

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>ELECTRONIC APPLICATION OF KENTUCKY</b>	)	
<b>POWER COMPANY FOR APPROVAL OF A</b>	)	
<b>CERTIFICATE OF PUBLIC CONVENIENCE</b>	)	
<b>AND NECESSITY FOR ENVIRONMENTAL</b>	)	<b>CASE NO.</b>
<b>PROJECT CONSTRUCTION AT THE</b>	)	<b>2021-00004</b>
<b>MITCHELL GENERATING STATION, AN</b>	)	
<b>AMENDED ENVIRONMENTAL COMPLIANCE</b>	)	
<b>PLAN, AND REVISED ENVIRONMENTAL</b>	)	
<b>SURCHARGE TARIFF SHEETS</b>	)	

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**RESPONSE OF SIERRA CLUB TO  
KENTUCKY POWER COMPANY’S MOTION FOR REHEARING**

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Sierra Club respectfully submits its Response to Kentucky Power Company’s (“KPC” or the “Company”) Motion for Rehearing Motion, filed August 2, 2021. KPC requests rehearing on three issues that the Company characterizes as unaddressed by the Commission’s July 15, 2021, Order in this case. In that Order, the Commission denied KPC’s request for a Certificate of Public Convenience and Necessity (“CPCN”) to invest in certain capital upgrades at the Company’s co-owned Mitchell Generating Station, located near Moundsville, West Virginia, that would be required under the federal Effluent Limitations Guidelines (“ELG”) to operate Mitchell as a coal-fired power plant beyond 2028. In denying KPC’s request for approval of the ELG project—which the intervenors unanimously opposed—the Commission determined that KPC had failed to establish that there are no other reasonable alternatives to meet KPC’s capacity needs, or that the ELG project is the least-cost alternative.<sup>1</sup> However, the Commission

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<sup>1</sup> In denying the ELG CPCN, the Commission found that “[i]gnoring the result of the scenario with carbon costs is unreasonable in light of Kentucky Power’s inclusion of carbon costs in resource planning, and emerging environmental laws and policies, because it skews an analysis of whether the ELG project

granted KPC's parallel request for a CPCN to invest in other capital projects required under the federal Coal Combustion Residuals ("CCR") Rule, a request that none of the intervenors opposed.

KPC seeks rehearing on three issues: (1) the Company's proposed annual depreciation rate for the CCR investments; (2) the Company's request for a finding that it prudently incurred \$1.903 million in ELG compliance costs prior to the Commission's Order denying the ELG CPCN; and, relatedly, (3) the Company's request to defer and accumulate for review and recovery in its next base rate case that already-incurred \$1.903 million in ELG costs. In this Response to KPC's Motion, Sierra Club takes no position on the matter of CCR depreciation. However, Sierra Club opposes KPC's request for a finding that it prudently incurred the \$1.903 million in ELG-related costs prior to the Commission's Order on its CPCN request and, therefore, also opposes the Company's request for authority to create a regulatory asset to recover the same.

As an initial matter, Sierra Club will clarify KPC's characterization that "no intervenor addressed or opposed" its request to recover this \$1.903 million in ELG costs. Motion at 6. To be sure, it is true that Sierra Club did not specifically and explicitly respond, in its post-hearing Response Brief, to the one terse reference and request in KPC's Initial Brief concerning recovery of these costs in the event that the Commission denied the ELG CPCN. *See* Initial Brief of KPC at 18. However, Sierra Club categorically and consistently opposed the proposed ELG projects

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is the most reasonable, least-cost option." Order at 22. In addition, the Commission "concur[red] with [the] Attorney General, KIUC, and Sierra Club that Kentucky Power's modeling assumptions significantly overstated the projected cost of other generation resources, which artificially created the appearance that the ELG project is more cost-effective than the alternatives," in particular solar power purchase agreements. *Id.* The Commission further reasoned that, "[g]iven the close results and Kentucky Power's exclusion of future enactment of environmental regulations, the Commission is not convinced that constructing the proposed ELG project in order to operate Mitchell between 2028 and 2040 is the least-cost option if any upgrades are required to comply with new environmental regulations...." *Id.*

and the Company's request to invest ratepayer dollars thereon. Respectfully, Sierra Club submits that its blanket opposition to the ELG project, and the associated unreasonable ratepayer burden posed by that project, subsumes a narrower opposition to recovery of already incurred costs related to the same.

That said, Sierra Club opposes KPC's request to recover the \$1.903 million in ELG compliance costs that it chose to incur ahead of gaining the Commission's approval of the ELG project. The extent of KPC's explanation as to why these costs were incurred comes in one sentence in its direct testimony, namely Witness Sherrick's assertion that "[t]hese costs were unavoidable prior to regulatory approval as they were necessary to establish the scope, schedule, and budget for the projects and to meet environmental compliance deadlines." Sherrick Direct at 12-13. Sierra Club submits that expenses associated with a utility's evaluation of costs and risks, and conditional planning, in the face of periodic regulatory junctures, are at the core of the utility's ongoing business prerogatives and appropriately fall on the utility and its shareholders, not its customers. Further, even if such regular threshold analytical costs are theoretically recoverable as prudent and benefitting ratepayers, even when a utility's proposal is later denied, Sierra Club submits that KPC has not carried its burden in this case to establish that the \$1.903 million amount was prudently incurred and necessary for presenting the Company's ELG CPCN case. For these reasons, Sierra Club respectfully opposes KPC's request for rehearing as to the already-incurred ELG costs.

Dated: August 9, 2021

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing copy of this RESPONSE OF SIERRA CLUB TO KENTUCKY POWER COMPANY's MOTION FOR REHEARING in this action is being electronically transmitted to the Commission on August 9, 2021; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.



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JOE F. CHILDERS