

Kentucky Power Company
KPSC Case No. 2021-00004
Commission Staff's Rehearing Data Requests
Dated August 19, 2021
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DATA REQUEST

RH_1_1 Explain Kentucky Power and Wheeling Power's plan regarding Mitchell. Provide updated status reports every ten days through the pendency of this proceeding.

RESPONSE

Kentucky Power and Wheeling Power currently are implementing plans to ensure the construction of the CCR project to allow the operation of the Mitchell Generating Station through December 31, 2028.

Kentucky Power Company and Wheeling Power Company are reviewing their alternatives regarding the Mitchell Generating Station in light of the July 15, 2021 decision of this Commission, and the August 4, 2021 decision of the Public Service Commission of West Virginia. No decision regarding a plan for the Mitchell Generating Station beyond that described above has been reached by either Company.

Kentucky Power will file updated status reports every ten days during the pendency of this proceeding.

September 13, 2021 Update

Wheeling Power Company and Appalachian Power Company on September 8, 2021 filed with the Public Service Commission of West Virginia their "Petition to Reopen Case and to Take Further Action" in Case No. 20-1040-E-CN. The petition requests the West Virginia Commission to provide certain confirmations, acknowledgements, and commitments regarding, *inter alia*, the Mitchell Generating Station, in light of the inconsistent orders of the Kentucky and West Virginia commissions regarding the proposed ELG work at the Mitchell Generating Station. The petition further requests that the West Virginia Commission provide the confirmations, acknowledgements, and commitments prior to the October 13, 2021 deadline under the ELG Rule for notifying the West Virginia Department of Environmental Protection concerning the ELG modifications at the Mitchell Generating Station. Finally, Wheeling Power and Appalachian Power Company indicated in the petition that there were matters in need of resolution should West Virginia decide to fully fund the ELG investment and maintain the plant in order to preserve an option to run the Mitchell Generating Station past 2028.

A copy of the petition is attached as KPCO_SR_KPSC_RH_1_1_Attachment1.

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The West Virginia commission by order dated September 9, 2021 established a procedural schedule, and provided for a September 24, 2021 evidentiary hearing, in connection with the petition.

A copy of the September 9, 2021 order is attached as KPCO_SR_KPSC_RH_1_1_Attachment2.

Kentucky Power Company and Wheeling Power Company continue to review their alternatives regarding the Mitchell Generating Station pending action by the West Virginia Commission on the petition. Kentucky Power Company also intends to explore these issues and will work to bring the Commission a recommendation on how to handle the Mitchell operating agreement in a new docket for review.

Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding on the status of the West Virginia decision on ELG investment.

September 23, 2021 Update

Wheeling Power Company and Appalachian Power Company on September 20, 2021 filed with the Public Service Commission of West Virginia their Reply in support of their "Petition to Reopen Case and to Take Further Action."

A copy of the Reply is attached as KPCO_SR_KPSC_RH_1_1_Attachment3.

Kentucky Power Company and Wheeling Power Company continue to review their alternatives regarding the Mitchell Generating Station pending action by the West Virginia Commission on the petition. Kentucky Power Company will work to bring the Commission a recommendation on how to handle the Mitchell operating agreement either in Case No. 2021-00370 or in a separate docket.

Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

October 4, 2021 Update

The Public Service Commission of West Virginia held an evidentiary hearing on September 24, 2021 in Case No. 20-1040-E-CN. The purpose of the hearing was to address the issues raised in Wheeling Power Company and Appalachian Power Company's September 8, 2021 "Petition to Reopen Case and to Take Further Action."

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Kentucky Power Company and Wheeling Power Company continue to review their alternatives regarding the Mitchell Generating Station pending action by the West Virginia Commission on the petition. Kentucky Power Company will work to bring the Commission a recommendation on how to handle the Mitchell operating agreement either in Case No. 2021-00370 or in a separate docket.

Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

October 13, 2021 Update

On October 12, 2021 the Public Service Commission of West Virginia issued its Order regarding Wheeling Power Company and Appalachian Power Company's September 20, 2021 "Petition to Reopen Case and to Take Further Action" affirming the earlier order that the Companies proceed with ELG at all three plants.

Please see KPCO_SR_KPSC_RH_1_1_Attachment4 which provides a copy of the October 12, 2021 Order and all other documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN since October 2, 2021¹ through October 12, 2021.

Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

October 25, 2021 Update

Wheeling Power Company is moving forward with CCR/ELG work at the Mitchell Generating Station given the recent action by the West Virginia Commission on the petition. Kentucky Power Company will work to bring the Commission a recommendation on how to handle the Mitchell operating agreement either in Case No. 2021-00370 or in a separate docket. The Company expects to make the operating agreement filing in fourth quarter 2021 and further plans to address through that filing that Kentucky Power will only pay for CCR-related costs associated with the CCR/ELG project.

¹ The Commission Staff's data request 2-6 dated September 17, 2021 sought, as a continuing request, that the Company provide a copy of any documents filed by Wheeling Power or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN and to be provided in the Company's 10-day status reports. The Company's response to 2-6 provided these documents through October 1, 2021.

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Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN from October 13, 2021 through October 24, 2021.

November 4, 2021 Update

AEP has entered into an agreement to sell its Kentucky operations, which include Kentucky Power and AEP Kentucky Transco, to Liberty Utilities Corp., the regulated utility business of parent company Algonquin Power & Utilities Corporation. Liberty will own and obtain power from Kentucky Power's 50% portion of the Mitchell Plant through 2028. The sale is expected to close in the second quarter of 2022, pending regulatory approvals. The Company expects that an application for Commission approval of the transaction will be made in the fourth quarter 2021.

Kentucky Power Company will work to bring the Commission a recommendation on how to handle the Mitchell operating agreement either in Case No. 2021-00370 or in a separate docket. The Company expects to make the operating agreement filing in the fourth quarter 2021.

Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN from October 25, 2021 through November 3, 2021.

November 15, 2021 Update

On November 5, 2021, Kentucky Power filed its notice of intent to file an application for approval of affiliate agreements related to the Mitchell Generating Station. The Commission assigned this proceeding Case No. 2021-00421. The Company will file its application before November 30, 2021. A comparable filing will be made at the same time in West Virginia.

Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

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There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN from November 4, 2021 through November 14, 2021.

November 24, 2021 Update

On November 19, 2021, Kentucky Power filed its application for approval of its proposed Mitchell Plant Operations and Maintenance Agreement and Mitchell Plant Ownership Agreement (collectively the “New Mitchell Agreements”) in Case No. 2021-00421. Please see KPCO_SR_KPSC_1_1_Attachment5 for a copy of the Company’s application, including the supporting testimonies of D. Brett Mattison and Timothy C. Kerns. A comparable filing was made contemporaneously in West Virginia under Case No. 21-0810-E-PC. Please see KPCO_SR_KPSC_1_1_Attachment6 for a copy of this filing.

Additionally, American Electric Power Service Corporation (on behalf of Wheeling Power and Kentucky Power) filed the New Mitchell Agreements and cancellation of Rate Schedules No. 303 (current Mitchell Plant Operating Agreement) with FERC on November 19, 2021. Please see KPCO_SR_KPSC_1_1_Attachment7 for a copy of this filing.

Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN from November 15, 2021 through November 23, 2021.

December 3, 2021 Update

On November 30, 2021 an informal meeting was held following the hearing in Case No. 2021-00370 to discuss a procedural schedule for Case No. 2021-00421. The Commission entered an Order on December 3, 2021 in Case No. 2021-00421 establishing the procedural schedule for Case No. 2021-00421.

As of December 2, 2021 a procedural schedule has not been established in the comparable filing made in West Virginia (21-0810-E-PC).

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) are filed as KPCO_SR_KPSC_1_1_Attachment8 and KPCO_SR_KPSC_1_1_Attachment9 respectively.

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Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period November 24, 2021 through December 2, 2021.

December 13, 2021 Update

On December 13, 2021, the Commission established a hearing date in Case No. 2021-00421. The hearing is to be held on March 1, 2022 through March 3, 2022.

As of December 12, 2021 a procedural schedule has not been established in the comparable filing made in West Virginia (21-0810-E-PC).

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) are filed as KPCO_SR_KPSC_1_1_Attachment10 and KPCO_SR_KPSC_1_1_Attachment11 respectively.

Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period December 3, 2021 through December 12, 2021.

December 22, 2021 Update

The Company will be filing its responses to the first set of discovery requests in Case No. 2021-00421 today.

As of December 21, 2021 a procedural schedule has not been established in the comparable filing made in West Virginia (21-0810-E-PC).

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) are filed as KPCO_SR_KPSC_1_1_Attachment12 and KPCO_SR_KPSC_1_1_Attachment13 respectively.

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Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period December 13, 2021 through December 21, 2021.

January 3, 2022

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period December 22, 2021 through December 31, 2021.

On December 22, 2021 the Staff of the Public Service Commission of West Virginia issued its initial memorandum and first set of data requests in Case No. 21-0810-E-PC. The proceeding seeks approval of the Mitchell Plant Operations and Maintenance Agreement and the Mitchell Plant Ownership Agreement. Copies of the filed memo and the data requests are attached as KPCO_SR_KPSC_1_1_Attachment14 and KPCO_SR_KPSC_1_1_Attachment15 respectively. As of December 29, 2021 a procedural schedule has not be established in Case 21-0810-E-PC.

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) are filed as KPCO_SR_KPSC_1_1_Attachment16 and KPCO_SR_KPSC_1_1_Attachment17 respectively.

January 13, 2022

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period January 1, 2022 through January 12, 2022.

Responses to the Staff of the Public Service Commission of West Virginia's first set of data requests in Case No. 21-0810-E-PC were filed on January 11, 2022. A copy of these responses is attached as KPCO_SR_KPSC_1_1_Attachment18. As of December 29, 2021 a procedural schedule has not be established in Case 21-0810-E-PC.

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) are filed as KPCO_SR_KPSC_1_1_Attachment19 and KPCO_SR_KPSC_1_1_Attachment20 respectively.

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January 24, 2022

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period January 13, 2022 through January 23, 2022.

A proposed procedural schedule was filed by West Virginia Staff in Case No. 21-0810-E-PC on January 14, 2022. On January 20, 2022 the "Objections of Appalachian Power Company and Wheeling Power Company to the Consumer Advocate Division's First Request for Information" were filed. A copy of these documents are attached as KPCO_SR_KPSC_1_1_Attachment21 and KPCO_SR_KPSC_1_1_Attachment22.

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) beginning November 24, 2021 are filed as KPCO_SR_KPSC_1_1_Attachment23 and KPCO_SR_KPSC_1_1_Attachment24 respectively.

February 3, 2022

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period January 24, 2022 through February 2, 2022.

The West Virginia Commission's procedural order in Case No. 21-0810-E-PC was entered on January 25, 2022. Appalachian Power Company's and Wheeling Power Company's responses to the Consumer Advocate Division and the West Virginia Energy Users Group first data requests were filed on January 26, 2022. A copy of these documents are attached as KPCO_SR_KPSC_1_1_Attachment25 through KPCO_SR_KPSC_1_1_Attachment27.

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) beginning December 4, 2021 are filed as KPCO_SR_KPSC_1_1_Attachment28 and KPCO_SR_KPSC_1_1_Attachment29 respectively.

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February 14, 2022

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period February 3, 2022 through February 13, 2022.

In Case No. 21-0810-E-PC, Appalachian Power Company's and Wheeling Power Company's response to the Consumer Advocate Division's motion to compel was filed on February 7, 2022. On February 8, 2022 the West Virginia Commission granted intervention two petitions to intervene: 1) West Virginia Coal Association and 2) West Virginia Citizens Action Group, Solar United Neighbors, and Energy Efficient West Virginia. A copy of these documents are attached as KPCO_SR_KPSC_1_1_Attachment30 through KPCO_SR_KPSC_1_1_Attachment31.

On February 7, 2022 American Electric Power Service Corporation on behalf of Kentucky Power and Wheeling Power Company filed a motion to withdraw the rate filing submitted on November 19, 2021 in dockets ER22-452-000 and ER22-453-000.

February 24, 2022

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN or Case No. 21-0810-E-PC during the period February 14, 2022 through February 23, 2022.

March 7, 2022

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period February 24, 2022 through March 6, 2022.

The Company inadvertently omitted from its last 10-day status update that in Case No. 21-0810-E-PC, Appalachian Power Company's and Wheeling Power Company's responses to West Virginia Energy Users Group second set of data requests were filed on February 23, 2022. A copy of these responses is attached as KPCO_SR_KPSC_1_1_Attachment32.

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The Commission held a hearing in Case No. 2021-00421 on March 1, 2022. After that hearing, the Kentucky Public Service Commission issued an order requiring the Company to notify the Commission whether or not the Company intended to file a proposed amendment to the Mitchell Ownership Agreement concerning the Company's alternate proposal to divide the Mitchell units between Kentucky Power and Wheeling Power. The Company is evaluating this option and will file its response regarding such a proposal as soon as is practical before March 16, 2022.

March 16, 2022

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period March 7, 2022 through March 15, 2022.

In Case No. 21-0810-E-PC, on March 8, 2022 the West Virginia Commission granted two requests for admission Pro Hac Vice of West Virginia Citizens Action Group, Solar United Neighbors and Energy Efficient West Virginia. On March 9, 2022, Appalachian Power Company and Wheeling Power Company filed a response to the third set of data requests from West Virginia Energy Users Group. A copy of the response is attached as KPCO_SR_KPSC_1_1_Attachment33. On March 11, 2022 the West Virginia Commission approved the Consumer Advocate Division's (CAD) Motion to Compel. A copy of the Order is attached as KPCO_SR_KPSC_Attachment34.

March 28, 2022

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period March 16, 2022 through March 27, 2022.

In Case No. 21-0810-E-PC, on March 16, 2022, Appalachian Power Company and Wheeling Power Company filed responses to CAD's first set of data requests as required by the Public Service Commission of West Virginia's order granting CAD's motion to compel. A copy of the public responses are attached as KPCO_SR_KPSC_1_1_Attachment35. On March 17, 2022 Appalachian Power Company and Wheeling Power Company filed their response to CAD's motion to amend the procedural schedule. A copy of the response is attached as KPCO_SR_KPSC_1_1_Attachment36. On March 18, 2022 Appalachian Power Company and Wheeling Power Company filed supplemental direct testimony of Christian Beam. A copy of the supplemental testimony is attached as KPCO_SR_KPSC_1_1_Attachment37. On March 18, 2022 the Public Service Commission of West Virginia issued an Order amending the procedural schedule. A copy of this Order is attached as KPCO_SR_KPSC_1_1_Attachment38. On March

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23, 2022, Appalachian Power Company and Wheeling Power Company filed a motion for protective treatment. A copy of this motion is attached as KPCO_SR_KPSC_1_1_Attachment39.

April 5, 2022

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period March 28, 2022 through April 6, 2022.

In Case No. 21-0810-E-PC, on March 28, 2022, the Staff of the Public Service Commission of West Virginia filed the direct testimonies of James Weimer, P.E., and Geoffrey M. Cooke. A copy of these testimonies is attached as KPCO_SR_KPSC_1_1_Attachment40.

On March 31, 2022 the Public Service Commission of West Virginia issued an Order granting the request for admission *Pro Hac Vice* of Melissa Anne Legge. A copy of the Order is attached as KPCO_SR_KPSC_Attachment41.

On April 1, 2022, the Staff of the Public Service Commission of West Virginia filed the supplemental direct testimony of James Weimer, P.E. A copy of the supplemental direct testimony is attached as KPCO_SR_KPSC_1_1_Attachment42.

On April 4, 2022 Appalachian Power Company and Wheeling Power Company filed the Rebuttal Testimony of Christian T. Beam. A copy of Mr. Beam's rebuttal testimony is attached as KPCO_SR_KPSC_1_1_Attachment43. Mr. Beam's Rebuttal Testimony covered the particulars of Section 9.6 and the Unit Interest Swap option contained in the amended proposed Mitchell Plant Ownership Agreement. Mr. Beam also supported the remaining elements of the agreements overall.

Of special note in Mr. Beam's Rebuttal Testimony was an alternative offered by Appalachian Power and Wheeling Power to the West Virginia Commission to remove in its entirety the provisions governing the transfer of Kentucky Power's plant interest by 2028 (Section 9.6 and related provisions and definitions) and rather focus the agreements on the operation of and investment in the plant between now and December 31, 2028.

The Rebuttal Testimony recognizes the Kentucky Commission's Order that Kentucky Power not invest in ELG, and the Kentucky Commission's discussions at its recent hearing in Case No. 2021-00421 concerning the potential need for a certificate of public convenience and necessity in the future should Kentucky Power wish to keep Mitchell in its generation mix past December 31, 2028.

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The Rebuttal Testimony also recognizes the Kentucky Commission's requirement to update the Kentucky Commission on the West Virginia proceeding every 10 days, and recognizes these updates as an avenue for informing the Commission about the West Virginia proceeding.

Ultimately, though, the Rebuttal Testimony requests that the West Virginia Commission find acceptable *both options presented*: the Unit Interest Swap option *and* the removal of Section 9.6 (and associated provisions) in its entirety, in order to provide flexibility and to reduce the potential for inconsistent decisions between the Kentucky and West Virginia Commissions, and to increase the potential that the agreements are found acceptable by both commissions.

As presented in the Rebuttal Testimony, the West Virginia Commission could authorize Wheeling Power to enter into the agreements except for Section 9.6 of the Mitchell Ownership Agreement (including associated definitions and provisions such as the arbitration clause in Section 12.4 that are specific to that clause) if it finds that to be reasonable. That could also facilitate Kentucky Power entering into the agreements on those same terms, assuming that the Kentucky Commission approves the agreements absent Section 9.6 and authorizes Kentucky Power to enter into the agreements on the same basis. If the West Virginia Commission sees both options as reasonable, it could issue an order finding it reasonable for Wheeling Power to enter into an agreement containing either option to facilitate consistency.

Finally, a hearing is set for April 7, 2022 on Appalachian Power and Wheeling Power's application in 21-0810-E-PC. On April 4, 2022 Appalachian Power and Wheeling Power filed an agreed order of witnesses for the April 7, 2022 hearing. A copy of this document is attached as KPCO_SR_KPSC_1_1_Attachment44.

April 13, 2022

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period April 6, 2022 through April 12, 2022.

In Case No. 21-0810-E-PC, on April 7, 2022 a hearing was held concerning the New Mitchell Agreements. A copy of the transcript is attached as KPCO_SR_KPSC_1_1_Attachment45.

The transcript includes the testimony of two Wheeling Power witnesses (President Christian Beam and Timothy Kerns), as well as Staff and intervenor witnesses. The hearing concerned the same New Mitchell Agreements as those filed with the Kentucky Commission (i.e., the Mitchell Plant Operations and Maintenance Agreement and the Revised Mitchell Plant Ownership Agreement) and also includes testimony regarding the removal of Section 9.6 and related definitions and provisions from the Ownership Agreement if the WVPSC determined that was a

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more reasonable option and to assist in promoting consistency in the agreements approved by both this Commission and the WVPSC. The transcript also includes testimony by Wheeling Power and an intervenor witness regarding the need for timely approval of the New Mitchell Agreements in order to move permits into Wheeling Power's name and for Wheeling Power to move forward with the ELG physical work.

Kentucky Power provides this update earlier than the required 10 days in consideration of the Commission's comments at the March 30, 2022 hearing in Case No. 2021-00421 that the Commission relies on these updates to inform it of the status of the West Virginia proceedings in the Commission's consideration of Case No. 2021-00421.

Witness: Deryle B. Mattison

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

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IN RE: APPALACHIAN POWER COMPANY*
AND WHEELING POWER COMPANY * 21-0810-E-PC

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HEARING TRANSCRIPT

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BEFORE: CHARLOTTE LANE, Chairman
RENEE A. LARRICK, Commissioner
WILLIAM B. RANEY, Commissioner
HEARING: Thursday, April 7, 2022
9:33 a.m.
LOCATION: PSC Howard M. Cunningham Hearing Room
201 Brooks Street
Charleston WV

Reporter: Caitlin Henson

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A P P E A R A N C E S (Cont.)

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A P P E A R A N C E S (Cont.)

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1 P R O C E E D I N G S

2 -----
3 CHAIR:

4 Okay. We can go on the record. Good
5 morning. I'm Charlotte Lane, Chairman of the Public
6 Service Commission of West Virginia. With me are
7 Commissioners Renee Larrick and Bill Raney. We are here
8 today to conduct an evidentiary hearing in Case Number
9 21-0810, Appalachian Power Company and Wheeling Power
10 Company.

11 On November 19th, 2021, Appalachian
12 Power or APCo and Wheeling Power or Wheeling Gathering
13 Companies filed a petition seeking Commission consent and
14 approval to enter into ownership and Operating Agreement
15 for the Mitchell Plant that is the subject of this case.
16 On March 18th, 2022, the Companies filed a Revised
17 Ownership Agreement, including a proposed unit swap
18 agreement instead of a fair market value sale of
19 ownership interests.

20 At this time, let's take appearances of
21 the parties. Mr. Porth?

22 ATTORNEY PORTH:

23 Thank you, Chairman Lane. My name is
24 William C. Porth of the firm of Robinson & McElwee, PLLC.
25 And I'm here today representing Appalachian Power Company

1 and Wheeling Power Company, together with Anne C. ---.

2 CHAIR:

3 You're going to have to speak into your
4 microphone.

5 ATTORNEY PORTH:

6 Oh, I'm sorry. Is that better?

7 CHAIR:

8 Yes.

9 ATTORNEY PORTH:

10 Okay. Do I need to repeat, Reporter,
11 or did you get it?

12 COURT REPORTER:

13 I got it.

14 ATTORNEY PORTH:

15 Okay. Thank you. And with me also
16 representing those companies is Anne C. Blankenship of my
17 firm, and Keith D. Fisher of the American Electric Power
18 Service Corporation.

