Sixth Amendment to the REPA.

20. The Sixth Amendment adds commercial terms allocating to ecoPower the financial risk that Ordering Paragraph 7 imposed on the Company in the event of any negative impact of the REPA on the Company's credit rating. Under the Sixth Amendment, ecoPower is required to make Kentucky Power financially whole in the event of any such change or threatened change. The Sixth Amendment to the REPA does not alter the agreement with ecoPower in a manner that would change the Commission's conclusions in the REPA Approval Order.

21. By this Application, Kentucky Power is seeking an Order from the Commission, approving the terms of the Sixth Amendment to the REPA and authorizing the Company to enter into the Sixth Amendment to the REPA. Because the Second through Fifth Amendments and the Seventh Amendments merely change the milestone dates relating to the ability of Kentucky Power to terminate the REPA without financial penalty, specific Commission approval of those amendments is not being sought by the Company through this application.

(d) Regulatory Requirements - 807 KAR 5:001, Section 18.

22. The information required by 807 KAR 5:001, Section 14 is described in Paragraph 2 above. [807 KAR 5:001, Section 18(1)(a)]

23. A general description of Kentucky Power's property and its field of operation, together with the statement of its original cost and its cost to Kentucky Power, is attached as EXHIBIT 1. [807 KAR 5:001, Section 18(1)(b).]

24. Kentucky Power did not issue any stock or bonds as a part of entering into the ecoPower REPA and will not as part of the Sixth Amendment to the REPA. Under existing Commission authority the REPA, as amended, constitutes an evidence of indebtedness. [807 KAR 5:001, Section 18(1)(c).]

25. Kentucky Power entered into the ecoPower REPA as a necessary and appropriate method of diversifying its generation base and meeting its customers' needs. The Sixth Amendment adds additional protections against risk, without altering any of the costs to be incurred under the REPA. The Sixth Amendment to the REPA is described in more detail above. [807 KAR 5:001, Section 17(1)(d).]

26. Kentucky Power is not acquiring any property, but is instead entering into the Sixth Amendment to the ecoPower REPA. A copy of the Sixth Amendment to the ecoPower

REPA is filed with this Application as Exhibit RKW-1 to the testimony of Company Witness Wohnhas. [807 KAR 5:001, Section 18(1)(e).]

27. Kentucky Power is not proposing to discharge or refund obligations as part of this application. [807 KAR 5:001, Section 18(1)(f).]

28. The required financial exhibits are described below in Paragraphs 31-37. [807 KAR 5:001, Section 18(2)(a).]

29. There are no outstanding trust deeds or mortgages relating to Kentucky Power or its property. [807 KAR 5:001, Section 18(2)(b).]

30. The information required by 807 KAR 5:001, Section 18(2)(c) is provided in **Exhibit 2.**

(e) Regulatory Requirements – 807 KAR 5:001, Section 12 (Financial Exhibit).³

31. Kentucky Power has the following stock authorized, issued and outstanding:

(a) Common Stock: 2,000,000 shares authorized and 1,009,000 shares outstanding. [807 KAR 5:001, Section 12(2)(a) and (b)]; and

(b) Kentucky Power has no authorized preferred stock. [807 KAR 5:001, Section 12(2)(c).]

32. There are no mortgages encumbering Kentucky Power's property. [807 KAR 5:001, Section 12(2)(d).]

33. The bonds identified in **EXHIBIT 3** to this Application constitute the Company's authorized and issued bonds. [807 KAR 5:001, Section 12(2)(e).]

34. The Company has no outstanding notes. [807 KAR 5:001, Section 12(2)(f).]

35. Kentucky Power has no other indebtedness outstanding. [807 KAR 5:001, Section 12(2)(g).]

³ 807 KAR 5:001, Section 18(2)(a).

36. During the past five years Kentucky Power paid the dividends identified in EXHIBIT 3 to this Application. [807 KAR 5:001, Section 12(2)(h).]

37. A detailed income statement and a detailed balance sheet for Kentucky Power for the twelve month period ending March 31, 2015 are attached as EXHIBIT 4 and EXHIBIT 5 respectively. [807 KAR 5:001, Section 12(2)(i).]

**APPLICATION FOR DECLARATORY ORDER
PURSUANT TO 807 KAR 5:001, SECTION 19**

(a) The Amendments to the REPA and the Relief Requested

38. As described above, the post-REPA Approval Order amendments to the REPA fall into one of two categories. First, the Second through Fifth Amendments and the Seventh Amendments merely change the milestone dates relating to the ability of Kentucky Power to terminate the REPA without financial penalty. Second, the Sixth Amendment to the REPA adds commercial terms allocating to ecoPower the financial risk that Ordering Paragraph 7 imposed on the Company in the event of any negative impact of the REPA to the Company's credit rating. Nothing in the Second through Seventh Amendments to the REPA changes the conclusions reached by the Commission in the REPA Approval Order, including the conclusion in the REPA Approval Order that the Company's concurrent recovery of costs associated with the REPA through Kentucky retail rates via a monthly rider is appropriate.