19 CHAIR:

20 Mr. Naum?

21 ATTORNEY NAUM:

22 Yes. Thank you. Good morning. Barry
23 Naum, from the law firm of Spilman, Thomas & Battle, PLLC
24 representing the West Virginia Energy Users Group. For
25 the purposes of this proceeding, WVEUG's membership

1 consists of the Chemours Company, LLC; Constellium Rolled
2 Products Ravenswood, LLC; Eagle Natrium Westlake;
3 Marathon Petroleum Company, LP; Mark West; and WVA
4 Manufacturing, LLC.

5 CHAIR:

6 Thank you. Mr. Williams?

7 ATTORNEY WILLIAMS:

8 Good morning, Chairman Lane and
9 Commissioners. My name is Robert Williams. I'm with the
10 Consumer Advocate Division of the Public Service
11 Commission. With me today is Heather Osborn and we have
12 a witness, Emily Medine.

13 CHAIR:

14 Mr. Pepper?

15 ATTORNEY PEPPER:

16 Good morning. Thank you.
17 Commissioners, Chairman Lane, I'm Emmett Pepper of the
18 law firm Pepper and Nason on behalf of West Virginia
19 Citizen Action Group, Solar United Neighbors, and Energy
20 Efficient West Virginia. With me today is co-counsel,
21 Ragu Murthy, of the law firm of Justice. And our expert
22 witness, James Wilson, will be provided later today.

23 CHAIR:

24 Okay. Thank you. Mr. Altmeyer?

25 ATTORNEY ALTMAYER:

1 Good morning, Chairman Lane and
2 Commissioners, Renee Larrick. My name is Jacob Altmeyer
3 from the law firm of Phillips, Gardill, Kaiser & Altmeyer
4 in Wheeling. I'm here representing the West Virginia
5 Coal Association. I'm here by myself. Nobody's here
6 today.

7 CHAIR:

8 Mr. Head?

9 ATTORNEY HEAD:

10 Good morning. Lucas Head representing
11 Public Service Commission Staff. I have two witnesses,
12 Geoffery Cooke and Jim Weimer, with me today.

13 CHAIR:

14 Please make sure your cellphones are
15 turned off and when speaking, please speak directly into
16 the microphone. And make sure your blue light is on
17 before speaking. At this time, I will admit all prefiled
18 Supplemental Direct Testimony and all prefiled comments
19 in response to testimony into the record. Each party
20 should have provided the Court Reporter with a copy of
21 all the prefiled testimony and comments for the record.
22 If you have not done so, please do so at the first break.

23 (Staff's Exhibit GMC-D was marked for
24 identification.)

25 (Staff's Exhibit JCW-D was marked for

1 identification.)
2 (Staff's Exhibit JCW-SD was marked for
3 identification.)
4 (CAD's Exhibit ESM-D was marked for
5 identification.)
6 (CAG's Exhibit JFW-D was marked for
7 identification.)
8 (Company's Exhibit CTB-D was marked for
9 identification.)
10 (Company's Exhibit TCK-D was marked for
11 identification.)
12 (Company's Exhibit CTB-S was marked for
13 identification.)
14 (Company's Exhibit CTB-R was marked for
15 identification.)
16 CHAIR:
17 As a reminder for the witnesses, when
18 you are called, please state your name and please spell
19 your name for the Court Reporter. Mr. Porth, you may
20 call your first witness.
21 ATTORNEY PORTH:
22 Ms. Blankenship.
23 ATTORNEY BLANKENSHIP:
24 The Companies call MCC Kerns. Does Mr.
25 Kerns need to be sworn in?

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CHAIR:

I'm sorry?

ATTORNEY BLANKENSHIP:

Does he need to be sworn in before we
get started?

CHAIR:

Yes.

COURT REPORTER:

Will you raise your right hand?

TIMOTHY KERNS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
AS FOLLOWS:

DIRECT EXAMINATION

BY ATTORNEY BLANKENSHIP:

Q. Good morning.

A. Good morning.

Q. Can you please state your name and business
address for the record?

A. I'm Timothy C. Kerns, K-E-R-N-S. My business
address is 2791 North U.S. Highway 231, Rockport,
Indiana, 47635.

Q. And by whom are you employed and in what
capacity?

A. Do I need to repeat any of that?

1 Q. No, you're fine.

2 A. Sorry. I'm employed by American Electric Power
3 Service Corporation as vice-president of Generating
4 Assets, Kentucky Power and Indiana Michigan Power
5 Company.

6 Q. And you might want to move the microphone a
7 little bit closer to you.

8 A. Okay.

9 Q. Okay. Great. Thank you. Did you previously
10 file Direct Testimony in this proceeding, consisting of
11 seven pages of questions and answers?

12 A. Yes, I did.

13 Q. Do you have any additions, deletions or
14 corrections to make to your testimony?

15 A. No, I don't.

16 Q. Do you adopt your testimony as part of your
17 evidence in this case?

18 A. Yes, I do.

19 Q. And are you able to answer any questions about
20 your testimony this morning?

21 A. Yes, I am.

22 ATTORNEY BLANKENSHIP:

23 Mr. Kerns is now available for Cross
24 Exam.

25 CHAIR:

1 Thank you. Mr. Williams? I mean, I'm
2 sorry. Mr. Naum?

3 ATTORNEY NAUM:

4 No questions for this witness, Your
5 Honor.

6 CHAIR:

7 Mr. Williams? Ms. Osborn?

8 ATTORNEY OSBORN:

9 Yes, the CAD has questions. Thank you.

10 CROSS EXAMINATION

11 BY ATTORNEY OSBORN:

12 Q. Good morning, Mr. Kerns. How are you?

13 A. Good morning. I'm well.

14 ATTORNEY OSBORN:

15 Am I using my microphone, okay, because
16 the cord is very short for some reason this morning. It
17 will not stretch. But you can hear me okay?

18 CHAIR:

19 Yes.

20 ATTORNEY OSBORN:

21 Okay. I wanted to make sure we're
22 good. Great.

23 BY ATTORNEY OSBORN:

24 Q. Mr. Kerns, you are the vice-president of
25 Generation Assets for Kentucky Power and Indiana Michigan

1 Power Company; correct?

2 A. Yes.

3 Q. And Indiana Michigan Power Company is an AEP
4 affiliate?

5 A. Yes, it is.

6 Q. Okay. And you yourself are actually an employee
7 of AEPSC; correct?

8 A. Yes, that's correct.

9 Q. Okay. And you state in your Direct Testimony at
10 page two that you have direct oversight over the
11 operation and management of Mitchell in your position; is
12 that correct?

13 A. Yes, that's correct.

14 Q. I wondered if there is a vice-president of
15 Generating Assets for Wheeling Power currently.

16 A. No, there's not because Wheeling Power doesn't
17 have any generating assets other than the undivided
18 ownership of the Mitchell Plant.

19 Q. Okay. And you fulfill that role?

20 A. I do.

21 Q. Okay. On page two of your testimony at line 17,
22 you indicate other regulatory proceedings that you
23 testified in. And unless I blanked out, I don't think
24 you updated that when Ms. Blankenship asked you about any
25 corrections, but it's correct, is it not, that you have

1 since the filing of your testimony testified in the
2 companion Kentucky case, as I'll refer to it?

3 A. Yes, that's true. I'm sorry.

4 Q. And --- that's fine. I just want to make that
5 clear for the record. And also for the record, when I
6 refer to companion Kentucky case, I'm referring to
7 Kentucky Public Service Commission Case Number 21-00421,
8 in which the Kentucky Public Service Commission is also
9 being asked to approve new Mitchell agreement; correct?

10 A. Yes, that's correct.

11 Q. Okay. On page two of your Direct Testimony at
12 line 23, you indicate that in this proceeding you're
13 testifying on behalf of both APCo and Wheeling Power; is
14 that correct?

15 A. Yes, it is.

16 Q. And in the Kentucky proceeding, the companion
17 Kentucky proceeding, when you testified, is it correct
18 that you were testifying on behalf of Kentucky Power?

19 A. Yes, that's correct.

20 Q. As you provided testimony in both the Kentucky
21 proceeding and this proceeding, did you at any time or do
22 you now perceive of any conflict with respect to you
23 testifying regarding the new Mitchell agreement on behalf
24 of both Wheeling Power and Kentucky Power?

25 A. No, I don't. The purpose of my testimony is to

1 make clear that the change of operatorship or moving from
2 Kentucky Power being the operator of the Wheeling plant,
3 Mitchell Plant to Wheeling Power causes no operational
4 issues or concerns. It would be the same, those
5 operating the plant. I'll still have oversight for the
6 Mitchell Plant. And so I don't see conflicts testifying
7 in both hearings.

8 Q. Okay. Would you agree with me that Wheeling
9 Power and Kentucky Power do not share the same interests
10 with respect to Mitchell at this point in time, in light
11 of the diversion of Kentucky and West Virginia PSC
12 orders?

13 A. Could you repeat the question, please?

14 Q. Okay. In light of the, what I'll describe as
15 diversion Kentucky Public Service Commission Order
16 regarding ELG and West Virginia Public Service Commission
17 Order regarding ELG, that the interests when it comes to
18 Mitchell are --- they're different in some ways between
19 Kentucky Power and Wheeling Power at this time; correct?

20 A. The Orders are certainly different, which is
21 what drove the need for Revised Agreements, you know, the
22 changeup and change the operator. So as far as the
23 interests at this time, both still have a 50 percent
24 undivided interest until that date comes or until the
25 decision is or comes time to me made.

1 Q. Okay. Let me ask you this. And you may have
2 referred to this just a moment ago, but certainly you
3 would agree I presume that the Kentucky Public Service
4 Commission and the West Virginia Public Service
5 Commission have different interests when it comes to
6 Mitchell, as we sit here today, given the diversion?

7 A. I believe the desired outcome for the Mitchell
8 Plant is different and the two jurisdictions makes
9 no ---.

10 Q. And the desired outcome for ratepayers is
11 different in both jurisdictions; correct?

12 A. I'm going to get back to the purpose, you know,
13 what my testimony is any operational impacts on the plant
14 changing over, or if these agreements are reasonable
15 compared to both parties. So impact on ratepayers is
16 certainly important, but it's not, it's really not the
17 purpose of my testimony.

18 Q. Fair enough. On page four of your Direct
19 Testimony, I believe beginning at line ten, you discuss
20 the Operating Committee, specifically discuss its
21 function and its members. And so the record's clear,
22 there are two voting members who comprise the Operating
23 Committee; correct?

24 A. Yes, that's correct.

25 Q. And one nonvoting member; correct?

1 A. Yes, that's correct.

2 Q. Okay. And for Kentucky Power, Brett Mattison,
3 who is the president and COO of Kentucky Power, he is one
4 of the two voting members; correct?

5 A. Yes.

6 Q. Chris Beam, president and COO of Wheeling Power
7 is the other voting member; correct?

8 A. Yes, that's correct.

9 Q. And you yourself, on behalf of AEPSC, you are
10 the nonvoting member; correct?

11 A. That's correct.

12 Q. Also on page four of your Direct Testimony at
13 line 21, and I'm going to jump around a little bit,
14 especially in your testimony. You state that it's
15 necessary to --- your testimony is that it's necessary to
16 replace the current Operating Agreement to reflect the
17 future operations and investment in Mitchell; is that
18 correct?

19 A. Yes.

20 Q. Okay. What I didn't see in your testimony and
21 what I'm asking now is whether you have an opinion as to
22 whether it's necessary to put into place an Ownership
23 Agreement at this time.

24 A. So my opinion on whether it's needed or not
25 would be that we have obviously supplied both. We split

1 out the existing Operating Agreement into two agreements
2 and we did that simply because the agreement we have is
3 an affiliate agreement, and we realize that at some point
4 the ownership may not be with an affiliate. And so the
5 content of the existing two agreements is really just a
6 splitting out and more, and putting better definition
7 around the responsibilities of the owners and the
8 Operating Committee. So ---.

9 Q. So that's how you view the proposed Ownership
10 Agreement, just a splitting out of the current Operating
11 Agreement?

12 A. I think it's more formalizing the ownership, you
13 know, the terms of the ownership of the Mitchell Plant or
14 as to the Operating Agreement, the O & M agreement, or
15 the nuts and bolts of how the plant will be operated and
16 maintained.

17 Q. Okay. Well, understanding that that is the
18 procedure that the Companies have chosen to follow,
19 proposing there's been a new Operating Agreement and
20 Ownership Agreement for the first time, again, I just
21 want to ask you whether it's your opinion that it is
22 necessary at this time to put into place an Ownership
23 Agreement.

24 A. So I'm going to get back to the purpose of my
25 testimony again. And referring to Witness Beam about,

1 you know, the reasons --- specific reasons maybe for
2 having two agreements. The two agreements, as proposed,
3 don't hinder my ability and Wheeling Power's ability to
4 operate the plant as --- you know, as the owner and
5 perform the duties described ---.

6 Q. Okay. I don't want to belabor this, but is your
7 answer, then, that you don't have an opinion as to
8 whether an Ownership Agreement is necessary at this time?

9 A. Yes.

10 Q. Okay. And on page five of your Direct Testimony
11 beginning, I believe, at line six, you detail for the
12 Commission your involvement in the operation of Mitchell
13 and your role as Vice-President of Generating Assets.
14 And it goes on to page six. You state that you will
15 continue to have overall managerial responsibility for
16 Mitchell and you explain how your time will be billed;
17 correct?

18 A. Yes.

19 Q. Okay. So as I understand your testimony, your
20 time would be billed to Wheeling Power as opposed to the
21 way it's billed now, which is to Kentucky Power; correct?

22 A. Yes. The portion of my time that I spent doing
23 work, you know, for the Mitchell Plant currently goes to
24 Kentucky Power. That would change to Wheeling Power. It
25 would be billed out to Kentucky Power.

1 Q. And that's just the --- that's if the operation
2 agreement is approved; correct? That's what we're
3 talking about just ---?

4 A. Yes, that's correct.

5 Q. Okay. So then just to be clear, so following
6 the transfer of operation to Wheeling, you continue to
7 hold your current position and fulfill the same duties to
8 Mitchell. Is that your testimony?

9 A. Yes. My title may change, however, that would
10 be --- my current duties I don't expect to change.

11 Q. Okay. And if down the line Kentucky Power is
12 sold by AEP to Liberty, you don't --- is it fair to say
13 you don't have any expectations as of now that you'll be
14 going to Liberty as an employee?

15 A. Yes, that's right. I don't expect that I'll
16 leave Wheeling AEP or that those duties would change.

17 Q. And if Kentucky Power is sold to Liberty, would
18 there be a need, if you know, for there to be a Liberty
19 employee who fulfills the duties that you fulfill now
20 with respect to Mitchell or would that all remain with
21 you, if you know?

22 A. Based on what I know at this time, there would
23 not be. I would be the person responsible for the
24 Mitchell Plant.

25 Q. You haven't been advised otherwise?

1 A. That's right.

2 ATTORNEY OSBORN:

3 Okay. Give me just a moment. I've got
4 something. I've got an exhibit ---. And so while Mr.
5 Williams continues to pass those out for me, Mr. Kerns
6 --- well, let me ask you --- well, let me say I've handed
7 you what's been marked or what I would ask be marked CAD
8 Cross Exhibit 1.

9 (CAD's Cross Exhibit 1 was marked for
10 identification.)

11 BY ATTORNEY OSBORN:

12 Q. This, however, just for the record is a copy of
13 a data request from the Kentucky Power or the Kentucky
14 PSC case number 21-00421, specifically the Commission
15 Staff post-hearing data request number two that is dated
16 March 3rd of 2022. So do you want to flip through this?
17 Have you seen this document? Have you seen these
18 documents before, Mr. Kerns? I would note it says that
19 you witnessed the responses, so I presume you have, but
20 for the record.

21 A. Some of those.

22 Q. Okay. And I will let you know, Mr. Kerns, that
23 with respect to what's identified by Kentucky Power as
24 attachment to the minutes for October 25th, 2021 and
25 identified by Kentucky Power as attachment three, minutes

1 for the November 2nd, 2021 meeting, I have taken out from
2 what I've provided as an exhibit copies of the Draft
3 Agreement that are discussed in these minutes because
4 they were 81 pages long. And it would just be --- or at
5 least some version of them or multiple versions of them.

6 A. Okay. I agree.

7 Q. Okay. You have seen these and you did, in fact,
8 witness the response?

9 A. Yes.

10 Q. Okay. I want to just ask you a few questions
11 about these documents and I'll move between the minutes.
12 On the first page, obviously Kentucky Power identifies
13 the attached file; correct; attachment one, two, three,
14 four, five, and identifies the meeting minutes, and for
15 the last one, a consent action; correct?

16 A. Yes, that's correct.

17 Q. Okay. All right. So turning to the second
18 page, this represents the Mitchell Operating Committee
19 minutes from October 20th of 2021; is that correct?

20 A. Yes.

21 Q. Okay. So I want to ask you just a couple of
22 questions here. Obviously the operating representatives
23 who are present are identified as Christine Retenauer,
24 and yourself. We already talked about you three being
25 the committee members; correct?

1 A. Yes.

2 Q. And then there's a paragraph that's constituting
3 all of the operating representatives, that being you
4 three, also present were John Crespo, Mike Zwick,
5 Christen Blend, Jim Bacha, Garrett Spitnogle, Kathy
6 Millincosky, Brian West, Brian Russ and Raja Sandjaron
7 (sic). I may have butchered his name. And I just want
8 to ask you who these folks are and who they're employed
9 by. So John Crespo, I understand he is an attorney for
10 AEP; is that correct?

11 A. Yes, that is correct.

12 Q. Okay. What about Mike Zwick?

13 A. Mike Zwick's the Vice-President Of Generating
14 Assets for Appalachian Power Company. He's my peer for
15 Appalachian Power.

16 Q. Christian Glenn?

17 A. She's also a Co-counsel for AEP.

18 Q. Jim Bacha is Counsel for AEP?

19 A. Yes.

20 Q. Gary Spitnogle?

21 A. He's the vice-president of environmental
22 services for the American Electric Power Service
23 Corporation.

24 Q. Kathy Millincosky?

25 A. Also legal counsel internal for American

1 Electric Power Service Corporation.

2 Q. Brian West?

3 A. He's the Vice-President of Regulatory Finance
4 for Kentucky Power. He's the alternate representative of
5 Kentucky Power on the Operating Committee. And I'm
6 sorry. I should have pointed out that Mike Zwick is the
7 alternate on the Operating Committee for Wheeling Power?

8 Q. Okay. I was going to have a question about that
9 based on something I saw. Let me make a note of that in
10 just a moment. And I'm sorry. Tell me again. Mr. West,
11 what is --- he's with Kentucky Power?

12 A. Yes. He's the Vice-President of Regulatory and
13 Finance. And I may even butcher that title. Those are
14 his primary roles.

15 Q. Okay. Brian Russ?

16 A. Brian Russ is in our American Electric Power,
17 Regulatory Services. He's manager.

18 Q. And Raja Sundarajan (sic)?

19 A. Yes. He is also American Electric Power Service
20 Corporation, at Regulatory Services.

21 Q. And I don't want to go into detail, but in these
22 October 20th, 2021 minutes from the meeting, the ELG PCR
23 compliance is discussed; correct?

24 A. Yes, that's correct.

25 Q. Okay. Who is present at this meeting on behalf

1 of Wheeling Power Company?

2 A. Chris Beam.

3 Q. Oh. Anyone other than Mr. Beam?

4 A. No, just the two --- the representative, Mr.
5 Beam for the Operating Committee and his alternate, Mike
6 Zwick.

7 Q. Okay. Why is the alternate on behalf of
8 Wheeling Power an employee of --- and employee of
9 Appalachian Power or his title is VP of Generating Assets
10 for APCo?

11 A. That would probably be a better question for Mr.
12 Beam regarding the relationship, to make sure it gets in
13 the record correctly between APCo and Wheeling Power.
14 But currently outside of the ownership of --- an interest
15 in the Mitchell Plant, Wheeling Power doesn't have any
16 generating assets.

17 Q. Okay. But they have other employees, for
18 example, or other representatives?

19 A. Yes, but those are not in the generation ---

20 Q. Okay.

21 A. --- organization.

22 Q. Okay. On page two of this attachment one, this
23 would actually be the third page, I assume, of this
24 exhibit. The paragraph after --- the paragraph that
25 begins with resolved, it states that Mr. Crespo,

1 Secretary to the Operating Committee and legal counsel
2 for AEP reviewed the terms of the agreement and the
3 changes that you made to address the matters raised in
4 the Orders issued by the Public Service Commissions of
5 West Virginia and Kentucky. And I apologize if it's
6 referenced somewhere before that, but what agreement was
7 it that Mr. Crespo was reviewing the terms of there?

8 A. That would be the existing Mitchell operation
9 agreement, as it related to the two Commissions' Orders
10 around the ELG.

11 Q. And then in the last result paragraph, it
12 indicates that the Operating Committee direct agent was
13 intended to --- prepare for this review, propose
14 modifications to the agreement and/or new agreement
15 related to --- and I'm not going to read it all, but
16 related to Mitchell Plant. And that goes on to list
17 specific. Who is the agent there being directed to do
18 this?

19 A. The agent is American Electric Power Service
20 Corporation.

21 Q. Okay. Turning, if you could, Mr. Kerns, to the
22 minutes for the October 25th, 2021 meeting. At the top
23 it will be attachment 2, page 1 of 83 will be indicated
24 on the front.

25 A. I have it.

1 Q. All right. The Operating Committee
2 representatives who were present at this meeting were
3 Chris Beam and Brett Mattison. You were not present for
4 those meetings?

5 A. I was not.

6 Q. Okay. And Mr. West does not appear to be
7 present either, as your alternate; is that correct?

8 A. Well, Mr. West would be Kentucky Power President
9 Mattison's alternate. Mr. Crespo was acting on behalf of
10 me or took my role as the Chair at the meeting.

11 Q. Okay. And is it standard that if you're not
12 available, Mr. Crespo takes your place?

13 A. It may not always be Mr. Crespo, but in these
14 meetings, it was.

15 Q. Okay. And during this meeting, Mr. Crespo
16 presented a draft, Mitchell Operations and Maintenance
17 Agreement, and the draft Mitchell Ownership Agreement.
18 And he apparently went through the terms and conditions
19 of that. So you were not there for that presentation of
20 the Draft Agreement. Had you seen them prior to this
21 meeting, if you know?

22 A. Yes, I have.

23 Q. And were you provided the opportunity to offer
24 input into those agreements, despite not being at the
25 meeting?

1 A. I offered input from an operations maintenance
2 perspective on how workable the agreements may be and
3 things like the budget limits and things like that. So I
4 have reviewed the agreements ahead of the meeting. But
5 when it comes to the Operating Committee, I wouldn't be a
6 voting member anyway. It was, you know, what the witness
7 000 the witness being the witness Mattison, saw as a
8 result of all the ---.

9 Q. Okay. And also regarding the folks who were
10 present at this meeting other than the committee members,
11 Matt Satterwhite, who is he?

12 A. He's also a representative of American Electric
13 Power Service Corporation, Regulatory Services.

14 Q. So the agreements that were presented by Mr.
15 Crespo, based on the fact that he presented them, and in
16 the prior minutes, the agent was prepared --- was
17 instructed to prepare them, I guess it's correct to say
18 that the Draft Agreements were prepared by AEP; correct?

19 A. I will ask you to --- I'm going to refer that
20 question to Company Witness Beam. I mean, yes, the
21 draft's do not have a lot of input on the service
22 corporation, but also from Mr. Beam and Mattison. And so
23 what they were seeing here is the draft --- the draft of
24 the agreements at that time.

25 Q. Turn to page two of attachment two. It'll be an

1 email from John Crespo to Randy Ryan, Steven Haynes, and
2 CC'd on that are Mr. Beam, Mr. Mattison, you, and Mr.
3 Zwick; correct?

4 A. Yes, that's correct.

5 Q. And this is an email dated the same day as the
6 meeting, November 25th. First of all, who is Randy Ryan?

7 A. Also legal counsel for American Electric Power
8 internal.

9 Q. Okay. And Steven Haynes?

10 A. He's Senior Vice-President for Strategic
11 Planning for American Electric Power.

12 Q. And Mr. Haynes testified along with you in the
13 companion Kentucky PSC case; correct?

14 A. That's correct.

15 Q. Okay. Explain to us what this email is. And
16 then I think I have a question for you about it. If you
17 could just generally explain for the record what's being
18 discussed here.

19 A. This email's summarizing the Operating Committee
20 meeting, and really just enumerates the questions and
21 comments that the Operating Committee members had
22 regarding the proposed agreements. And Mr. Crespo has
23 just laid it out on this here.

24 Q. Okay. So if you're looking under the bottom
25 where there's --- where questions or concerns about

1 section 9.6 are laid out. It states the buy-out
2 standards were discussed and are being reviewed.
3 Discussed whether the Operating Committee needs to
4 address their use of good faith in considering future
5 capacity commitments and PJM related to Mitchell after
6 2028. Do you know what that means, what that's referring
7 to?

8 A. I don't know. I would defer this to Witness
9 Beam.

10 Q. Okay. So you were copied on this email. Did
11 you read it when you received it, if you know?

12 A. I did.

13 Q. Okay. And did you note that with regard to
14 Section 9.6?

15 A. No, I didn't, simply because, again, my function
16 is primarily operation and maintenance of the plant, and
17 Section 9.6 is dealing with buyout or what happens, you
18 know ---. So it really didn't grab my attention to dig
19 in further on that.

20 Q. Okay. Okay. Turning, then, to the Mitchell
21 Operating Committee minutes from November 2nd of 2021.

22 A. Okay.

23 Q. I think we've gone and identified everyone who
24 is present. They were present at one of the other
25 meetings. We don't need to do that. So the second to

1 last paragraph states that Mr. Crespo presented a revised
2 draft, revised draft of the proposed Mitchell operation
3 Maintenance Agreement and the proposed Mitchell Ownership
4 Agreement. Then it states that AEP legal counsel also
5 described the current status of this Draft Agreement as
6 born --- included in the transaction for the sale of
7 Kentucky Power to Liberty, which will include the sale of
8 Kentucky Power's undivided interest in the Mitchell
9 Plant. Explain to us what that's referring to. Or
10 actually, back up. You were present for this meeting;
11 correct?

12 A. Yes, I was.

13 Q. Okay.

14 A. I was present at the meeting. So I would go
15 from --- my interest would be around my recollection of
16 that. It was really just an update from counsel on where
17 things stood or what with --- in Kentucky with proposed
18 sale to Liberty and what would happen as a result of the
19 two Commissions' different workers around ELG, what would
20 happen --- Kentucky Power's undivided interest in
21 Mitchell. It was based on the agreement at that time,
22 the draft version of the agreement at that time.

23 Q. Was there also a discussion at this committee
24 meeting about the fact that the proposed Mitchell
25 agreements are a condition precedent to the sale of

1 Kentucky Power to Liberty?

2 A. Not as I recall.

3 Q. Do you know, if at the time of this meeting,
4 November 2nd of 2021, you were aware that Liberty was
5 requiring new Mitchell agreements as a condition to it
6 going forward with the purchase of Kentucky Power?

7 A. No, I was not.

8 Q. Are you aware of that, as you sit here today?

9 A. As I sit here today, I am.

10 Q. In what context did you become aware of that, if
11 you recall?

12 A. Through the transaction here in Kentucky for the
13 sale of Kentucky Power to Liberty.

14 Q. You're involved in that, these two?

15 A. At the end from an operation and maintenance
16 perspective for the Mitchell Plant and --- you know,
17 Kentucky Power generating asset is involved in that. So
18 yes, in that regard, sure.

19 Q. And just for the record, if memory serves, I
20 believe that's Kentucky PSC Case Number 21-00004. I
21 think that's right.

22 A. I ---.

23 Q. For the record, if I'm wrong, someone figure it
24 out, but I believe that's what it is. Turning --- and I
25 promise I'm almost finished with the minutes. I just

1 have a few more questions. The November 9th Operating
2 Committee minutes, which would be attachment four.

3 A. Okay.

4 Q. In fact, I want to look at page three of five of
5 attachment four, as opposed to the minutes themselves.

6 A. Would that be an email?

7 Q. Yes.

8 A. Okay. I have it.

9 Q. This is an email from Brian Sherrick sent to
10 John Crespo on Tuesday, November 9th, 2021 and you were
11 copied on this email, along with others; correct?

12 A. Yes, that's correct.

13 Q. Okay.

14 And the subject indicates that West Virginia
15 units BPR, ELG engineering study update. So we're
16 referring both of the units to the Mitchell Plant;
17 correct?

18 A. That's correct.

19 Q. Okay. And it indicates that this is a status
20 update for finding an independent engineering consultant
21 to evaluate West Virginia units CCR, ELG cost allocations
22 in preparation for the Mitchell Operating Agreement
23 meeting this afternoon. And it goes on to discuss that
24 several A & E firms that have been engaged. What does
25 A & E stand for?

1 A. Architects and engineers.

2 Q. Okay. And the chart at the bottom, and while it
3 indicates it's confidential, obviously I obtained this
4 from the Kentucky case from its docket. So I don't think
5 we have to worry about that. Several consultants are
6 identified going across the chart, you know, various
7 things that they could provide, just technology,
8 experience; CCR, ELG rule familiarity, et cetera are
9 indicated. And then there's an evaluation column;
10 correct?

11 A. Yes, that's correct.

12 Q. Okay. Turning to page four of five of
13 attachment four, the next page of the email, at the
14 bottom of the chart, there's a statement that says our
15 evaluation and final recommendation will be made by
16 November 12th. We wanted to update you on our progress
17 and see if there is any concern with using a firm very
18 experienced with AEP and not completely independent,
19 given the sparsity of firms capable of completing the
20 task. Do you know what that --- are you able to shed
21 some light on that statement?

22 A. Sure. We use several A & E firms for what we
23 do. As you know, we were looking for certain qualities
24 and abilities in a firm we were getting ready to engage.
25 Black & Veatch, for example, we have experience with. So

1 we just wanted to make sure that the operating didn't
2 have any issues or feel that there would be any conflicts
3 if the firm or the technical expert that we chose or that
4 was chosen wasn't a newbie to AEP, if you will.

5 Q. And that's what the phrase not completely
6 independent means to you?

7 A. Yes. So Burns & McDonnell, for example, is
8 doing work at our other facilities not related to the ELG
9 or CCR, but they are doing work for AEP.

10 Q. Okay. Who is Bill Mast? It says Bill Mast.

11 A. Bill Mast is a representative from our projects
12 group, AEP Service Corporation projects.

13 Q. Okay. All right. Then I want to turn to
14 attachment five, page one of five, which is identified as
15 a written consent action on the mutual Operating
16 Committee, dated November 16th of 2021; correct?

17 A. Yes, that's correct.

18 Q. This here is to set forth the Operating
19 Committee's approval of the new Mitchell agreement;
20 correct?

21 A. Yes, that's correct.

22 Q. And when this written consent action refers to
23 the new Mitchell agreement, are those the same revised
24 Draft Agreements that were presented at the November 2nd,
25 2021 meeting of the Operating Committee?

1 A. Yes, with any changes incorporated that were
2 noted, you know, to voting members of the committee that
3 they wanted revised ---.

4 Q. Between November 2nd, 2021 and November 16th of
5 2021, when this written consent action was made, were
6 there any written --- any more written revised drafts
7 actually provided to the committee members, that you're
8 aware of?

9 A. Not that I'm aware of.

10 Q. Okay. And the new Mitchell agreements that are
11 being approved by this written consent action, are those
12 the Mitchell --- is that the Mitchell Operating Agreement
13 and the Mitchell Ownership Agreement that were initially
14 filed in both the Kentucky PSC Case 21-421 and in this
15 case?

16 A. Yes. They're the ones with the buyout
17 provision, the fair market buyout provision.

18 Q. Yes, the buyout provision filed with the
19 petition in this case and the initial application.

20 A. Yes, that's correct.

21 Q. Okay. And just for the record, the written
22 consent action, it contains the signature of Brett
23 Mattison and Christian Beam as having approved those
24 agreements; correct?

25 A. Yes, that's correct.

1 Q. Okay. So now I just want you to flip back to
2 the very first page of CAD Cross 1. And the question
3 that was asked or the data request from Kentucky
4 Commission Staff was for Kentucky Power to provide copies
5 of the Mitchell Operating Committee minutes between
6 January of '21 and March 1st of 2022. But of course the
7 only thing that was provided in response were four dates,
8 October 20th, the 25th, November 2nd and the 9th
9 committee meeting minutes, and then the consent action
10 from November 16th. So I'm just wondering, were there no
11 --- were there no Operating Committee meetings from
12 January of '21 until October 20th of 2021?

13 A. There was one meeting earlier in the year. It
14 was just a review of the operating plan and no minutes
15 were collected.

16 Q. Okay. No minutes were collected. And then from
17 the meeting on November 9th of the committee of 2021, up
18 until March 1st of 2022, were there no Operating
19 Committee meeting?

20 A. Can you give me the date, please? I'm sorry.

21 Q. Yes. So attachment four to this document are
22 the minutes for the November 9th meeting. And then we
23 don't have any minutes for any other meeting through
24 March 1st of 2022 provided in this document. So were
25 there any meetings between those dates, March or November

1 9th and March 1 of this year?

2 A. No, there haven't been any Operating Committee
3 meetings. You know, really the next reason to have a
4 meeting will be when we get the recommendation or the
5 report from the tech advisor on the split of the cost
6 that is required for CCR compliance and those required
7 for ELG. So once we make the file and once we have the
8 agreements, the approval from voting members. We haven't
9 had a reason to have a meeting since.

10 Q. Okay. Well, the reason I ask that is because I
11 mean obviously on November 16th, we have the consent
12 action of the Operating Committee approving the original
13 proposed agreement that was filed in Kentucky in this
14 case. But we don't have any minutes of Operating
15 Committee meetings because they apparently didn't occur.
16 We don't have any other consent action, that I'm aware
17 of, that provides discussion of and approval of the
18 Revised Ownership Agreement that we're --- that is on the
19 table, that superseded the initially proposed Ownership
20 Agreement. So can you tell me how that ---- the Revised
21 Ownership Agreement that superseded the initially
22 proposed one that we're here talking about today, how
23 that came to be?

24 A. Again, I would refer to Witness Beam, since he
25 is, you know, the voting member for Wheeling Power and

1 the Operating Committee. Simply because we didn't have
2 an Operating Committee meeting, I would offer doesn't
3 mean that the two operating company presidents didn't
4 talk and come to agreement. But I don't want to speak
5 for Mr. Beam to tell you how that happened.

6 Q. If that happened --- would you not have expected
7 to be a participant in such a meeting as a member of the
8 Operating Committee?

9 A. Not necessarily, because I'm not a voting
10 member.

11 Q. So what is your role then? What is your purpose
12 in the Operating Committee?

13 A. It's representing the agent, American Electric
14 Power Service Corporation, securing, you know, resources
15 required to assist with the operating and maintenance of
16 the Mitchell Plant. It could be accounting services. It
17 could be environmental services, engineering services,
18 construction services. So it's really just making sure
19 we fulfill the obligations of the requirements of the
20 existing Operating Agreement.

21 Q. Mr. Kerns, were you present at any other meeting
22 or discussion, you know, setting aside initial Operating
23 Committee meetings, but just any meetings having to do
24 with the revision to the Ownership Agreement that gives
25 us the agreement we're talking about today? In other

1 words, the removal of --- the addition of the unit swap
2 language?

3 A. Only discussions regarding is this possible
4 meaning can we --- you know, or here's something that
5 we're talking about. Can we --- instead of having a 50
6 percent undivided ownership between two operating
7 companies, is it feasible to have one operating company
8 with one of the units and another operating company end
9 up with the other, to which I said yes.

10 Q. Okay. And when that discussion regarding
11 feasibility occurs, were you privy to any discussion
12 regarding why this revision was being raised?

13 A. No.

14 Q. Were you --- well, let me ask you this. Was
15 anyone from Liberty Utilities or Algonquin present during
16 that meeting or this discussion?

17 A. No.

18 Q. Who from Wheeling Power was present or involved
19 in those discussions?

20 A. I don't have my notes with me to help remember
21 who was, you know, conference call saying, hey,
22 operationally is this --- is this possible? And so I
23 don't recall if Mr. Beam was on the call or not.

24 ATTORNEY OSBORN:

25 I've got one more incident for you.

1 And I'll ask that this document be marked CAD Cross 2.

2 (CAD's Exhibit Cross 2 was marked for
3 identification.)

4 BY ATTORNEY OSBORN:

5 Q. This is another Commission Staff --- Kentucky
6 PSC Commission Staff post-hearing data request, also
7 dated March 3rd of 2022. And it is post-hearing data
8 request three, whereas the one we just spoke about was, I
9 believe, two. And again, Mr. Kerns, you are one of the
10 witnesses to respond to this document; correct?

11 A. Yes, that's correct.

12 Q. Okay. In here, Kentucky Power has asked you,
13 provide the senior executive who will resolve dispute for
14 the Mitchell Operating Committee. The response refers
15 Staff to Section 12.2. And is that of the Operating
16 Agreement?

17 A. Yes, that's of that existing Operating
18 Agreement.

19 Q. Okay. And then beneath that recitation of
20 section 12.2, there is an explanation or a further
21 discussion of that. I'm not going to read the entire
22 thing, but --- are the currently the representative of
23 each owner on the Operating Committee --- of committee.
24 And if the president of the owners are unable to resolve
25 the dispute, it would be expected for the disputed matter

1 to be escalated to one more senior technical or executive
2 personnel outside of the owner's organization. That
3 would be someone at AEP; is that correct?

4 A. Yes.

5 Q. Okay. But then you go on to say that in the
6 future, if one of the owners is going to a third party,
7 this would include senior technical and executive
8 personnel who are in different companies. And based on
9 what we know of right now, that could or would have been
10 able to be Liberty and AEP; correct?

11 A. Yes, potentially.

12 Q. Okay. So I want to follow up on that, because
13 during the hearing on March 30th of 2021 in Kentucky PSC
14 Case Number 21-00421, you testified; correct?

15 A. I did.

16 Q. Okay. And do you recall testifying in that
17 hearing that, to your knowledge, there have been no
18 disputes between Wheeling Power and Kentucky Power
19 pertaining to the Operating Agreement that is currently
20 in effect?

21 A. Yes, I do.

22 Q. Okay. And does that remain your testimony?
23 You're still unaware of any dispute that have arisen?

24 A. Yes.

25 Q. Okay. Do you recall following up with that

1 statement by saying maybe because the two companies are
2 affiliated?

3 A. I would want to see the transcript, but could be
4 something like that.

5 Q. Okay. And that's because a dispute --- you
6 would receive a dispute over the Operating Agreement as
7 less likely when the two companies are affiliates?

8 A. Yeah. I think all of our affiliates --- our
9 operating companies have the same corporate values, and,
10 you know, we struggle with the same culture regardless of
11 which operating company. So I wouldn't expect there to
12 be big disputes between two of those, especially two
13 opposed as Appalachian, Wheeling Power and Kentucky
14 Power.

15 Q. Okay. And so if Kentucky Power is deferred to
16 Liberty and affiliates are no longer operating or
17 affiliates are no longer the owners of Mitchell, then the
18 fact that there have been disputes in the past regarding
19 the Operating Agreement really doesn't mean anything;
20 correct, because now we're dealing with completely
21 different parties who are no longer affiliates?

22 A. Yeah. So you're really asking me to speculate
23 on what could be. And so it's a little bit outside of
24 the scope of, you know, from an operation maintenance
25 standpoint, I don't expect --- I wouldn't be comfortable

1 speculating on what could or couldn't be. I mean ---.

2 Q. That's fair enough. Also during your testimony
3 at the March 30th, 2021 hearing in the companion Kentucky
4 case, you testified Mitchell is not currently running;
5 correct? That it had not been dispatched by PJM, that
6 they had notification?

7 A. That's correct.

8 Q. Okay.

9 Is that still true? Is Mitchell still not
10 running?

11 A. One of the units at Mitchell is operating today.

12 Q. Which unit is that?

13 A. Unit 1. And the other unit continues to be in
14 service shutdown not required, meaning that it wasn't
15 selected by the PJM market.

16 Q. The fact that the other unit, excuse me, is not
17 running, does that have anything to do with the lack of
18 availability of coal?

19 A. It has to do with the offer; didn't put it in a
20 spot to be selected. And certainly coal availability or
21 inventory and what we have procured for this year
22 compared to what our projected burn is has been the
23 driving intel for our inventory-management strategies ---
24 yes.

25 Q. Since the March 30th hearing in Kentucky, has

1 Unit 2 run at all?

2 A. No.

3 Q. Okay. And I don't believe you were asked during
4 that hearing how long the units had not been running
5 prior to that day, but I wonder if you can fill us in on
6 that. Give us sort of a timeline.

7 A. I don't have that timeline, as far as the last
8 time that they operated, you know, prior to that.

9 Q. Okay. Is that something, that information that
10 you could get for us, I presume?

11 A. Yes, if requested.

12 ATTORNEY OSBORN:

13 Okay. Yeah. I would like to request
14 that as a post-hearing exhibit. That could be CAD's
15 Post-Hearing Exhibit 1 and it would be prior to the March
16 30th of 2021 hearing in Kentucky case --- Kentucky PSC
17 Case Number 21-421, when was the last time, how long had
18 the units not been running? Essentially just a timeline.

19 (CAD's Post-Hearing Exhibit 1 was
20 requested.)

21 A. Okay.

22 BY ATTORNEY OSBORN:

23 Q. Let's say going back to the beginning of the
24 year, to the beginning of 2022. That might make it
25 better than the language I used.

1 A. So timeline of operation from 1/1/22 to March
2 30th?

3 Q. No.

4 A. I'm sorry.

5 Q. Actually until today. Let's go through today.

6 A. Through April 7th?

7 Q. Yes, please. And then you also testified during
8 that hearing that you expected Mitchell to run this
9 summer because that would be the peak season for AEP.
10 Would that be both units or just one unit? What's your
11 recommendation?

12 A. Expect it to be both units.

13 Q. Okay. During that hearing ---?

14 A. And I'm sorry.

15 Q. I'm sorry. Go ahead.

16 A. I expect that --- I don't expect any operational
17 needs that would prevent the units from running this
18 summer. I mean, summer and winter are traditionally
19 high-energy markets, most volatile and when the customers
20 are most exposed, obviously, to the high energy prices.
21 So that's, again, in that stretch of managing inventory
22 so that we are available during those traditional
23 volatile times.

24 Q. And what about the availability of coal? Does
25 that give you any cause to think that both units may not

1 operate this summer?

2 A. No, because that's what we're managing for.
3 That's the reason the offer strategy's in place, to
4 ensure that we do have fuel for those what are typically
5 the most volatile times in the energy market.