39. Because the post-REPA Approval Order amendments to the REPA do not alter the bases for the Commission's conclusions in the REPA Approval Order, the Company is seeking a declaration pursuant to 807 KAR 5:001, Section 19 that none of the Second through the Seventh Amendments to the REPA have altered or changed the REPA Approval Order, including the conclusion in the REPA Approval Order that the Company's concurrent recovery

of costs associated with the REPA through Kentucky retail rates via a monthly rider is appropriate.

(b) A Declaratory Order is Appropriate

40. 807 KAR 5:001, Section 19 authorizes the Commission to issue a declaratory order with respect to the applicability of the provisions of KRS Chapter 278 or the Commission's administrative regulations to a person, property or state of facts. Because they do not change any of the bases for the Commission's approval of the REPA in Case No. 2013-00144, a declaration is appropriate that none of the Second through the Seventh Amendments to the REPA have altered or changed the REPA Approval Order, including the conclusion in the REPA Approval Order that concurrent recovery of costs associated with the REPA through Kentucky retail rates via a monthly rider is appropriate.

(c) Regulatory Requirements

41. A complete, accurate, and concise statement of the facts supporting this application is found in Paragraphs 1 – 20 above. [807 KAR 5:001, Section 19(2)(b)].

42. Kentucky Power's interest in this Application arises from being the purchaser under the REPA and the provider of electric utility services with its service territory. [807 KAR 5:001, Section 19(2)(c)].

43. This application relates to KRS 278.271, KRS 278.300, 807 KAR 5:001, Section 14, 807 KAR 5:001, Section 17, and the Commission's REPA Approval Order. [807 KAR 5:001, Section 19(2)(d)].

44. As described above, Kentucky Power proposes that the Commission issue a declaratory order stating that none of the Second through the Seventh Amendments to the REPA have altered or changed the REPA Approval Order, including the conclusion in the REPA

Approval Order that the Company's concurrent recovery of costs associated with the REPA through Kentucky retail rates via a monthly rider is appropriate. [807 KAR 5:001, Section 19(2)(e)].

45. Kentucky Power will serve a copy of this application and all testimony provided in support thereof to all parties who intervened in Case No. 2013-00144. [807 KAR 5:001, Section 19(3)].

Requested Date For Final Order

46. Kentucky Power requests that the Commission issue an order granting the requested relief as soon as practicable but no later than August 28, 2015. The issuance of an order by August 28, 2015 is a necessary predicate for there to be a final and non-appealable order issued on or before October 1, 2015 as required by the amended paragraph 6.1(A) of the REPA as set forth in of the Sixth Amendment to the REPA.

Exhibits And Testimony

47. The exhibits and testimony listed in the Appendix to this Application are attached to and made a part of this Application.

Communications

48. The Applicant respectfully requests that communications in this matter be addressed to:

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ON BEHALF OF KENTUCKY POWER

WHEREFORE, Kentucky Power Company requests that the Commission issue on or before August 28, 2015, an Order :

(a) approving the terms and conditions of the Sixth Amendment to the REPA between Kentucky Power and ecoPower;

(b) approving and authorizing Kentucky Power to enter into the Sixth Amendment to the REPA between Kentucky Power and ecoPower;

(c) declaring pursuant to 807 KAR 5:001, Section 19 that none of the Second through the Seventh Amendments to the REPA have altered or changed the REPA Approval Order, including the conclusion in the REPA Approval Order that concurrent recovery of costs associated with the REPA through Kentucky retail rates via a monthly rider is appropriate; and

(d) granting all other required relief or approvals.

Respectfully submitted,



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COUNSEL FOR:
KENTUCKY POWER COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served as indicated below upon:

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By Overnight Delivery

Jennifer Black Hans
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By Overnight Delivery

on this the 18th day of June, 2015.



Kenneth J. Gish, Jr.

APPENDIX

TESTIMONY

| <u>Witness</u> | <u>Subject Matter</u> |
|------------------|---|
| Ranie K. Wohnhas | An overview of this Application, the post-REPA Approval Order amendments to the REPA including the Sixth Amendment to the REPA. |
| Jay F. Godfrey | The Sixth Amendment to the REPA |

LIST OF EXHIBITS

- EXHIBIT 1: General description of Kentucky Power's property, the Company's field of operation, and cost information (Paragraph 23 of the Application).
- EXHIBIT 2: Maps and Plans of the proposed ecoPower facility (Paragraph 30 of the Application).
- EXHIBIT 3: Information regarding bonds, note, and dividends paid (Paragraphs 33 and 36 of the Application).
- EXHIBIT 4: Detailed income statement of Kentucky Power for the twelve-month period ended March 31, 2015 (Paragraph 37 of the Application).
- EXHIBIT 5: Detailed balance sheet of Kentucky Power for the twelve-month period ended March 31, 2015 (Paragraph 37 of the Application).