6 Q. During that hearing, you also said that --- or
7 testified that Unit 2 of Mitchell had a forced outage
8 rate over the past five years that has never been above
9 ten percent. Do you recall that?

10 A. No, I don't recall that it was forced. I do
11 recall talking about forced outage rates.

12 Q. Well, do you know whether over the past five
13 years Unit 2 has ever had a forced outage rate above ten
14 percent?

15 A. Again, I don't --- I'm sorry. I don't know have
16 that information with me, but it has been traditionally
17 over the past five years better than uniform.

18 Q. Okay. And we can always refer back to the
19 transcript of the Kentucky proceeding. What about Unit 2
20 over the past five years, its forced outage rates? I
21 believe you testified in the Kentucky proceeding that it
22 has ranged from a low of 12.14 percent and a high of 43.9
23 percent in 2021. Does that sound right to you?

24 A. I don't believe so. Did you say Unit 2 or Unit
25 1?

1 Q. Unit 1.

2 A. Okay. Then yes, that sounds reasonable.

3 ATTORNEY BLANKENSHIP:

4 Your Honor, I'm going to interject
5 here. She's been going down the path. I'm not quite
6 sure what the relevancy is to this hearing.

7 ATTORNEY OSBORN:

8 Well, I think the relevancy, which
9 we'll get to, but I think it should be obvious. We're
10 talking about asking the Commission to approve an
11 agreement, an Ownership Agreement, that contains a unit
12 swap provision. And there are obvious differences
13 between the two units at Mitchell. And I suspect, based
14 on the testimony in the Kentucky proceeding, that Mr.
15 Kerns is going to tell us right now that he doesn't know
16 which unit will be more desirable come 2028. And so I
17 think that leaves us, as West Virginia ratepayers and
18 West Virginia Commission, wondering if we're going to get
19 the bad end of a deal potentially. I think that's the
20 relevance.

21 CHAIR:

22 Go ahead and ask your questions.

23 ATTORNEY OSBORN:

24 Okay.

25 BY ATTORNEY OSBORN:

1 Q. I believe you also testified in Kentucky that
2 Unit 1 in Mitchell has, quote, 50 years' worth of
3 corrosion; is that correct?

4 A. Both units do.

5 ATTORNEY OSBORN:

6 The Company was asked to provide
7 post-hearing exhibits in Kentucky providing the cost of
8 forced outages over and above the anticipated cost
9 thereof. In other words, the cost of replacing the
10 generation and the repairs required. I don't think
11 that's been provided yet or we haven't seen it in the
12 Kentucky docket. But I would ask that a post-hearing
13 exhibit be provided in this case as well.

14 (Post-Hearing Exhibit 2 was marked for
15 identification.)

16 CHAIR:

17 Ms. Osborn.

18 ATTORNEY OSBORN:

19 Yes.

20 CHAIR:

21 Would you identify that post-hearing
22 exhibit again?

23 ATTORNEY OSBORN:

24 Yes. Post-Hearing Exhibit 2, the cost
25 of forced outages over and above the anticipated cost

1 that the Companies had made. In other words, the cost of
2 replacement generation and repairs required on the units.

3 CHAIR:

4 Okay. Thank you.

5 BY ATTORNEY OSBORN:

6 Q. So Mr. Kerns, can you predict now which unit,
7 one or two, would be the more desirable unit to own come
8 2028?

9 A. I --- I can't because there are so many factors
10 that would go into that, and it would be based on what
11 each individual's company's needs are and which of those
12 units would best meet those needs. It would have to do
13 with the market at the time. So there's just so many
14 factors that you'd be speculating on. My testimony in
15 Kentucky was intended to say that --- that both units
16 came in service at the same time. They've both
17 experienced the same life cycles over their 50-year
18 lives.

19 And --- and there's no difference, we don't
20 discriminate one unit versus the other on how we maintain
21 or the maintenance cycles or the investment strategy on
22 those units. So to look back five years or ten years and
23 pick out just forced outage rate or just capacity factor,
24 I think it's pretty shortsighted if I'm trying to make a
25 decision of that --- of that magnitude.

1 Q. Do you recall testifying in the Kentucky case
2 that come 2028, Unit 1 which would either have to be
3 upgraded or sold, based on its condition?

4 A. Again, I don't --- I don't recall using those
5 words. Come 2028, December 31st of 2028, if the units
6 haven't been upgraded to be ELG-compliant, then they have
7 to cease operation.

8 Q. Besides for the ELG compliance, however, with
9 respect to Unit 1, as you sit here today, do you believe
10 that by 2028 in order for that unit to function properly,
11 it will need certain upgrades of the meters, setting
12 aside ELG? Just with respect to its current condition.

13 A. Well, yes that unit and Unit 2 and between now
14 and 2028, all of the units that I'm responsible for to
15 run past 2028 will need some sort of maintenance program
16 or some capital improvements.

17 Q. Mr. Kerns, did --- were you involved --- well, I
18 believe you told us earlier that you testified in
19 Kentucky PSC Case Number 21-00004, the case involving
20 Kentucky Power's application for approval of ELG and CCR
21 projects at --- I may have that confused, because I
22 thought I looked at the case number.

23 So were you not involved in that case, the ELG
24 case in Kentucky?

25 A. I was not.

1 Q. Okay.

2 Does --- does AEP Corporate play a role in
3 making capital investment decisions at Richwood?

4 A. Those decisions, to my knowledge, are made by
5 the company --- the individual operating companies. So
6 Mr. Beam would be able to tell you what that process is
7 in more detail, but we present ---. You know, I present
8 to Mr. Beam and Mr. Mattison's teams, but we fell the
9 investment strategy should be or what investments needs
10 to be made in order to --- to maintain the reliability of
11 the units and then they work all of that within their
12 individual operating company requirements and the
13 business --- their financial metrics.

14 Q. And then do you expect that procedure to be the
15 same or different if Kentucky Power is --- they are
16 affiliates?

17 A. Yeah, I don't have an answer on that. I don't
18 know. I mean, we would operate in accordance with
19 whatever approved ownership and all of them agreements
20 are there at the time. But I don't --- I can't speculate
21 on what that'll look like.

22 Q. Well, under the terms of the earlier agreement
23 that's been proposed to this Commission, what happens, if
24 Kentucky Power and Wheeling Power disagree about a
25 capital investment decision, as they --- as they're

1 situated now being affiliates?

2 A. I --- we haven't had that come up. So
3 again ---.

4 Q. Should the terms of the agreement ---?

5 A. To the --- I'm sorry, let me back up. Are you
6 talking about the existing agreement?

7 Q. No, I'm talking about the proposed agreement.

8 A. Can you point me to a specific section? I'm
9 sorry.

10 Q. No, I was hoping you could point me to one. I'm
11 just wondering what are the terms of the proposed
12 agreement discussed what happens if Kentucky Power and
13 Wheeling Power disagree about a capital investment
14 decision?

15 A. Well if there's a disagreement about an
16 investment decision, it would go to Section 12, I
17 believe, which is the dispute resolution section. And
18 they --- and they would, and it lays out the path for
19 coming to resolution.

20 Q. And your expectation is that the path would be
21 the same even if Kentucky Power is purchased by Liberty
22 and the two are no longer affiliates?

23 A. Yes.

24 Q. Do you think it's fair saying that if Liberty
25 purchase Kentucky Power, Liberty will want to participate

1 in any capital decisions that are related to Mitchell?

2 A. As a 50 percent undivided ownership, I believe
3 it's fair. And --- and again, as the proposed O & M and
4 Ownership Agreement lays out, they would have an interest
5 and they would direct some of that.

6 Q. Okay.

7 And do you think that there could be differences
8 in opinions with respect to capital investment decisions
9 if one party plans to operate Mitchell only until 2028
10 and the other party plans to continue to operate Mitchell
11 after 2028?

12 A. Yeah, I --- I don't have an answer for that.

13 Q. Can you envision a scenario in which Wheeling
14 Power believes an investment is necessary in Mitchell,
15 but Liberty, presuming it has purchased Kentucky Power,
16 rejects that or disagrees with that?

17 A. You're asking me to --- to speculate. And you
18 know, I really, the scope of my testimony is around the
19 operation and maintenance of the plant and not what may
20 or may not happen if the Liberty transaction closes. I
21 haven't been in conversations with Liberty about the
22 Mitchell Plant or --- or anything like that to even to
23 try to guess.

24 Q. Were Kentucky Power and Wheeling Power in
25 agreement about moving forward, subject to regulatory

1 approval, with ELG and CCR compliance? In other words,
2 should they both believe that to be the best course of
3 action to move forward? Did one believe the best course
4 of action would be to not move forward ---?

5 A. The operating companies Wheeling Power and
6 Kentucky Power or the Commissions?

7 Q. The operating companies.

8 A. Yes, we put forth --- we put forth the
9 proposals. And you know, weren't involved in either of
10 those --- those hearings, but my understanding is that we
11 put forth the proposals that, in order to have the
12 opportunity to run Mitchell past 2028. We need to invest
13 in ELG-compliance-related equipment, and --- and we got
14 the different orders from the Commissions.

15 Q. And Mr. Beam is involved in that, correct, on
16 behalf of Wheeling Power?

17 A. I'm not sure.

18 Q. Okay. Does the proposed Operating Agreement
19 contain terms with respect to how dispatch will be
20 enabled?

21 A. Yes.

22 Q. And is it possible, under the proposed Operating
23 Agreement, that one owner will want to discuss the plants
24 and the other owner will not?

25 A. The agreement addresses that if it would arise.

1 But to say that it's, you know, possible that one would
2 or one wouldn't, I don't know. But it says that if one
3 of the owners decides to, then it would be the
4 responsibility of the Operating Committee to determine or
5 to come up with the procedures and execute those in a way
6 that will allow the owner to dispatch on their own.

7 Q. Mr. Kerns, as a representative of Kentucky
8 Power, do you know why if Kentucky Power believed it was
9 the best course of action to move forward --- forward
10 with ELG compliance work, it didn't appeal the Kentucky
11 Commission's decision during that request?

12 A. I do not know.

13 Q. Who --- who would make that decision on behalf
14 of Kentucky Power, if you know?

15 A. I assume it would be the Kentucky Power
16 leadership, being Mr. Mattison and his leadership team.

17 Q. Are you familiar at all with the rationale that
18 the Kentucky Commission gave for denying the requested
19 certificate for ELG compliance?

20 A. I'm not.

21 Q. Okay. Have you read the Order?

22 A. No.

23 Q. I believe during the March 30th hearing in
24 Kentucky, the Chairman of the Commission there made a
25 point of noting that the Kentucky Commission found that

1 Kentucky Power did not meet its burden of proof in that
2 case. Do you recall the Chairman saying that?

3 A. Yes.

4 Q. Okay. And you have no knowledge of --- of that
5 beyond hearing the Chairman's statement?

6 A. I mean, I know through conversations that that
7 was what was referenced. I'm an engineer, not an
8 attorney, so failure to meet burden of proof, I don't
9 know legally what all that means and you know, operate
10 the plant.

11 Q. Okay. All right. That's all I have for you,
12 thank you.

13 A. Thank you.

14 CHAIR:

15 Mr. Murthy.

16 ATTORNEY MURTHY:

17 Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY ATTORNEY MURTHY:

20 Q. Good afternoon, Mr. Kerns.

21 A. Good afternoon. It's afternoon? Morning.

22 Q. Sorry, good morning.

23 A. Man, time's flying.

24 Q. Earlier you testified that you were asked about
25 the technical feasibility of the unit inter swap and you

1 --- and you determined that that was technically
2 feasible. Is that correct?

3 A. Yes, that's correct.

4 Q. If the unit inter swap occurred, Wheeling would
5 own one unit of Mitchell and either Kentucky Power or
6 Liberty would own the other unit. Is that right?

7 A. That's my understanding.

8 Q. And in that scenario it's possible that Kentucky
9 Power or Liberty could choose to retire their unit of
10 Mitchell in 2028. Is that right?

11 A. Again, you're going --- you're going to ask me
12 to either get into the legal interpretation or, you know,
13 it's physically able to set, identify and separate, I'm
14 sorry, and allocate the costs associated with the two
15 units to the two owners without physically cutting
16 something in half or building more or what have you. So
17 what would happen, you know, Mr. Beam would be able to
18 answer questions around 9.6 and what happens as we
19 approach 2028.

20 Q. I had a few questions about the ELG retrofits.
21 The ELG retrofits, as they're currently designed, are
22 designed to keep both units operating past 2028. Is that
23 right?

24 A. Yes, that's correct.

25 Q. Are there any steps in the ELG process that

1 might be different if the plan was to just keep one of
2 the units operating past 2028?

3 A. Yes. Based on what I understand about the
4 compliance scope, if you were willing to keep going and
5 going past 2028, you wouldn't --- you probably wouldn't
6 install the dry bottom ash conveying system. You would
7 still, however, need the wastewater treatment system from
8 the FGD. So a portion of that wouldn't be needed.

9 Q. Is it fair to say that an ELG process intended
10 to only keep one unit operating past 2028 would be less
11 costly and less complex than --- than what we currently
12 have planned?

13 A. If you didn't install the dry bottom ash
14 conveyor system on one of the units and the cost for that
15 unit, yes, it would --- it would be cheaper. However,
16 the wastewater treatment facility has to be designed to
17 handle all the wastewater treatment right now. So that
18 has to be what it has to be.

19 Q. Okay. In the --- in one of the cross exhibits
20 you were handed, this describes the search for an
21 independent engineering consultant to evaluate the West
22 Virginia units, CCR/ELG cost allocations. The engineer
23 that was selected was Burns and McDonnell. Is that
24 right?

25 A. Yes, that's correct.

1 Q. If we were to --- if anyone was to inquire about
2 the cost difference between the two ELG plans that I've
3 laid out, one to keep one unit operating, one to keep
4 both units operating, would an independent engineer like
5 Burns and McDonnell be able to conduct that analysis?

6 A. I would have to pose that question to --- to the
7 firm.

8 Q. Last question. You were asked some questions
9 about picking one unit over the other. Which unit will
10 be better in 2028? And you responded that roughly that,
11 you know, looking at five or ten years of data might not
12 be enough for that. Would an independent engineer like
13 Burns & McDonnell be able to do that analysis and, you
14 know, determine now which unit might be better in 2028?

15 A. Again, I don't want to speak for them. Their
16 --- their analysis, if somebody could do it, I would
17 suspect their analysis would be more than looking at five
18 performance metrics in the --- in the past and are more
19 at what the conditions are, we would expect the
20 conditions to be going forward and put some sensitivities
21 around --- around that, rather than just saying, you
22 know, this is the best fit.

23 Q. Your Honor, could you just give me one second?
24 Nothing further. Thank you, Mr. Kerns.

25 A. Thank you.

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CHAIR:

Mr. Altmeyer.

ATTORNEY ALTMAYER:

Thank you, Chairman Lane. Just a few questions.

CROSS EXAMINATION

BY ATTORNEY ALTMAYER:

Q. Good morning, Mr. Kerns.

A. Good morning.

Q. First of all, it was not clear in your testimony here. Is the original proposed Ownership Agreement, the original version 9.6 with a buyout transaction backstop, still an available option to be approved and/or revised and approved in this matter or has it been completely supplanted by the Revised Agreement?

A. I would ask you to save that question for Witness Beam.

Q. So you don't know?

A. I --- I believe I know the answer, but again it's a little bit of outside of my scope. I'd rather Mr. Beam answer that question.

Q. At the Mitchell Plant, as we stand here today, or --- since their divergent decisions of the Kentucky PSC and the West Virginia PSC, have ELG projects been commenced already?

1 A. The detailed engineering and design has
2 commenced, but there hasn't been any dirt turned over or
3 any steel on the ground.

4 Q. Does it --- in the design process, are the ---
5 is Wheeling Power and/or AP incurring costs in --- in
6 doing design or is that internally done?

7 A. Yes, they're incurring costs.

8 Q. Okay. Are those costs already being allocated
9 to Wheeling Power exclusively in accordance with those
10 numbers?

11 A. No, they're being approved and we'll wait for
12 the out --- for the report from the technical expert that
13 identifies what they would recommend as the breakdown of
14 those which are exclusively for CCR compliance,
15 exclusively for ELG, and which are shared, if there are
16 any shared. And then that'll be put before the Operating
17 Committee, and then based on that, that's how they'll get
18 --- start being allocated.

19 Q. And that's addressed in the proposed agreements?

20 A. It is.

21 Q. You testified earlier that you were the one who
22 answered the question about the feasibility of the unit
23 swap option. Have you ever been involved in the
24 operation of a plant by any --- settlements or provision
25 or whatever of a point in that the two units are owned by

1 separate companies?

2 A. Yes.

3 Q. Which plants are those?

4 A. I started my career at the Phillips' plant,
5 which was, had five units, three of which were owned by
6 Ohio Power, two by Appalachian Power. The Cardinal plant
7 currently has, we're in a joint ownership position there.
8 We are not the operator at Cardinal. The Amos plant,
9 though, I haven't been directly involved with the Amos
10 plant, had some joint ownership, I believe, with Unit 3
11 between Ohio Power and Appalachian Power up until some
12 number of years ago, so yes.

13 Q. In those examples cited by you, are all the
14 companies involved owned by the same parent company? Are
15 they all affiliates in their ownership arrangements?

16 A. No. Cardinal --- the Cardinal plant is not.

17 Q. Okay. What --- if you were involved in the
18 Cardinal plant, how were disputes between the two
19 companies regarding the use dispatch, maintenance,
20 whatever of the units resolved?

21 A. I'm not familiar with the Cardinal Operating
22 Agreement. I haven't been involved from that standpoint.
23 My involvement at Cardinal has been in my past life as a
24 Regional Office Manager, a Regional Engineering Manager,
25 and providing services to that plant. So I know there's

1 a Cardinal Operating Agreement, but the dispute
2 resolution I'm not familiar with.

3 Q. Would you agree the difficulty in addressing
4 disputes when the parent companies --- the parent, the
5 owners of the two companies operating the two units at
6 the same facility are no longer the same parent company?

7 A. Again, I --- I really don't want to get into
8 speculating. Is it possible? Yes. I wouldn't want to
9 guess at how probable. And through those inner
10 situations that I --- that I described, whether the joint
11 ownership is with an affiliate or a nonaffiliate, I'm not
12 aware of any situation if there was a disagreement where
13 we couldn't work that out with a commercial solution.

14 Q. Would it, in your opinion, further complicate
15 that relationship if one of the owners of one of the
16 companies was entitled to the tie of that plant in six
17 years and the other one entitled to wait another year and
18 keep the plant open for an additional 12 at minimum?
19 That in your opinion, I understand you can't speculate,
20 but in your opinion, would that result in a more ---
21 higher likelihood of disputes?

22 A. I don't know that it would. I think that it
23 would lead you down a path of a different investment
24 strategy, which I think is again one of the reasons that
25 figuring this out in 2025 as to what it's going to look

1 like, you know, we have plenty of time to do that. But
2 there is a need to do that and to get that identified,
3 because if someone ends up with --- whoever ends up with
4 a unit that they may not want to operate past 2028,
5 they're going to have a different view on how --- what
6 kind of investment to make in that unit. They don't need
7 it to last to 2040. So --- but I don't know that that
8 increases the likelihood of disagreement or dispute or a
9 contentious relationship.

10 Q. Okay.

11 ATTORNEY ALTMAYER:

12 No more questions, Your Honor.

13 CHAIR:

14 Mr. Head, do you have a lot of
15 questions? If you do, we can take a break and come back.

16 ATTORNEY HEAD:

17 Actually Chairman, all my questions are
18 for the next witness. So I have no questions for this
19 witness.

20 CHAIR:

21 Okay. Commissioner Raney.

22 COMMISSIONER RANEY:

23 Yes, ma'am. Good morning, Mr. Kerns.

24 A. Good morning.

25 COMMISSIONER RANEY:

1 Do you --- not you, not Mr. Kerns I
2 don't mean, but Kentucky Power, do you --- do you all
3 have the responsibility for Conner Run?

4 A. Kentucky Power, it's --- it's part of Kentucky
5 Power, yes.

6 COMMISSIONER RANEY:

7 Okay, okay. Now you've mentioned to
8 Ms. Osborn, I think, that if Kentucky Power sold to
9 Liberty that you would have the same duties. Did I
10 understand that to be as elemental as I think it is?

11 A. Yes. Basically instead of being responsible as
12 a Kentucky Power employee or a representative of Kentucky
13 Power, I'd be --- have the same duties of oversight for
14 the plant manager and the plant and the operational at
15 Mitchell by representing Wheeling Power.

16 COMMISSIONER RANEY:

17 Okay. That --- is the Kentucky Power
18 part of Mitchell necessary today, and will it be in the
19 future necessary to meet the needs of West Virginia
20 customers?

21 A. Could you repeat that, please?

22 COMMISSIONER RANEY:

23 Yeah. Is the Kentucky Power part of
24 Mitchell necessary today to meet the needs of West
25 Virginia customers?

1 A. I --- I am not familiar with the need of what
2 either Kentucky or West Virginia. So I would ask that
3 you compose that to Mr. Beam about how much ---

4 COMMISSIONER RANEY:

5 Okay.

6 A. --- is needed to serve West Virginia customers
7 and how much is needed to serve the Kentucky capacity
8 requirements.

9 COMMISSIONER RANEY:

10 Okay. Well we --- we had an Order in
11 October I think it was that required the plant to operate
12 at 69 percent capacity. Has the Kentucky Power part of
13 --- can you separate it enough to say that the Kentucky
14 Power part of Mitchell has achieved that standard?

15 A. I cannot.

16 COMMISSIONER RANEY:

17 Okay. You said in 2028 you'd leave it
18 up to the future. Now if you had to pick today, would
19 you pick Unit 1 or Unit 2?

20 A. I don't have enough information to say that I
21 would take --- which one I would take.

22 COMMISSIONER RANEY:

23 Okay. All right. Thanks.

24 A. Yes, sir.

25 COMMISSIONER RANEY:

1 That's it, Madam Chair.

2 CHAIR:

3 Mr. Kerns, that reminds me. You said
4 that one of the units had corrosion issues?

5 A. Yes, that's correct. They actually --- they
6 both do and it comes from years of burning the
7 high-sulfur coal. And as you start up and shut down and
8 go through the --- I'll get geeky on you here --- the dew
9 point of the --- of the flue gas, you form sulfuric acid
10 inside the duct work. And --- and it just, it coats
11 everything and just starts down a long term corrosion
12 path. So both --- both units are experiencing that.

13 CHAIR:

14 Okay. So it's both units?

15 A. Yes, yes.

16 CHAIR:

17 Okay. I was concerned that only one
18 unit --- okay. You answered some questions regarding
19 your bidding strategy at Mitchell?

20 A. Yes, that's correct.

21 CHAIR:

22 I would like Wheeling to provide a
23 spreadsheet showing the day ahead cost-based bids, the
24 day ahead market-based bids, and the clearing price
25 related to each bid. If your bids cover different time

1 periods and different capacity amounts throughout a day,
2 provide the information by time period and capacity
3 offered. And that would be Commission Requested Exhibit
4 1.

5 (Whereupon, Commission Post Exhibit 1
6 was requested.)

7 A. Okay.

8 CHAIR:

9 And you testified that part of the ELG
10 investment would not be made if you were installing for
11 only one unit. Please provide an estimate of the cost
12 for two units and the cost for one unit. That will be
13 Commission Exhibit --- Post Exhibit Number 2.

14 (Whereupon, Commission Post Exhibit 2
15 was requested.)

16 CHAIR:

17 And you also testified that the
18 upgraded wastewater handling had to be designed to meet
19 the current wastewater amounts. Does that mean that
20 Kentucky will be using facilities paid for solely by
21 Wheeling until 2028?

22 A. That's where --- there'll be pay rates --- you
23 know, through that and that's what the technical expert
24 will help us determine as how much of that is exclusively
25 for ELG and how much of the costs are for CCR-only

1 compliance. The --- the wastewater treatment, it's for
2 ELG compliance. So yes, in 2028, any of the wastewater
3 that goes through that treatment facility by virtue of
4 Kentucky Power's 50 percent ownership, they would be
5 using that.

6 CHAIR:

7 Okay. The bids that I asked for, I'd
8 like for them to be July 1 of last year to today.

9 A. Okay.

10 CHAIR:

11 Okay. Ms. Blankenship.

12 ATTORNEY BLANKENSHIP:

13 Yes. Thank you, sir. I just have a
14 couple real quick questions to clarify the record. And
15 we'll just start with addressing some of the questions
16 that Chairman Raney had. Commissioner Raney had about
17 how the ---.

18 REDIRECT EXAMINATION

19 BY ATTORNEY BLANKENSHIP:

20 Q. You were talking about the different units. Can
21 you explain a little bit how the Mitchell Plant operates
22 for the benefit of both units and for Wheeling Power and
23 Kentucky Power as a whole and with their undivided
24 interests?

25 A. So --- so both units, both of the Mitchell units

1 are offered in on --- on a daily basis and selected or
2 not selected by PJM for the day head energy market. The
3 --- you know, 50 percent of the output goes for Kentucky
4 Power and 50 percent of the output for Wheeling Power or
5 Appalachian Power needs. Is that what you're --- what
6 you're asking for?

7 Q. Yeah, I think so. Yes, thank you. And then I
8 wanted to go back to some questions that CAD attorney had
9 asked you. CAD Cross Exhibit Number 1, if you can turn
10 to that and I don't know which actual page, but it's item
11 number two, attachment four, page four of five. It is
12 the second page of an email that was talking about the
13 technical experts and there is a sort of a graph. And
14 the email is from Bill Mast. Let me know when you get to
15 that page.

16 A. Okay. I'm sorry, could you reference again?
17 Item number two, attachment what?

18 Q. Attachment four, page four of five.

19 A. Four of five. Okay.

20 Q. Ms. Osborn was asking you questions regarding
21 your understanding of this email. And underneath the
22 chart, the statement made about --- and this is again
23 from Bill Mast, that said our evaluation and final
24 recommendation will be made November 12th, but we wanted
25 to update you on our progress to see if there are any

1 concerns with using a firm very experienced with AEP and
2 not completely independent given the sparsity of firms
3 capable of completing the task.

4 I think there may have been some confusion about
5 what your understanding of completely independent and
6 relating to the sparsity of the firms capable of
7 completing the task. And I just wanted to clarify that.
8 So not being completely independent, that's not related
9 to a corporate dependency within the companies and --- or
10 between the companies and any of these firms. Is that
11 correct?

12 A. Yes, that's correct. Many of these companies
13 are a part of American Electric Power Service Corporation
14 or their entities.

15 Q. And is it your understanding that that statement
16 was related more to whether or not the companies had
17 actually used these firms before?

18 A. Yes, that is --- that's my point.

19 Q. And can you elaborate a little bit on what you
20 meant or what was meant by the sparsity of firms capable
21 of completing the task at that time?

22 A. We've been applying to a lot of --- a lot of
23 AEs out there that had --- that were knowledgeable, that
24 we felt were knowledgeable enough about the ELG and CCR
25 rules to be able to give us a credible report. As you

1 can see, there HDR, the next --- the next to the last
2 firm listed, no ELG experience, no regulatory experience,
3 no RFP issued. And the last one didn't respond at all.
4 So it's not like you can just go out and find anybody to
5 perform this task. And so, we --- we did have to use or
6 include in the RFP some AE firms that we've used on other
7 projects in AP.

8 Q. Okay.

9 ATTORNEY BLANKENSHIP:

10 That's all I have. Thank you.

11 CHAIR:

12 Okay. Thank you. Let's take a morning
13 break until 11:30, and then we'll go with Mr. Beam ---
14 and then take a lunch break.

15 SHORT BREAK

16 CHAIR:

17 Mr. Porth? Ms. Blankenship.

18 ATTORNEY BLANKENSHIP:

19 Yes, thank you. The Companies call
20 Chris Beam.

21 CHAIR:

22 Good morning.

23 ATTORNEY BLANKENSHIP:

24 Good morning. Good afternoon, or is it
25 still morning? I think it's still morning.

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CHAIR:

It's still morning.

A. Good morning.

CHRISTIAN BEAM, HAVING FIRST BEEN DULY SWORN, TESTIFIED
AS FOLLOWS:

DIRECT EXAMINATION

BY ATTORNEY BLANKENSHIP:

Q. Could you please state your name and business
address for the record?

A. Chris Beam, B-E-A-M, 500 Lee Street, East,
Charleston, West Virginia.

Q. And by whom are you employed and in what
capacity?

A. Appalachian Power Company, President and Chief
Operating Officer.

Q. And did you file Direct Testimony in this case,
consisting of 14 pages of questions and answers and three
exhibits?

A. Yes, ma'am.

Q. And do you have any changes, additions or
corrections to make to that testimony?

A. I do have one change to make in my Rebuttal
Testimony. Is it okay to go to that or we'll do that

1 later?

2 Q. We'll --- we'll get to that next. Let's just
3 focus on the Direct Testimony.

4 A. Nothing in the Direct, no.

5 Q. Okay. So let's now go to the testimony, the
6 Supplemental Testimony that you filed next in this case.
7 And did that consist of eight pages of questions and
8 answers and two exhibits?

9 A. Yes, ma'am.

10 Q. And do you have any changes or additions or
11 corrections to make to that testimony?

12 A. No.

13 Q. Okay. And now to your Rebuttal Testimony that
14 you filed on April 4th, 2002, consisting of 17 pages of
15 questions and answers. Do you have any additions,
16 corrections or deletions to make to that testimony?

17 A. Yes, one --- one small change.

18 Q. And where is that?

19 A. On page six.

20 Q. Okay.

21 A. Line nine. I'd like to remove the word be, B-E.
22 It's in between certainly and achievable. So it would
23 read, but it is certainly achievable once it's removed.

24 Q. Okay. Thank you. Are there any other
25 corrections or additions or deletions that you have?

1 A. No, ma'am.

2 Q. And do you adopt your Direct and Supplemental
3 and Rebuttal Testimonies as evidence in this case?

4 A. I do.

5 Q. And are you able to answer questions regarding
6 those testimonies?

7 A. Yes, ma'am.

8 ATTORNEY BLANKENSHIP:

9 And Mr. Beam is now available for Cross
10 Examination.

11 CHAIR:

12 Mr. Naum.

13 ATTORNEY NAUM:

14 Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY ATTORNEY NAUM:

17 Q. Good morning, Mr. Beam.

18 A. Good morning.

19 Q. I hope to be brief here. There's a few
20 statements made by the Companies in testimony and
21 discovery that at least to my perception don't comport
22 with the Revised Ownership Agreement, so I hope to just
23 maybe ask some clarifying questions around that. But
24 first before I do that, I'd like to steal the Coal
25 Association's thunder a little bit. Mr. Altmeyer asked a

1 question of Mr. Kerns. Were you in the room for that?

2 A. Yes, sir.

3 Q. And that question was deferred to you. Is it
4 Wheeling Power's understanding that the original proposed
5 Section 9.6 and the original proposed Ownership Agreement
6 is still an available option? Or is it Wheeling Power's
7 impression that the Revised Agreement supplants that one?

8 A. The Revised Agreement supplants that one.

9 Q. Okay. Thank you. If we could move to some
10 discovery. I hope to do this without introducing an
11 exhibit, but if we need to, that's fine. In WVEUG set
12 two, the Companies provided a response on February 23rd,
13 2022. Are you familiar with WVEUG's set two discovery,
14 generally?

15 A. Yes, sir. I actually have them in front of me.

16 Q. Okay. Great. On request WVEUG 2-05, actually
17 let's start at 2-01, referencing question five. It
18 states that the Companies have not yet determined a
19 witness who could address this subject matter of this
20 discovery request. And then if we turn to question five
21 itself, I'm hoping that maybe now you could answer a
22 question related to our subpart B of question five, do
23 you see that?

24 A. Yes, sir, I see that in front of me. Yes.

25 Q. And that question asks, would any element of the

1 Mitchell agreements preclude the sale of Kentucky Power's
2 ownership interests in the Mitchell Plant and/or Wheeling
3 Power's ownership interest in the Mitchell Plant to a
4 third party? The Companies provided a response and said
5 neither owner would be precluded from selling its
6 undivided ownership interests in the Mitchell Plant to a
7 third party. Are you able to testify to the veracity of
8 that statement?

9 A. That the proposed agreements would not prohibit
10 any owner from selling?

11 Q. Yes.

12 A. That is correct, that's what the agreements say.

13 Q. Yeah, so it's your testimony that the Revised
14 Ownership Agreement would not prevent either Kentucky
15 Power or Wheeling from disposing of that potentially to a
16 third party; correct?

17 A. Agreed, but it would take regulatory approval,
18 of course, by both states to do that.

19 Q. Okay. Thank you. And in fact, you do and this
20 is where I'm just looking for some clarity. In your
21 Supplemental Direct on page four, you do reference that
22 each owner would be able to deal with the unit it owns
23 independently. And then later on, on page four, you say
24 it would facilitate a sale by Kentucky Power of its
25 interests to a third party. So we've already established

1 that, that's your testimony. Can you point out to me in
2 the Revised Ownership Agreement where contemplation of a
3 potential sale to a third party is provided?

4 A. So that is --- geez, the exact spot. Let's see
5 here real quick. 9.6 is negotiation of a buyout
6 transaction.

7 Q. Okay. So ---.

8 A. And an inter-swap transaction.

9 Q. Okay. So are you testifying that 9.6
10 contemplates that either Kentucky Power or Wheeling Power
11 could transfer their interest to a third party?

12 A. I'm sorry, no, no.

13 Q. Okay.

14 A. I'm sorry, this is the buyout transaction. So
15 if one wanted to buy the other, the other out.

16 Q. Right.

17 A. I don't have the exact number memorized on where
18 it is in the agreement, I apologize.

19 Q. Okay. Well, let me --- let me, maybe I can help
20 walk you through some parts of it.

21 A. Okay.

22 Q. So if you go to Section 9.1. And Article 9
23 refers to transfers, but Section 9.1 restricts either
24 owner from assigning, transferring or otherwise disposing
25 of its ownership interests. Do you see that? That's in

1 the first line?

2 A. Yes, sir.

3 Q. But then about eight lines down there's a
4 provision there that says either owner may dispose of
5 all, but not less than all of its ownership interests to
6 a State-regulated utility affiliate. Mr. Beam, what's
7 the significance of carving out a potential transfer to a
8 State-regulated utility affiliate?

9 A. So maybe for us, an example may be that maybe
10 APCo could take on Wheeling Power. So that would be a
11 State affiliate for us.

12 Q. Okay. And then assuming the sale of Kentucky
13 Power is consummated with Liberty Utilities, then that
14 could contemplate perhaps a sell to a Liberty affiliate
15 as well?

16 A. Well, but not for us. That would be a Kentucky
17 option. Not --- we wouldn't address that here.

18 Q. But you agree that Article 9 at least provides
19 that Kentucky Power could dispose of it to a
20 State-regulated utility affiliate?

21 A. Yeah, I think the article's all-inclusive of
22 they could sell it to really anyone.

23 Q. Okay.

24 A. Third-party-wise.

25 Q. Again, I --- I don't see that anywhere in

1 Article 9, but wouldn't you agree that the general
2 prohibition stated in the first line of 9.1 seems to
3 prohibit the sale of --- of interest to a third party?

4 A. Well, it's just without prior written consent of
5 the other owner.

6 Q. Okay. So your testimony is that if --- if
7 Kentucky Power, as currently constituted as an AEP
8 affiliate, got Wheeling Power's consent, prior written
9 consent, they could sell it to an interested third party?

10 A. If --- yeah. If Wheeling Power would agree to
11 that, yes.

12 Q. Okay. And then vice versa if Wheeling Power
13 wanted to sell? But as I understand what you just
14 testified, let's assume that Liberty Utilities acquires
15 Kentucky Power, then does anything, anything in this
16 agreement provide for the potential disposition to an
17 interested third party?

18 A. For --- for who?

19 Q. Either interest.

20 A. I think we always reserve the right to be able
21 to sell one of our assets, as long as you receive
22 approval from the Commission to do it.

23 Q. Okay. So it's your testimony that this Revised
24 Ownership Agreement could provide for the sale of either
25 interest in the Mitchell Plant to say a wholesale

1 merchant generator?

2 A. I would say anybody, if they're interested.

3 Q. Okay. So possibly the West Virginia Public
4 Energy Authority, if they --- if they had some interest
5 in acquiring ---

6 A. Sure.

7 Q. --- all or some of the Mitchell Plant, it could
8 do that?

9 A. Sure. You betcha.

10 Q. And you would agree, Mr. Beam, that a potential
11 sale to a third party could prove to be a beneficial
12 resolution to the ownership of all or part of the
13 Mitchell Plant?

14 A. We could probably --- you could make that
15 assumption. I don't know if it's accurate, but sure.

16 Q. Okay. But if I look at this agreement, it
17 appears that Kentucky Power and Wheeling Power are bound
18 to one of two courses of action. And that's of course in
19 Section 9.6, and that's what's referred to as the buyout
20 transaction or the unit interest spot transaction. Is
21 that fair?

22 A. It is fair, and so the reason that it is written
23 this way is based on the Orders we've received of course
24 from this Commission and the Kentucky Commission. And
25 based on the Order out of Kentucky, you know, our

1 assumption is that they are done with this asset after
2 '28. And based on the Order from the West Virginia
3 Commission with wanting us to preserve the right to run
4 both of this units after '28. So that's why it's written
5 the way it's been written.

6 Q. Okay. In Section 9.6(a) regarding the buyout
7 transaction, the parties are bound to at least commence
8 good-faith discussions of a buyout by no later than
9 December 31st, 2024; correct?

10 A. I wouldn't say bound. It's at the request of.
11 So if no one requests, then I would assume that it
12 wouldn't happen.

13 Q. Okay, so ---.

14 A. That would be my guess.

15 Q. Okay. That's fair. So if prior to
16 December 31st, 2024, an interested third party said they
17 would like to acquire part or all of Mitchell, nothing in
18 this agreement would prohibit such a sale?

19 A. I do not believe so, no.

20 Q. Okay. Would --- would Wheeling Power have any
21 --- have any concerns or objection to a modification to
22 this agreement that specifically provided for a
23 contemplation of a third-party sale?

24 A. So at this time, we would. And the reason being
25 is these exact same documents are in front of another

1 Commission for approval. And of course, we need approval
2 from both Commissions to move forward. And any
3 modification made to this document will really just slow
4 this entire process down.

5 Q. But that's something you could do?

6 A. Well, it could jeopardize the entire transfer of
7 permits, jeopardize transferring the ownership --- the
8 operation over to Wheeling Power, and then eventually
9 could possibly have an impact on the ELG projects.

10 Q. But when you say the transfer to Wheeling Power,
11 what --- what are you referring to the potential transfer
12 to ---?

13 A. The operator, I'm sorry. So moving the operator
14 from Kentucky Power to Wheeling Power, and that operator
15 has to be moved over before you can apply for new
16 permits.

17 Q. So --- so is it your testimony that both
18 Commissions have to approve the Ownership Agreement in
19 full before the operation of the plant can transfer to
20 Wheeling Power?

21 A. Well, so, you know, we've made an offer here
22 that we could --- as long as both Commissions would
23 approve, we could actually drop 9.6 from this moving
24 forward. That's the offer that we've made.

25 Q. If that ---.

1 A. There seems to be a lot of pushback around 9.6
2 You know, 9.6 tried to lay out a very distinct framework
3 for the future. Certainly it doesn't --- doesn't
4 determine a price or a value, but it does determine a
5 framework on how to do that in the future. And it's able
6 to do that with really --- the assumption would be here
7 that you're going to have nonaffiliate parties now trying
8 to come to an agreement. And so this --- this was
9 written in a way that allows you to do that and gives you
10 some framework to follow. And our belief is, if the
11 Commission were to approve these, it provides framework
12 for them to follow. That's why it was written, that's
13 why we've written it the way we have.

14 Q. But if this Commission were to not approve the
15 Ownership Agreement as proposed, the Companies could
16 still go forward with --- with the operational change,
17 could they not?

18 A. So I don't think so, because, you know, the
19 Ownership Agreement really lays out how the cost will
20 work going forward. And without getting into a lot of
21 detail, you know, the rule --- the rules that we have out
22 of Kentucky versus not paying for ELG investment, the
23 ruling that we have out of the West Virginia Commission
24 to move forward, those costs are starting ---. As prior
25 Witness Kerns said, we are starting to accrue those

1 costs. And so those costs are kind of sitting in a
2 holding account, for lack of a better term. And once we
3 have our technical expert to help us understand how costs
4 would be separated, then we'll start billing those costs
5 appropriately.

6 The problem really in Kentucky is the order, the
7 way I understand it in Kentucky is no charges for ELG can
8 be billed to the Kentucky customer. And so we need these
9 agreements to be able to basically put in place, the
10 correct billing structures, to make this all move
11 forward.

12 Q. So --- so it is your testimony here today that
13 this is essentially an all or nothing proposition? The
14 Commission has to approve this Revised Ownership
15 Agreement or nothing?

16 A. So like I've said, we've offered --- we've
17 offered an opportunity here with 9.6 being --- you know,
18 it seems to be controversial not only in this
19 jurisdiction but in Kentucky. We have offered to drop
20 that as a means of trying to get resolution between both
21 jurisdictions. We would recommend, though, to --- if ---
22 if found appropriate by this Commission, approval of 9.6
23 and maybe approval without 9.6 to be able to enter those
24 agreements. It would give us the most flexibility to
25 work with the other Commission to try and get these

1 agreements done.

2 Q. 9.6 was negotiated between Kentucky Power and
3 Wheeling Power?

4 A. Between the Operating Committee, yes.

5 Q. Operating Committee. So Wheeling Power's
6 willing to --- and presumably Kentucky Power is willing
7 to accept a modification of the agreement that would
8 eliminate 9.6, but the parties would not be amenable to
9 an amendment that would contemplate a third-party sale?

10 A. Not at this time.

11 Q. Okay. If I understand correctly your Rebuttal
12 Testimony --- and I'm looking at page three, but I think
13 you've made this representation in other --- other
14 places, but page three, this is on line eight. And this
15 refers to that flexibility that you --- you just
16 discussed. You state the owners further recognize that
17 those actions will be subject to future review by their
18 respective Commissions for prudence and reasonableness.

19 So as I understand this, and as I understand
20 your testimony as a whole, Mr. Beam, any request, whether
21 it's a buyout or an agreement, whether it's a buyout or a
22 unit swap would have to come before this Commission for
23 full approval; correct?

24 A. This Commission and also the Kentucky Commission
25 since there's, you know, still the 50/50 ownership share.

1 Q. Okay. If you turn to WVEUG set one discovery.

2 A. Yes, sir.

3 Q. Move to question ten, if you would, sir.

4 A. Okay.

5 Q. Subquestion C references the recovery of costs
6 from the Companies' ratepayers. And if I understand
7 correctly, and you did provide this response. Is that
8 --- is that accurate?

9 A. Yes, sir.

10 Q. And in subsection (c), your response is the
11 Companies would seek to recover from customers all
12 prudently-incurred costs associated with the buyout
13 transaction in full ownership of the Mitchell Plant. Is
14 that correct?

15 A. That is correct.

16 Q. And does that answer still apply under the
17 Revised Ownership Agreement?

18 A. Yes, it does.

19 Q. Okay. So at this point the Companies are not
20 asking the Commission to predetermine the reasonableness
21 or prudence of the recovery of costs from West Virginia
22 ratepayers, is it?

23 A. That is correct, we are not.

24 Q. Okay. So at this point the Companies are not
25 asking the Commission to make a determination as to the

1 reasonably for West Virginia to acquire the capacity
2 share from Kentucky Power's ownership of Mitchell.

3 Correct?

4 A. That is correct, we are not asking for that.

5 Q. And --- and similarly, then, the Companies are
6 not asking for this Commission to predetermine whether
7 that capacity is necessary to supply West Virginia
8 customers? Is that fair?

9 A. That is also correct, yes, sir.

10 Q. And if we could just to close up, go back to the
11 conversation regarding third party potential ownership or
12 purchase. Under the unit-swap transaction of 9.6, as
13 proposed, as I understand this, the end result would be
14 that Kentucky Power would own one unit and Wheeling Power
15 would own the other unit; correct?

16 A. Yes, sir.

17 Q. And upon consummation of a supposed unit
18 inter-swap transaction, then, it's your testimony that
19 either party would then be free to dispose of that
20 interest however it desired?

21 A. Well, there are a few catches. Right? So there
22 are some shared pieces of equipment that both units rely
23 on. So for instances, let's just say coal yard. So we'd
24 have to figure out, then, the shared pieces of equipment
25 and how they're split. And then --- but after that's all

1 done then it really --- it's up to the other party and
2 what they would choose to do with their portion of their
3 ownership.

4 Q. So a wholesale merchant generator or,
5 hypothetically, the West Virginia Public Energy could ---
6 could acquire one or both of those units?

7 A. Yeah. Well, I think hypothetically, anybody
8 that would be looking to buy a coal unit could buy them.
9 And then of course, you know, you always have to throw in
10 there that with regulatory approval, so ---.

11 Q. Okay. Great. Okay. Thank you. That's all I
12 have. Appreciate it.

13 CHAIR:

14 Okay, Ms. Osborn.

15 ATTORNEY OSBORN:

16 Yes, thank you.

17 CROSS EXAMINATION

18 BY ATTORNEY OSBORN:

19 Q. Mr. Beam, pursuant to the West Virginia
20 Commission's Orders approving the ELG compliance work at
21 Mitchell, these proposed agreements, both the Ownership
22 and the Operating Agreement, what is the timeline by
23 which they --- one or both must be approved?

24 A. Well ---.

25 Q. In your --- in as you understand it.

1 A. So as soon as possible is the timeline. We have
2 to get moving on to comply with the Orders we've been
3 given. We have to transfer over the operations from
4 Kentucky to Wheeling Power. We have to apply for permits
5 in the new operator's name. And then we also have to get
6 started on the physical work of the ELG at the plant.
7 And so as soon as possible is the timeline.

8 Q. Okay. So is it your testimony that the lack of
9 these agreements is causing a lack of physical work when
10 it comes to ELG? Is that why work's not being performed,
11 then?

12 A. No. So as Witness Kerns testified earlier, the
13 detailed engineering is currently progressing on the ELG.
14 That was released in November, right after the Orders
15 from this Commission. And so I don't have the exact
16 timeline in front of me, but detailed engineering starts.
17 And then you'll start into some type of procurement for
18 whatever the pieces and parts are you're going to buy.
19 And then eventually you'll start physical construction in
20 the field.

21 Q. All right. And that will occur absent the
22 immediate approval of these proposed agreements; correct?

23 A. It will occur to basically implement the Orders
24 we receive from this Commission, but the Ownership
25 Agreement allows us to then set in place the correct

1 mechanisms and the correct sharing of costs for all
2 investments going forward.

3 Q. What --- if you know, what is the time frame
4 under which the proposed sale of Kentucky Power to
5 Liberty in this proceeding?

6 A. So if I think I've heard, if I remember
7 correctly, second quarter of this year.

8 Q. So soon?

9 A. Yes.

10 Q. Okay. And these proposed agreements, both the
11 Ownership and the Operating, are conditions precedent to
12 or precedent to the closing of the Liberty acquisition of
13 Kentucky Power; correct?

14 A. That's my understanding.

15 Q. Okay. So in other words, isn't it accurate that
16 the reason AEP wants to get these proposed Ownership and
17 Operating Agreements in place is because AEP knows that
18 it cannot go forward with the sale of Kentucky Power to
19 Liberty without these agreements in place. Isn't that
20 what this all boils down to?

21 A. No, I disagree. So --- and the reason I
22 disagree you have to realize that not only do these
23 agreements have to be approved by both Kentucky and West
24 Virginia, they also require a FERC Agreement, and those
25 are I think if I remember correctly, around a 60-day

1 timeline for that agreement. And so we still don't have
2 agreement in Kentucky or West Virginia on these
3 agreements. And once we have those, then we will submit
4 to FERC. So you're talking an extended time before these
5 are all approved. This process needs to start today as
6 soon as possible so we can get an end to this process.

7 Q. And Kentucky, as I understand it, in the
8 companion Kentucky case, 2021-00421, an Order has been
9 issued that sets forth a briefing schedule --- I'm sorry.
10 Not a briefing schedule, but a deadline for when the case
11 will stand submitted for decision by the Commission. Are
12 you aware of that?

13 A. I am not.

14 Q. Okay. Do you have any involvement in the
15 companion Kentucky case?

16 A. No.

17 Q. Okay. And what about the case pending before
18 the Kentucky PSC regarding Liberty's acquisition of
19 Kentucky Power? Do you have any involvement in that?

20 A. No.

21 Q. You did participate in the ELG proceeding in
22 front of this Commission; correct?

23 A. Yes, ma'am.

24 Q. Okay. And based on your participation and your
25 knowledge of that case, is it your understanding that the

1 Mitchell --- that Mitchell would close in 2028 if it does
2 not proceed with ELG compliance?

3 A. Yes, ma'am.

4 Q. Okay. And is it your understanding that this
5 Commission supports paying for the full ELG costs based
6 --- on the condition that West Virginia will have the
7 right to all of the energy and capacity of the entire
8 Mitchell station after 2028?

9 A. That is my understanding.

10 Q. That is your understanding. Okay. Did you
11 participate in the Kentucky proceeding regarding ELG
12 compliance?

13 A. No, ma'am.

14 Q. Okay. Do you --- based on your position with
15 Wheeling Power, do you have knowledge of that case? I
16 mean, generally speaking?

17 A. Not very detailed, no.

18 Q. Is it your understanding that the Kentucky
19 Commission denied the request to move forward, whether
20 Kentucky Power's decision to move forward with ELG
21 compliance, based on the fact that Kentucky Power failed
22 to meet its burden of proof in that case?

23 A. I don't know.

24 Q. Do you know whether Kentucky Power in any way
25 appealed or asked for reconsideration of that decision by

1 the Kentucky PSC?

2 A. I don't believe they did.

3 Q. Are you aware that Kentucky Power did file a
4 motion for rehearing in the Kentucky ELG case?

5 A. I am not.

6 Q. Okay. Would you be surprised to learn that
7 Kentucky Power continued to hold its buyout arrangement,
8 hearing and the Kentucky ELG proceeding on three issues,
9 none of which were ---? In other words, would you be
10 surprised to learn that Kentucky Power, in that motion
11 for a hearing, did not ask the Kentucky Commission to
12 reconsider its decision and overarching issue of ELG
13 compliance?

14 A. So your question is, would I be surprised?

15 Q. Yes.

16 A. So --- no. So I have no idea the details that
17 are in that case, let alone the transaction that has
18 transpired in the hearing and the process. So I just ---
19 I really have no opinion, I don't know.

20 Q. Okay. So as part of Wheeling Power, you're
21 telling us that you have no involvement in or
22 understanding of the case by which Kentucky Power, the
23 co-owner of Mitchell, sought --- sought the Kentucky
24 Commission's approval to move forward with ELG
25 compliance?

1 A. Like I said, very minimal. I have --- I have
2 received Virginia, West Virginia and Tennessee. That
3 takes up a lot of my time.

4 Q. And as a voting member of the Mitchell Operating
5 Committee, why is it that you have very minimal
6 understanding of the Kentucky proceeding regarding ELG
7 compliance?

8 A. Well, my understanding from my role on the
9 Operating Committee is very clear. My job is to
10 represent Wheeling Power and the interests of the West
11 Virginia customer. And from that perspective, I'm pretty
12 well-versed. And that's the piece I'm worried about.

13 Q. All right. But aren't the interests of West
14 Virginia customers with respect to Mitchell ELG
15 compliance impacted by the Kentucky decision?

16 A. Could be. I don't know.

17 Q. Could be.

18 A. They may not be. I don't know. We're
19 speculating. I don't know the answer to that.

20 Q. Well, isn't it true, because the Kentucky PSC
21 decided that Kentucky had --- Kentucky Power had failed
22 to meet its burden of proof, that's why West Virginia is
23 --- is this --- West Virginia Commission has determined
24 that it's appropriate for West Virginia to pay for the
25 full cost of ELG compliance at ---?

1 A. So no, I can't tie those two things together.
2 When I remember the order that was received here, I think
3 the Order referenced the replacement cost versus the
4 expense of the investment was what I remember the Order
5 coming out.

6 Q. Are you familiar with the Kanawha River Plant,
7 Mr. Beam?

8 A. Yes, ma'am.

9 Q. Okay. Was that plant entirely depreciated at
10 the time of its retirement?

11 A. Cleared to zero, I believe the answer was no.

12 Q. So there was remaining book value?

13 A. I assume there was, yes.

14 Q. Do you know what happened to the remaining book
15 value of the Kanawha River Plant after it was retired?

16 A. I do not, no.

17 Q. Okay. What about the Sporn Power Plant? Are
18 you familiar with that?

19 A. Yes, ma'am.

20 Q. Was that plant entirely depreciated at the time
21 of its retirement?

22 A. I don't know the answer to that.

23 Q. Okay. So if there was any remaining book value,
24 you wouldn't know what happened with that?

25 A. No. Those units retired in 2015. I didn't

1 assume this role until 2017.

2 Q. Okay. Do you understand that when this
3 Commission stated that without ELG investments, Kentucky
4 Power would have to treat its residual investment in
5 Mitchell as a stranded cost? That this PSC warranted
6 that that it has no commercial value?

7 A. Well, I certainly understand the words in the
8 order. I --- I think that I would maybe push back on
9 that a little bit and say I don't think that the West
10 Virginia Commission could determine the value of someone
11 else's asset.

12 Q. That sounds like a statement that someone who is
13 representing Kentucky Power would make to me, but you're
14 not here on behalf of Kentucky Power; correct?

15 A. I am not.

16 Q. And you're not here on behalf of Kentucky
17 ratepayers; correct?

18 A. No, ma'am.

19 Q. Okay. Have you been involved in any of the
20 negotiations with Liberty regarding the purchase of
21 Kentucky Power?

22 A. No, ma'am.

23 Q. Have you been involved in any of the
24 negotiations with Liberty regarding the necessity of the
25 proposed ownership and operating agreements as a

1 condition to that sale?

2 A. I've had zero discussions with Liberty.

3 Q. Okay. Would you agree with me that Wheeling
4 Power, Kentucky Power, AEP, and Kentucky Power, if it's
5 purchased by Liberty, have different interests or want
6 different things when it comes to Mitchell?

7 A. So I certainly cannot speak for Liberty. I know
8 what our interests are in Mitchell.

9 Q. And what --- what is your interest in Mitchell?

10 A. To follow the directive we've been given by this
11 Commission to make sure that it is --- it's able to run
12 past 2028. We can make sure that we've installed the CCR
13 and ELG equipment.

14 Q. And what do you think Kentucky Power as it's
15 situated today as an affiliate, what do you think it
16 wants out of Mitchell?

17 A. To comply with the Orders that Kentucky has
18 given Kentucky Power. And that is to install the CCR
19 equipment, make sure the unit runs through the end of
20 2028 to the benefit of their customers.

21 Q. And AEP, what do you think its interest is when
22 it comes to Mitchell?

23 A. So I think AEP's interests are pretty simple;
24 right? So to comply with the Orders that we are given in
25 the jurisdictions that govern us.

1 Q. One of AEP's interest when it comes to Mitchell
2 is also making sure that it's in its agreements that
3 Liberty wants approved so that it can sell Kentucky Power
4 to Liberty?

5 A. So I would change that. I think these
6 agreements are required by the Orders we've received out
7 of both of our jurisdictions, Kentucky and West Virginia.

8 Q. Is there a West Virginia Order that you're aware
9 of that states prior to any transfer of Kentucky Power to
10 a third party that we need to get agreements such as
11 these in place?

12 A. No, but --- but the Orders that we do have from
13 this Commission I think are very clear. It is to make
14 the investment a hundred percent an ELG, make the CCR
15 investment, and operate and run the plant and make sure
16 it is available past 2028. And that's what we're doing.
17 And that's what these --- that's how these were written
18 is the ability to be able to do that, and the ability to
19 be able to protect that interest going forward.

20 Q. Under the proposed Ownership Agreement, which
21 currently as it's been proposed to this Commission and to
22 the Kentucky Commission, includes Section 9.6, the unit
23 inter swap. I want to ask you --- I want to ask you your
24 thoughts on how a potential scenario will play out. Is
25 there anything contained within the proposed Ownership

1 Agreement that would prevent this scenario? Let's say
2 Kentucky Power and Wheeling Power cannot agree to a
3 buyout. At that point --- let me ask this. At that
4 point, the unit inter swap, by default, kicks in;
5 correct?

6 A. If 96 --- if 9.6 stays in and you don't get
7 mutual agreement and regulatory approval, then it
8 automatically defaults into the unit swap.

9 Q. Okay. So let's say 9.6 stays in and we don't
10 have a buyout.

11 A. Okay.

12 Q. It automatically kicks to a unit inter swap;
13 correct?

14 A. Yes.

15 Q. Is there anything in the Ownership Agreement
16 that's being proposed that would prevent the unit inter
17 swap going forward and Kentucky Power, let's say owned by
18 Liberty at the time, to immediately retiring whichever
19 unit it then owns, and West Virginia customers are solely
20 --- West Virginia ratepayers are still on the hook for
21 invested in the full ELG compliance of both units?

22 A. So I think the thing that we're maybe missing
23 here is that remember that the Kentucky Commission
24 ordered Kentucky Power to install CCR equipment, and to
25 run the unit through 2028 to the benefit of their

1 customers. And so, assuming that they could just
2 unilaterally shut a unit down without approval from their
3 Commission, I don't think that's possible. I don't
4 understand why you would instruct someone to make that
5 type of investment to not run the asset.

6 Q. Pursuant to the West Virginia Order, Wheeling
7 Power is going to pay for the entirety of ELG compliance
8 on both units. A unit inter swap occurs because no
9 buyout can be agreed to. So you then --- with Kentucky
10 Power, let's say Liberty at that point, owns a unit
11 that's now fully ELG-compliant, what happens under that
12 scenario?

13 A. Yea, that would be --- so if you would go to my
14 Direct Testimony, that actually would be defined under
15 Exhibit C, and it kind of lays out how that all works.
16 Right? So basically to really summarize it, they would
17 have to compensate West Virginia and the West Virginia
18 customer for that piece of equipment.

19 Q. Would they have to compensate West Virginia for
20 the value that that equipment provided in keeping the
21 plant open during that time, up until 2028?

22 A. So all to be determined in the future. I have
23 no idea what the value would be and how it's determined.
24 The Operating Committee would figure that out.

25 Q. There's a lot to be determined in the future by

1 the Operating Committee under these proposed agreements;
2 correct?

3 A. No different than running a plant that we've
4 done for years.

5 Q. Under the Operating Agreement, though, that's
6 currently in place, Kentucky Power and Wheeling Power are
7 affiliates, both owned by AEP; correct?

8 A. That is correct.

9 Q. And we have a different scenario under the
10 Operating Agreement if the purchase of Kentucky Power by
11 Liberty goes through; correct?

12 A. Agree 100 percent. That's why you need these
13 agreements in place, to be able to deal with that.

14 Q. Okay.

15 Did Wheeling Power engage its own counsel in
16 negotiations regarding these proposed agreements?

17 A. So --- so Wheeling Power, no different than
18 Kentucky Power, uses the AEP Service Corp. legal
19 resources, and that's who we use to help us with these
20 types of things.

21 Q. To the best of your knowledge, were any of ---?
22 Let me see how I want to phrase this. The signatory is
23 for the AEP Service Corp., who you say were, you know
24 representing Wheeling Power the same as Kentucky Power in
25 these negotiations. Are they different from the AEP

1 Service Corp. attorneys who are involved in the
2 transaction, the sale of Kentucky Power to Liberty?

3 A. So I don't know the answer to that. I haven't
4 been involved in the Liberty transaction, so I don't know
5 what all --- who all's involved in that.

6 Q. Would you agree that Wheeling Power may have a
7 conflict of interest with Kentucky Power, given Kentucky
8 Power asserting a post-2028 value for Mitchell when
9 arguably the West Virginia Commission does not support
10 that?

11 A. I see no conflict of interest. I think the West
12 Virginia Commission has given us pretty clear guidance on
13 what they ask us to do to preserve the right to these
14 units to run past 2028, and we're going to follow that
15 Order.

16 Q. All right. Let me ask that another way. If
17 Kentucky Power asserts a post-2028 value for Mitchell
18 that this West Virginia Commission does not support,
19 would you then agree that there may be a conflict of
20 interest between Wheeling Power and Kentucky Power?

21 A. So --- okay. I think you're asking the
22 question. The value of Kentucky's ownership share at the
23 end of '28, is that what you're asking?

24 Q. Yes.

25 A. So that already exists; right? So they have a

1 value that's determined over there, we have a value
2 determined here. I think it was a dollar. So the
3 problem is, is that has to be negotiated and that has to
4 be negotiated in the future. But a single unilateral
5 Commission cannot determine the value of someone else's
6 ownership.

7 Q. Would you, Mr. Beam, as President and COO of
8 Wheeling Power and as a voting member of the Operating
9 Committee for Mitchell support the West Virginia position
10 that there is no value post-2028 for Kentucky Power in
11 return?

12 A. I support that we would need to determine that
13 in the future, and right now we can't determine that.

14 Q. Okay. What --- what value does Kentucky Power
15 --- what is Kentucky Power's position with respect to the
16 value that the plant currently has to Kentucky Power?

17 A. I have no idea. That's a Kentucky Power
18 question.

19 Q. Has there been any discussion or any agreement
20 by Wheeling Power to waive any concerns related to
21 potential conflicts of interest between it and Kentucky
22 Power?

23 A. I don't --- you'll have to be more direct with
24 your question. I don't understand what you're asking.

25 Q. Okay. Well a few minutes ago, we talked about a

1 potential conflict of interest between Wheeling Power and
2 Kentucky Power. To your knowledge, has Wheeling Power
3 been asked to waive any potential conflict of interest?

4 A. No.

5 Q. Okay. Give me just a second here. All right.
6 If you just look at your Rebuttal Testimony on page nine,
7 Mr. Beam. On here you're discussing the fact that CAD
8 Witness Medine has testified that the proposed Mitchell
9 Agreements were negotiated by Kentucky Power and Liberty
10 without the input of Wheeling Power, and that that is to
11 the detriment of West Virginia customers.

12 You disagree with that. And you go on to state
13 on line seven, I was involved in the creation and
14 approval of the agreements originally presented with my
15 Direct Testimony in this proceeding, and in the creation
16 of the revised Ownership Agreement that was filed with
17 and addressed in my Supplemental Testimony in this
18 proceeding. And you referenced the fact that you're
19 Wheeling Power's representative on the Operating
20 Committee.

21 So earlier I had given Mr. Kerns CAD Cross
22 Exhibit 1, which are the minutes from --- for Committee
23 meetings, Operating Committee meetings. Do you --- is
24 that up there with you?

25 A. No, ma'am.

1 Q. Okay. Let's get you a copy. Do we have one
2 that's not written on? Just a moment, I think I've got
3 one here. You got it? We've been --- we've been
4 notating all over it.

5 A. Thank you.

6 Q. And before we get to those --- those minutes,
7 you go on to say on line ten of page nine of your
8 Rebuttal that all of those agreements were approved by
9 the Operating Committee, of which Wheeling Power and
10 Kentucky Power are the only voting members. Now what I'd
11 like for you to do is turn to the Operating Committee
12 meeting minutes --- that's a mouthful --- that you have
13 there as CAD Cross 1, and show me where the Operating
14 Committee approved the Revised Ownership Agreement.

15 A. All I see in this packet is the original that I
16 filed in my original testimony approval document.

17 Q. Okay.

18 A. That's all I see in here.

19 Q. Is it your testimony that there was an Operating
20 Committee meeting during --- that you were present for
21 during which the revised Ownership Agreement was
22 approved?

23 A. There's been several discussions. I wouldn't
24 say that we called the formal meeting and took formal
25 meeting minutes, like you have here in front of you. But

1 every time there's a proposed change, we are allowed to
2 put input into that change. I think that in my opinion,
3 I believe that the Wheeling Power team drove a lot of
4 this change that's in here currently. And so yes, we are
5 involved. Is it formally documented in these meeting
6 minutes? It appears not. Is this all of the meeting
7 minutes? I also don't know that. So I don't know, this
8 is a Kentucky document, so I don't know who answered it
9 in Kentucky and I just don't know the answer to this
10 question.

11 Q. Well, turn to your attachment five of CAD Cross
12 1, which is the written consent action of the Mitchell
13 Operating Committee, dated November 16th of 2021. And
14 here, we have ---.

15 A. Give me a second, I'm sorry. Give me a minute.
16 Which --- what is it again?

17 Q. It's attachment five of CAD Cross 1. The
18 written consent action of the Mitchell Operating
19 Committee. Yeah, it's near the back. It's the last ---
20 attachment five is the last attachment.

21 A. Attachment four. Sorry, just not familiar with
22 what we're looking at here. I don't have it. Attachment
23 five for me is a blank page. Okay. Here it is, got it.
24 Right there. Attachment five? That says attachment
25 four. Attachment five. Okay. Sorry, got it.

1 Q. Do you have it?

2 A. Yes, ma'am. Sorry.

3 Q. Okay. Now you said you're not familiar with
4 this document. You're referring to CAD Cross 1. But I
5 presume you're familiar with attachment five to CAD Cross
6 1, the written consent action of the Mitchell Operating
7 Committee?

8 A. Yes.

9 Q. Okay. Because you and Mr. Mattison signed it;
10 correct?

11 A. That is correct.

12 Q. And is it true that this document, dated
13 November 16th of 2021, formalizes the Operating
14 Committee's approval of the original proposed Ownership
15 Agreement and Operating Agreement?

16 A. That's correct.

17 Q. Okay. To the best of your knowledge, then, Mr.
18 Beam, is there any other written consent action of
19 Mitchell Operating Committee that we may be missing that
20 formally approved the revised Ownership Agreement?

21 A. Like I said, I'm not sure. I don't keep these
22 meeting minutes. That's not what I do, but I was
23 definitely involved in the revisions and the approval of.

24 Q. Well, let me just ask it this way. Do you
25 recall signing any written consent action of the Mitchell

1 Operating Committee that approved new Ownership and
2 Operating Agreement for Mitchell other than the one that
3 we have here today?

4 A. No, but my verbal approval was definitely given.

5 Q. Okay. Do you --- do you know why there would
6 have been a written agreement with respect to one, but
7 not the other?

8 A. Well, I do. We would --- we assume that that
9 was going to be the right answer to the question. And as
10 you have now seen, we are on now kind of revision two.
11 And so this is moving kind of quickly. And as we get
12 live feedback either from --- from this jurisdiction or
13 the Kentucky jurisdiction, we're trying to find a way to
14 get resolution between both states. And so this thing's
15 moving kind of quick as you get immediate feedback. And
16 that's why it's moving as fast as it is.

17 Q. I have one last exhibit we're going to mark as
18 CAD Cross 3.

19 (Whereupon, Exhibit CAD Cross 3 was
20 marked for identification.)

21 BY ATTORNEY OSBORN:

22 Q. All right. So as Mr. Williams finishes passing
23 this out, Mr. Beam I'll represent to you that CAD Cross 3
24 is a document, dated March 9th of 2022 in Kentucky Public
25 Service Commission Case Number 2021-00421. There's ---

1 the first page of which is a cover letter, indicating
2 that a memorandum being filed in the case is attached.
3 So I would like for you to turn the page, and look at the
4 actual interagency memorandum from the Kentucky Public
5 Service Commission. Have you ever seen this document
6 before?

7 A. No, ma'am.

8 Q. Okay. Would you agree this --- this memo
9 indicates, on its face, that an informal conference was
10 held on March 9th of 2022 in Case Number 21-00421 in
11 Kentucky? Is that what the memo states?

12 A. Yeah, I'm reading it. It looks like that, yes.

13 Q. Okay. And does the memo also state the purpose
14 of that informal conference was to discuss a proposed ---
15 it says amended but I believe that's meant to say
16 amendment, to the Mitchell Ownership Agreement concerning
17 Kentucky Power Company's alternate proposal to divide the
18 Mitchell units between Wheeling Power and --- between
19 Kentucky Power and Wheeling Power Company ---? The
20 possibility of settlement and other matters that may in
21 the disposition of this proceeding. Yeah, that's what
22 the document says?

23 A. That's what it says.

24 Q. Okay. Were you, on behalf of Wheeling Power,
25 involved in this informal conference on May 9th, 2022?

1 A. No ma'am.

2 Q. Okay. And you also see there on the memo that
3 it states that attached is a copy of the attendance
4 roster. So if you turn the page, I believe here we have
5 the attendance roster, which is a two-page document, I
6 think. And if you look at those two pages, it --- this
7 indicates that nobody from Wheeling Power was present for
8 this informal conference; correct?

9 A. No one from Wheeling Power. The Service Corp.
10 and Kentucky power were represented.

11 Q. Okay. Yeah, exactly. There are three folks
12 there from Liberty; correct?

13 A. Yes, it's what it says.

14 Q. Okay. To the best of your knowledge, is Liberty
15 a party to Kentucky PSC Case Number 21-00421?

16 A. I don't know.

17 Q. Okay. Any idea why three representatives of
18 Liberty would have attended this conference?

19 A. Also don't know. Sorry.

20 Q. Okay.

21 ATTORNEY BLANKENSHIP:

22 Your Honor, I'm going to object to the
23 use of this exhibit. There's been no foundation laid,
24 the witness is not involved, he's not familiar with the
25 document, he wasn't involved in the underlying case in

1 Kentucky.

2 CHAIR:

3 Ms. Osborn?

4 ATTORNEY OSBORN:

5 Well, that's kind of my purpose for the
6 exhibit is to demonstrate the lack of involvement in this
7 Kentucky proceeding regarding revisions to the Ownership
8 Agreement. The lack of Wheeling Power's, Wheeling Power
9 in that, in this discussions but the inclusion of Liberty
10 in those discussions. And I just wanted to get it on the
11 record from Mr. Beam that Wheeling Power was not
12 involved. And of course if he knew why Liberty was, I
13 wanted to know that as well. That was the purpose of the
14 document.

15 CHAIR:

16 I think --- I think the point's been
17 made, so let's move on.

18 ATTORNEY OSBORN:

19 Thank you.

20 BY ATTORNEY OSBORN:

21 Q. There --- there's been no similar informal
22 conference or anything here at the West Virginia PSC that
23 was nothing similar regarding the changes to the
24 Ownership Agreement; correct?

25 A. No.

1 Q. Okay. Now, in your Rebuttal you state that the
2 ownership of Mitchell can be split, but continue to
3 operate. Is that correct?

4 A. Yes, ma'am.

5 Q. Okay. Do each of the two units have similar
6 operating performance, to your knowledge?

7 A. That would be for Witness Kerns.

8 Q. Okay. And we discussed that with him a bit.

9 A. Yes, ma'am.

10 Q. Do you know how it was decided --- how it would
11 be decided if we reached the unit swap provision of the
12 Ownership Agreement which party would get which unit?

13 A. I do not. I know there would be a large laundry
14 list of things that would be taken into account to
15 determine that.

16 Q. Would each owner by its own call for those
17 units?

18 A. I don't know that.

19 Q. If they do, do you know where the stock piles
20 would be located?

21 A. They would have to be onsite if you're going to
22 burn it there.

23 Q. Would there be two stockpiles or just one for
24 both units? Or four, rather?

25 A. Don't know the answer. You could negotiate one

1 common pile, and you bill them for the operations and
2 maintenance of it. So all of that to be determined in
3 the future.

4 Q. Okay. And that may be determined in the future
5 by affiliates or by nonrelated parties; correct?

6 A. Don't know.

7 Q. Okay. Why, in the revised Ownership Agreements,
8 does it not --- is there not a provision that provides
9 that if Mitchell is still in operation in 2028, ownership
10 would automatically transfer to Wheeling Power or its
11 designee if Kentucky Power does not wish to operate
12 Mitchell?

13 A. We --- that would be a taking, and we can't do
14 that. We don't own --- Wheeling Power doesn't own a
15 hundred percent of the facility. We own an undivided 50
16 percent. If you separate the units at the end of '28 and
17 they choose not to run it, we don't own that unit. And
18 so I can't take something that doesn't belong to us.

19 Q. And so you don't think you could've negotiated
20 that term into an agreement?

21 A. We don't have an agreement in place to do any
22 negotiating yet, that's what we're asking for. Could
23 that be negotiated? Sure.

24 Q. Into the Ownership Agreement that we're seeking
25 approval of now?

1 A. Well, I think it'd be premature to put it in the
2 agreement today, but the way this market has changed so
3 dramatically in the last six months, I think you're
4 better to wait a little while to see what happens in this
5 market.

6 Q. Is there a right to transfer provided by the
7 Ownership Agreement in the event that the other party
8 wishes to shut down its unit?

9 A. So the agreement doesn't address a right to
10 transfer, but it has a provision if Wheeling Power would
11 want to buy their portion. We could certainly do that
12 through negotiation. Of course seek regulatory approval
13 to do that from both Commissions. So the agreements
14 allow that to happen.

15 Q. What value does the unit have if it's shut down?

16 A. I can't determine that.

17 Q. As President of Wheeling Power, I mean, would
18 you --- do you have an opinion on that, Mr. Beam, in your
19 position as President of Wheeling Power in representing
20 its interests?

21 A. So as President of Wheeling Power, I'm concerned
22 with what the Order I have in West Virginia tells me to
23 do, and that's what I'm doing. Also as President of
24 Wheeling Power, I'm also looking out for the best
25 interests of my customers. And if buying an additional

1 Mitchell unit --- if that's what would be so inclined in
2 the future --- if it is the right economic solution for
3 the West Virginia customer, we'll be all about trying to
4 get the best price and coming for this Commission as for
5 approval. That's what we would do.

6 Q. And looking as --- in your role looking out for
7 West Virginia customers, wouldn't it be in the best
8 interest of West Virginia customers for that unit owned
9 by Kentucky Power to have as little value as possible?

10 A. Yeah, I don't know. I mean, I think the
11 question you're trying to ask is the lowest transfer
12 price; right?

13 Q. Yes.

14 A. Well, then, yeah, for the West Virginia
15 customer, that's great. That's what we would try to do.
16 But the value of it today, I have no idea what that is.

17 Q. Let me switch gears just a moment here. Have
18 you reviewed Steve Baron's testimony in Kentucky PSC Case
19 Number 21-00481?

20 A. No, ma'am.

21 Q. Okay. I'll represent to you that he raises the
22 issue that Kentucky Power may have insufficient time to
23 replace Mitchell capacity by the end of 2028, and I want
24 to ask you if you believe changes to the proposed
25 Ownership Agreement may have been made to demonstrate

1 that Kentucky Power could, in fact, retain the capacity
2 after 2028 until adequate replacement capacity is in
3 place?

4 ATTORNEY BLANKENSHIP:

5 I'm going to object again to this line
6 of questioning. He did not read Mr. Baron's testimony,
7 and he's already stated numerous occasions he was not
8 involved in the Kentucky case.

9 CHAIR:

10 He can answer that question if he can.

11 A. Can you ask the question again? I'm sorry.

12 BY ATTORNEY OSBORNS:

13 Q. Sure. Understanding that you haven't read Mr.
14 Baron's testimony, I'll represent to you that he raises
15 the issue that Kentucky Power may have insufficient time
16 to replace Mitchell capacity by the end of 2028. And so
17 I'm asking you if you believe, based on your
18 participation in the drafting and redrafting of these
19 agreements, that changes to the proposed Ownership
20 Agreement may have been made to demonstrate that Kentucky
21 Power could, in fact, retain the capacity from Mitchell
22 after 2028 until adequate replacement capacity is in
23 place?

24 A. They --- they were not made for that reason.
25 These changes were made in trying to get agreement

1 between both Commissions to move forward with an
2 equitable solution for both. As far as Mr. Baron's
3 testimony, of course I haven't read it, but there's all
4 kinds of way you could satisfy your capacity need.

5 CHAIR:

6 Ms. Osborn?

7 ATTORNEY OSBORN:

8 Yes.

9 CHAIR:

10 Let's go ahead and take a lunch break.
11 We'll come back at 1:30 --- 1:35.

12 ATTORNEY OSBORN:

13 Thank you.

14 LUNCH BREAK TAKEN

15 CHAIR:

16 Okay. Ms. Osborn, do you want to
17 continue?

18 ATTORNEY OSBORN:

19 Yes, thank you. And I think I actually
20 have, Chair, one more question for Mr. Beam.

21 BY ATTORNEY OSBORN:

22 Q. Mr. Beam, I asked Mr. Kerns about this and he
23 referred me to you. If you look at CAD Cross Exhibit 1,
24 the various meeting minutes and specifically the email
25 that is part of attachment two. It'll say up in the

1 corner attachment two, page 2 of 83. Sorry. I'm sorry.
2 I could have identified that better.

3 A. I think I have it. The John Crespo email?

4 Q. Yeah, the second page of the October 25th.
5 Yeah.

6 A. Yes, ma'am. I have it.

7 Q. Okay. And so it was down at the bottom under
8 section nine, the bullet point Section 9.6. It says the
9 buy-out standards were discussed and reviewed and are
10 being reviewed. Discuss whether the Operating Committee
11 needs to address their use of good faith in considering
12 future capacity commitments and PJM related to Mitchell
13 after 2028. And I'd asked Mr. Kerns what that was
14 referred to or what that meant. He didn't know,
15 suggested you might. Do you know what that's referring
16 to or what that means?

17 A. So I certainly didn't write the email, but I
18 would --- you know, this is an assumption, but I assume
19 good faith considering the future capacity commitments is
20 how do you bid these units into the PJM capacity market
21 and who bids in what share. I would assume that's what
22 we're talking about.

23 ATTORNEY OSBORN:

24 Okay. I think that's all I have for
25 you. Thank you, Mr. Beam.

1 A. Thank you.

2 CHAIR:

3 Mr. Pepper? Mr. Murthy?

4 ATTORNEY MURTHY:

5 Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY ATTORNEY MURTHY:

8 Q. Good afternoon, Mr. Beam.

9 A. Good afternoon.

10 Q. I wanted to start with looking at 9.6A of the
11 Modified Agreement.

12 A. Okay. I'm there.

13 Q. So looking at this section, the parties have
14 until December 2024 to negotiate the buyout transaction;
15 is that correct?

16 A. So these are just --- these are estimated dates
17 and we say that later in here. So these dates can move
18 around based on their Operating Committee for sure. The
19 one thing, though, that we do know is, is, you know,
20 assuming PJM rules do not change, which sometimes they
21 do, but as we sit here today, we know the date and when
22 we have to bid in this capacity of the PJM. And so I
23 would say you probably just draw a line in the sand for
24 that day and work your way back, and then allowing enough
25 time for each Commission to be able to rule on anything

1 you put in front of them.

2 Q. Okay. So the one ironclad date that you have as
3 of right now is the date that you must bid the Mitchell
4 units into the PJM capacity market; is that right?

5 A. For a capacity, yes.

6 Q. Okay. And what is that date?

7 A. So you bid in three years in advance. So I
8 think that's going to be like 2025, mid-2025.

9 Q. Okay. Mid-2025. And working backwards from
10 that, you want to build in a period of time between then
11 and whatever time before that for you to obtain
12 regulatory approval for the buyout transaction; is that
13 right?

14 A. Yeah. And that's why these dates were put in
15 here. Those are rough dates.

16 Q. Okay. The rough date that you have here is
17 December 2024. And according to 9.6, it looks like 9.6
18 has the unit interest spot as a backstop to the buyout
19 transaction negotiation. Is that fair?

20 A. Yeah, most definitely. That's what we actually
21 call it's a backstop.

22 Q. Okay. By the point that --- the rough date that
23 you have here, December 2024, by that point, Wheeling
24 would have completed the ELG retrofits; is that correct?

25 A. I believe that's correct, yes.

1 Q. Okay. Your colleague, Mr. Kerns, testified
2 earlier about two possible ELG plans. One intended to
3 have just one unit operating after 2028 and one intending
4 to have both units operating after 2028. Do you recall
5 that?

6 A. Yes.

7 Q. Just for the sake of convenience, I'm going to
8 call them ELG for one unit, ELG for two units. The plan
9 currently is ELG for two units; is that correct?

10 A. The plan currently is ELG for both units, yes.

11 Q. We're going to get the conditions Post-Hearing
12 Exhibit 2 with the cost difference between those two
13 plans. My question to you is, have the Companies
14 previously evaluated that cost? Have they tried to
15 estimate that cost difference?

16 A. I'm trying to think back to the CCR and ELG
17 case. I can't remember. I thought that may have been
18 looked at, but I'm not positive.

19 Q. Have the Companies previously evaluated the ELG
20 for one plan for Mitchell?

21 A. Evaluating what, the costs or the --- or will it
22 work?

23 Q. Let's say either. Let's start with the cost.

24 A. So you know, I don't know. That's what I just
25 alluded to there. That would have come up in the last

1 case. I just don't remember. I'm sorry.

2 Q. As we discussed, you have --- this current plan
3 has --- the current contractor agreement has the unit
4 interest swap as a backstop to the buyout transaction.
5 Is it fair to say nothing in this agreement would prevent
6 the Companies from negotiating a unit interest swap now?

7 A. No, there's nothing in here would keep you from
8 doing that.

9 Q. I'd like to take a look at your Rebuttal
10 Testimony, page 4, line 21.

11 A. I'm sorry, what page was that?

12 Q. Page 4, line 21.

13 A. Page four. Okay. I'm there.

14 Q. I'm going to read the line here, then I have a
15 few questions about it. The sentence I'm looking at
16 says, there is no determination of need contemplated at
17 this time because there's no transaction that is being
18 put before the Commission. Here they're referring to Jim
19 Wilson's testimony, where he discusses a determination of
20 need for additional capacity from Mitchell; is that
21 correct?

22 A. Yes, sir.

23 Q. Okay. Is it fair to say that when the Companies
24 do put a Mitchell buy-out transaction before the
25 Commission, if the Companies do that, that submission

1 would include an analysis of that need?

2 A. It would include an analysis and also a filing
3 within this Commission for approval.

4 Q. The buyout transaction would result in Wheeling
5 acquiring about 780 megawatts of additional capacity; is
6 that right?

7 A. Yeah. Give or take, yeah.

8 Q. So if Wheeling was to bring the buyout
9 transaction to the Commission, would you agree the
10 Companies would have to demonstrate that Wheeling
11 actually needs that extra 780 megawatts of capacity?

12 A. Well, so, you know, we do an integrated resource
13 plan. So I would assume we would refresh that plan to
14 show need.

15 Q. And if the Companies were to ask this Commission
16 for approval of the buyout, that would have to include a
17 demonstration that you needed this extra 780 megawatts?

18 A. Possibly, yes.

19 Q. Is there any scenario in which you would not
20 have to demonstrate that?

21 A. I'm not sure.

22 Q. The Companies would also have to demonstrate
23 that adding that extra capacity is in the best interest
24 of the Companies West Virginia customers. Would you
25 agree?

1 A. Yes.

2 Q. Would you agree that a CPCN proceeding before
3 this Commission would include analysis on those two
4 points, need and ratepayers best interest?

5 A. If we were to do what?

6 Q. Mr. Beam, sitting here today, is it fair to say
7 the Companies haven't yet conducted those analyses?

8 A. We have not, yes.

9 ATTORNEY MURTHY:

10 Okay. Your Honor, could you just give
11 me one second? Thank you, Your Honor. Nothing further.
12 Thank you, Mr. Beam.

13 CHAIR:

14 Mr. Altmeyer?

15 ATTORNEY ALTMEYER:

16 Thank you, Chairman. I have a few
17 questions for Mr. Beam today.

18 CROSS EXAMINATION

19 BY ATTORNEY ALTMEYER:

20 Q. Good afternoon. How are you doing?

21 A. Good. Good afternoon.

22 Q. Good. Pardon me if it's a little bit scattered,
23 because we've had several Cross Examinations already.
24 But first you testified several times today and in your
25 Direct and Rebuttal and Supplemental Testimony that the

1 purpose of these agreements is to sort of benefit of the
2 ratepayers in West Virginia and Kentucky, and to
3 determine ELG separation costs, all these different
4 ownership components and operation components that's
5 going to arise with the diverging decisions; is that
6 correct?

7 A. Yes.

8 Q. You also talked about or you testified regarding
9 urgency, and that you believe that that is creating the
10 urgency for the approval of this agreement; is that
11 correct?

12 A. It is. You know, so like I've testified earlier
13 that, you know, starting the physical work in the field,
14 you need to have the operator to be Wheeling Power,
15 because the permits need to be in Wheeling Power's name
16 based on the Kentucky Order that we received. And so
17 right now, I'm doing ELG engineering, detailed
18 engineering, but for physical work to start in the field,
19 this stuff has to be approved and move the operator over,
20 and to get the permits in Wheeling Power's name.

21 Q. Is there any deadline --- hard deadline for that
22 switch of operator role? For example, did the Kentucky
23 Public Service Commission put a deadline on accomplishing
24 that task?

25 A. So there's no deadline from the Public Service

1 Commission of Kentucky or West Virginia, but there is a
2 deadline from the U.S. EPA that you must install this
3 equipment ASAP.

4 Q. So is it your testimony, then, that you cannot
5 physically carry out the ELG construction projects
6 without the switchover of control of the plant?

7 A. The physical work in the field, yes.

8 Q. And that's because of the title of the permit?

9 A. They're permits that are required to start the
10 work in the field, yes.

11 Q. And is there something the Kentucky Service or
12 Kentucky Public Service Commission Order that says they
13 cannot be on the permit for the ELG work; that they will
14 not is what it says.

15 A. It says that they will no longer be removed as
16 controller, but it says that they cannot or will not be
17 on the permits for the ELG work. That is correct.

18 Q. Okay. The Operating Agreement that's in place
19 right now, are you aware of that, the terms of that
20 agreement?

21 A. Yes, sir.

22 Q. Does it terminate automatically or by operation
23 as soon as a sale or this proposed sale to Liberty would
24 be consummated?

25 A. No. The termination really has to be between

1 both owners. So what we've proposed is it would
2 terminate upon the approval of these agreements.

3 Q. What you've proposed. But I'm asking what the
4 terms of that agreement say.

5 A. Those terms of that agreement say it stays in
6 place until it's terminated by either owner in agreement
7 with the other.

8 Q. If you want to go to your Direct Testimony,
9 Exhibit CTB-D1, page 18, which is the existing ownership
10 Operating Maintenance Agreement.

11 A. What page, I'm sorry, did you refer to?

12 Q. Page 18.

13 A. Eighteen (18).

14 Q. That agreement. So we're looking at Article 8.

15 A. Yes, sir. I'm there.

16 Q. So under 8.2, isn't it true that the minute
17 Kentucky Power or Wheeling Power is no longer a direct or
18 indirect wholly-owned subsidiary of AEP, that the
19 agreement is terminated?

20 A. Mutually agreeable to terminate the agreement.

21 Q. Okay. Well, can you direct me to where
22 that ---? I might be missing that.

23 A. It's the very last sentence.

24 Q. Okay.

25 A. Wheeling Power may mutually agree to terminate

1 this agreement.

2 Q. Oh, they may?

3 A. Sure. That's one of that options. But under
4 item two or arguably one, under item one, if Kentucky
5 Power or Wheeling Power divests itself of any portion of
6 its ownership in the Mitchell Plant, or under two, if
7 Kentucky Power or Wheeling Power is no longer a direct or
8 indirect subsidiary of AEP, that operates to terminate
9 the agreement regardless of the mutual agreement of the
10 parties.

11 COMMISSIONER RANEY:

12 Where is that ---?

13 ATTORNEY ALTMAYER:

14 I'm on --- so the Direct Testimony of
15 Mr. Beam. This is Company Exhibit CTB-D1, which is the
16 original Operating And Maintenance Agreement or the one
17 that's still in place now. Page 18. And it's Article 8
18 there.

19 ATTORNEY BLANKENSHIP:

20 I'm also going to object. Mr.
21 Altmeyer's asking for a legal opinion of what this
22 section states. It reads as it reads. And Mr. Beam is
23 not an attorney and he's not testifying to give a legal
24 opinion on this.

25 ATTORNEY ALTMAYER:

1 Well, I'll just get to the point of why
2 I'm bringing it up, if that's okay.

3 BY ATTORNEY ALTMAYER:

4 Q. Isn't it true that the urgency --- the primary
5 urgency in passing these agreements is the sale to
6 Liberty and not the various complications that are
7 presented by the divergent ELG decisions in Kentucky and
8 West Virginia?

9 A. No, I don't agree with that at all. You know,
10 as the Order we've received from this West Virginia
11 Commission, we are to install the ELG equipment and move
12 forward with that equipment. And as by the rules of the
13 EPA for that equipment, you must install that equipment
14 as soon as possible. And so for us to do that, we have
15 to, one, be the operator of Mitchell Plant, which we are
16 currently not. These agreements change us to the
17 operator.

18 Two, the permits must be in Wheeling Power's
19 name. They are currently in Kentucky Power's name.
20 These agreements allow us to move those permits to our
21 name. And then three, I cannot start the physical ELG
22 work in the field until the permits are moved and applied
23 for in West Virginia under Wheeling Power. That is why
24 these agreements are needed.

25 Q. Are you aware of any deadline for the sale to

1 Liberty of Kentucky Power to be closed?

2 A. So like I said earlier, my understanding is it's
3 the second quarter of this year. But also as I said
4 earlier, we need approval in West Virginia and Kentucky
5 of these agreements, plus a FERC approval. And so when
6 you do the math, it puts you way past the second quarter.
7 We need these agreements so I can start the physical ELG
8 work in the field or we could be in jeopardy of me not
9 basically following out the agreements that this
10 Commission has asked us to do.

11 Q. Okay. Do you recall the Consumer Advocate had a
12 line of questioning regarding the negotiation of the
13 terms of these proposed agreements, where you testified
14 that AEP or American Power (sic) Service Corporation
15 presented both Kentucky and Wheeling Power in drafting
16 the originals of these agreements? Is that accurate?

17 A. Yeah. We rely on the legal team and the Service
18 Corp. to help us with those types of things, yes. But
19 they draft them. They don't approve them.

20 Q. Sure. So would it be accurate to say that your
21 role was approval, reviewing approval of the terms, not
22 the original drafting of the agreement?

23 A. We were involved in some of the drafting and
24 changing some of the language that was in them. Now, of
25 course, the legal team reviews it and says, is it

1 appropriate type of language? Number one. And then two,
2 if it is, it gets incorporated into the agreement. And
3 then between Kentucky Power's owner, Brett Mattison, the
4 other voting member and myself, we agree and vote on ---
5 if we agree, we vote and we get agreement to move forward
6 with whatever the modification may be.

7 Q. So the initial effort of drafting is essentially
8 handled by American --- AEP's legal team and then
9 presented to you for comments, revisions, approval,
10 whatever beyond that? You're not involved --- Wheeling
11 Power's not involved in literally drafting the original
12 proposed agreements?

13 A. So to say pen to paper, the answer is no, but
14 Wheeling Power is definitely involved, because we had to
15 take the Order from this Commission along with the Order
16 actually Kentucky Power's involved from the Order from
17 their Commission. Those were the actual input documents
18 that you had to use to modify the existing agreement.

19 Q. Sure. But that was executed by AEP's legal
20 team, ---

21 A. Yes.

22 Q. --- initially? To return to the question from
23 Consumer Advocate, do you not see a significant conflict
24 of interest if AEP is negotiating the terms --- the
25 initial terms of these agreements with the potential

1 purchase of Liberty on behalf of both Kentucky Power and
2 Wheeling Power when they're trying to enhance the value
3 of Kentucky Power for the benefit of that transaction,
4 when that enhancement operates to the detriment of the
5 future plans of Wheeling Power?

6 A. I do not. So certainly they're the legal team,
7 but they're not the voting member on the committee. I am
8 for Wheeling Power. And we have modified and changed
9 those agreements based on my input and my team's input
10 right here in Charleston. And that input is to protect
11 the customers in West Virginia.

12 Q. Fair enough. Regarding the original agreement,
13 which I understand has been supplanted, the original
14 proposed Ownership Agreement and the wording of 9.6, and
15 its fair market value calculations and buyout procedure,
16 did you have input in how that would directly or did you
17 simply approve the original language?

18 A. I was involved as we tried to put that language
19 together.

20 Q. Why did you pursue that language as it read the
21 first time?

22 A. Well, we thought that it was trying to comply
23 with Orders that we have out of both Commissions,
24 Kentucky and West Virginia. And we thought that it gave
25 a solution set in the future on how to get to a fair

1 value for an asset in the future. That's why we agreed
2 to it that way. Clearly folks didn't agree with what we
3 proposed, feedback in the Kentucky case, feedback in the
4 FERC discussions that were had, and then feedback from
5 here. So we changed it and that's where we came up with
6 this modified proposal that's in here today.

7 Q. Now you said feedback from here. We've had no
8 proceedings where the feedback would have been provided
9 regarding that revised agreement before today; is that
10 correct?

11 A. There was a FERC information session around this
12 and there was feedback provided in that that folks did
13 not approve of the fair market values.

14 Q. But no party from this matter. I mean, there
15 may be similar parties. We're not one to the FERC,
16 but ---.

17 A. You were not there, but there were parties that
18 are in this room that were involved in that discussion
19 that were not in favor of what we have.

20 Q. Okay. Was it important to you, in drafting the
21 original arrangement in 9.6, that it include the language
22 that it shall be transferred, the interest of Kentucky
23 Power to Wheeling Power in 2028 in the absence of mutual
24 agreement? Was that an important part of that to you?

25 A. It's something you have to consider, you know,

1 because, you know, the Order that we have here basically
2 indicated that we will install the ELG equipment. The
3 West Virginia customer will be solely responsible for
4 that cost. And for that, it was preserving the right to
5 run the entire facility past 2028. And so then it
6 automatically puts into play how do you resolve anything
7 after 2028, because Kentucky gave an Order that said
8 basically come 1/1/29, it's not going to be an asset that
9 I'm going to operate. So it automatically put into place
10 how do you address that. So the language that we tried
11 to use and the verbiage that we were using and our best
12 guess was the way to try and address that.

13 Q. I agree with you, for what it's worth. But then
14 in the transition to the revised version of 9.6 with the
15 unit interest swap, I assume you're involved intimately
16 in that drafting?

17 A. Yes, sir.

18 Q. The revised version of 9.6, would I be correct
19 that it provides no way for Wheeling Power or West
20 Virginia ratepayers to compel the transfer of the
21 interest of Kentucky Power, nor prevent Kentucky Power,
22 or Liberty or anyone else it may transfer to from simply
23 retiring that unit?

24 A. So the language is clear, right. So we can
25 always negotiate a Sales Agreement between Kentucky Power

1 and Wheeling Power. And then certainly that would be
2 brought to this Commission and the Kentucky Commission
3 for approval. That option still exists today. This
4 option that's in there now is, is if we cannot get
5 agreement there, then it forces an option into this unit
6 split option. That's what we have now. And the unit
7 split option was to preserve --- our belief, preserve the
8 order in West Virginia that says you need to be able to
9 run these assets past 2028.

10 Currently today, I only --- Wheeling Power only
11 owns 50 percent of the facility. Kentucky Power owns the
12 other 50 percent. So it is going to be very hard to
13 dispatch half of a unit that someone else owns that says
14 I can't run it past '28. So the default was then let's
15 try this option to where we can then give each owner a
16 unit, divide up the shared equipment. And that was a
17 fair way to move forward in the future.

18 Q. You referenced the Order from this Commission in
19 October, saying that it must --- that the sole benefit
20 and capacity beyond 2028 will transfer to Wheeling Power
21 to West Virginia ratepayers. How on earth does the
22 revised agreement provide any assurance that Kentucky
23 Power or Liberty is prevented from simply retiring that
24 and in a way, slowing away the investment that West
25 Virginia ratepayers are making along the way?

1 A. That is a risk here. There is no doubt about
2 it. You know, if Kentucky Power is actually able to buy
3 --- Liberty's able to buy Kentucky Power, which we don't
4 know that yet, but if that happens, of course, you know,
5 they'll be the new owner. What their plans are with the
6 unit, I don't know that today. But I do know what the
7 Kentucky Commission has said in Kentucky is that you are
8 going to install CCR equipment on that unit. That unit
9 will run through 2028 to the benefit of the Kentucky
10 customer. And whether Liberty owns Kentucky or whether
11 technically Kentucky Power still owns Kentucky, we're
12 going to run that unit and maintain that unit for the
13 benefit of the customers. That's what's going to happen.

14 Q. Right. Understanding for sure that the revised
15 version 9.6 protects Wheeling Power's ability to run one
16 unit. But does it in any way protect their ability to
17 run the entire plant. Would you agree with that?

18 A. We have the provision to buy the other unit, if
19 we so choose.

20 Q. In the absence of that agreement, can you still
21 negotiate a purchase of that --- their interest?

22 A. Yes.

23 Q. We talked about I believe with Mr. Kerns some of
24 the issues that may arise with the two companies that
25 have joint ownership of Mitchell having divergent

1 interests which may arise if this sale to Liberty is
2 consummated. You said you don't have any idea what
3 Liberty's plans are, understandably. Are you aware of
4 the statement that Algonquin, the parent of Liberty
5 Utilities, CEO made at the time of the announcement of
6 the sale regarding their intentions for Kentucky Power?

7 A. I'm not.

8 Q. For your information, quote, they saw this
9 transaction as an opportunity to replace over one
10 gigawatt of rate-based fossil fuel generation with
11 renewable energy. Would you describe that goal, whether
12 noble or not, to be in line with Wheeling Power's?

13 ATTORNEY BLANKENSHIP:

14 Objection. The witness has already
15 said he's not familiar with the statement.

16 CHAIR:

17 I think he can answer that.

18 BY ATTORNEY ALTMAYER:

19 Q. Do you want me to rephrase?

20 A. Yes, please.

21 Q. Say it again? Considering that statement, let's
22 assume it was said. Someone who made that statement,
23 would you consider their future interests to be in line
24 with Wheeling Power's regarding the Mitchell Plant?

25 A. So like I said, I don't know the announcement,

1 but so is that announcement referenced solely to Kentucky
2 Power? They're a bigger utility than just Kentucky
3 Power. So I don't know what they're retiring or offering
4 to retire. Don't know the answer to that. Is it in
5 alignment with what we're planning to do? That is not in
6 line with what we're planning to do. We have an Order
7 from this Commission that says make the investment to
8 keep the asset at least in play through 2028 and preserve
9 it for longer and that's our plan.

10 ATTORNEY ALTMAYER:

11 Thank you. Can I have a second just to
12 go over my notes here, Chairman?

13 BY ATTORNEY ALTMAYER:

14 Q. Just one more line of questioning. You've said
15 --- testified already here that you don't know what's
16 been going on in the Kentucky proceedings generally.
17 You're not involved. But you were involved in creating
18 the revised version 9.6; is that correct?

19 A. Yes.

20 Q. What concerns --- what was your understanding of
21 the concerns that needed to be addressed in revising 9.6?

22 A. I think the biggest concern was is the value
23 that was going to be determined for an asset that's not
24 owned by this Commission. And then the concern of the
25 other Commission was someone trying to assign a value to

1 an asset. And so because of that, that's why we got rid
2 of the fair market swap and we came up with this unit
3 swap as a way that would be fair and balanced in probably
4 the way to look at it on a way to move forward.

5 Q. Given the fact that if these ownership
6 agreements are approved and the ELG investments happen
7 and 100 percent of those costs are borne by West Virginia
8 ratepayers, your understanding that they're 50 percent
9 owners between Kentucky and Wheeling Power equitably. Do
10 you believe that they continue to have equal interest in
11 the Mitchell Plant, once those investments begin?

12 A. And so the agreements that we put out in front
13 of everyone address that very clearly. So the ownership
14 of the ELG investments will be solely on Wheeling Power's
15 books. It will not be on the Kentucky Power's books.
16 And so from that perspective, Wheeling Power will have
17 basically more ownership of the asset than the other one.
18 But holistically, it's still a 50/50 ownership of that
19 facility, until something else is determined for a sale
20 price.

21 Q. Right. And so in drafting these ownership
22 agreements knowing that in the future the investment ---
23 the amount of investment Wheeling Power's making in this
24 facility will outpace Kentucky Power pursuant to the
25 orders, don't you think it would be important to

1 definitively address the change of ownership at the end
2 of this term, assuming a mutual agreement isn't arrived
3 on --- upon.

4 A. We did. I mean, that's why we actually came up
5 with the very first fair market value. We thought that
6 did that. Based on feedback we have from folks that are
7 involved in cases in both states, there was a lot of
8 pushback on there. We came up then with the unit swap
9 arrangement. It appears there's a lot of pushback on
10 that in both states. And so in this proceeding we've
11 also offered to just drop 9.6, if that so would move this
12 forward. But timing is of the essence. So we just can't
13 keep going back and forth between Commissions and getting
14 more dates, more time, more hearings because the longer
15 we do that, the longer I hold off on installing ELG
16 equipment. And it would then put me then in violation of
17 the EPA's rules to get this equipment installed.

18 Q. Would it be possible to simply approve the
19 change --- for this Commission to approve the change of
20 control alone and leave the rest of the agreements to a
21 future proceeding?

22 A. Well, we think we need both, because we think
23 this lays the groundwork for the future. No matter what,
24 this discussion has to be had and we have to resolve it.
25 And so our belief is, is this framework does not assign

1 ownership or a price. It assigns a framework to figure
2 that out in the future and that's what we're asking for.
3 But as I've said, if there's just too much pushback,
4 we've offered to drop 9.6 is an effort to keep this
5 moving.

6 Q. Would you offer to drop the Ownership Agreement
7 entirely ---

8 A. No.

9 Q. --- and simply execute the Operations Agreement,
10 which would allow the control to change over and allow
11 you to apply for your permits?

12 A. No, because the Ownership Agreement addresses
13 the permit piece. It addresses the owner --- it
14 addresses the operator piece. We need both to make this
15 happen.

16 Q. Well, I would argue that the pillar of the
17 Ownership Agreement is how it's on around in 2028 that's
18 coming. And as you've testified here, that the urgency
19 is as soon as the end of 2025. So do you think it would
20 be prudent to defer that, for this Commission to defer
21 that in the future and not bring that to a head right now
22 as you're suggesting the entire agreement needs to be?

23 A. So I think we need to get an agreement between
24 both Commissions as soon as possible, at least on this
25 piece, to allow me to do the ELG work, first and

1 foremost. These agreements also then allow you to solve
2 the later piece at a little later time when you have some
3 more time. But to tie up a decision in the future for
4 something I know I have to do today is going to be
5 detrimental to the project.

6 ATTORNEY ALTMAYER:

7 Okay. No more questions, Chairman.

8 CHAIR:

9 Thank you. Mr. Head?

10 ATTORNEY HEAD:

11 Thank you.

12 CROSS EXAMINATION

13 BY ATTORNEY HEAD:

14 Q. Good afternoon, Mr. Beam.

15 A. Good afternoon, sir.

16 Q. Do you have a copy of your Rebuttal Testimony
17 from April 4th?

18 A. I do.

19 Q. Could you please turn to page 4 of 17? In
20 response to a question asking you to explain further why
21 these concerns are being raised prematurely, down at
22 lines 12 through 17, you state; therefore, all the
23 theoretical and hypothetical scenarios that are troubling
24 the other parties today may be amicably resolved in
25 future years. The parties concerns; therefore, are the

1 result of speculation that would be premature to address.
2 In any event, all of the parties to this case will be
3 able to present their positions and make their arguments
4 about whatever actual and specific scenarios may be
5 presented to this Commission in the future for its
6 decision.

7 My question involves Article 12.4, which is
8 actually from your Supplemental Direct Testimony, CTB-S2.
9 12.4 is the unit interest swap dispute. Do you believe
10 that the language of this Article 12.4 provides this
11 Commission the authority to exercise, or I'm sorry,
12 allows this Commission to exercise its authority to
13 modify agreements between utilities?

14 A. I want to ask you to repeat the question again.
15 I'm sorry.

16 Q. Can you point to somewhere in article 12.4 where
17 this Commission would be able to exercise its authority
18 under West Virginia state laws to modify any agreement
19 that was reached --- that was ordered by the arbitration
20 clause in this Article 12.4?

21 A. Oh, so you're in the arbitration clause?

22 Q. The unit interest swap dispute.

23 A. Okay.

24 Q. Page 23 of 40 at the top is CTB-S2.

25 A. Yes, I'm there.

1 Q. So let me start over. Section 12.4A, starting
2 on the next page, which is 24 of 40, it states that
3 judgement on the award rendered by such arbitration shall
4 be final and binding upon the owner and not subject to
5 appeal or review. And down to Section 12.4(b), it says
6 that the decision of the Arbitrator shall be final and
7 binding upon the owners and not subject to appeal or
8 review. The Arbitrator shall have the sole power to rule
9 on any challenge to its own jurisdiction without any need
10 to refer such matters first to a court.

11 Next section 12(c) --- 12.4(c) says that the
12 dispute resolution procedures of this Article 12 shall be
13 the sole and exclusive remedy of the parties hereto and
14 each of the parties hereto agree, on behalf of itself and
15 its affiliates, to be fully bound by all arbitral awards
16 or decisions resulting from a dispute resolution
17 procedures of this Article 12.

18 Keeping all that language in mind, my question
19 is, if this goes to arbitration, which seems possible
20 since this is in the --- this is in the proposed
21 agreement, what changes could this Commission make to the
22 agreement reached that wouldn't be forbidden by the
23 language of this unit swap dispute Article 12.4?

24 A. Yeah. It's a great question. So the way this
25 article is written and the way this whole section is

1 written is that is the Arbitrator is ruling on the
2 options between owner A and B. So for here, it would be
3 Kentucky and Wheeling. But the thing that we don't want
4 to lose sight of, though, is then that answer is then
5 brought to each jurisdictional for approval. So for
6 instance, we would make a filing in West Virginia for
7 approval and then of course Kentucky would make a filing
8 in Kentucky for approval, depending on what the option
9 --- what the issue is.

10 But what we're saying here is that the
11 Arbitrator --- what that really means is the Arbitrator
12 has to give an answer that's final and binding between
13 the two owners. Then the owners must seek approval of
14 whatever the issue is that the Arbitrator's ruled on, if
15 it would either change ownership or anything like that.
16 You have to come back to your respective Commissions for
17 approval of whatever that may be. So we're --- nowhere
18 in here are we waiving the right of taking the right of
19 way from either Commission to basically have the ability
20 to review what we're doing and then of course approve
21 what we're doing.

22 Q. Sure. But in the event that you come to the
23 Commission, this Commission or the Kentucky Public
24 Service Commission, but speaking of the West Virginia
25 Public Service Commission, say there's a portion of the

1 Arbitrator's decision that this Commission doesn't agree
2 with. Would approving this contract or this agreement
3 now not make it --- make this Commission in violation of
4 this agreement or the Companies in violation of this
5 agreement if it were to change any ---? If there were to
6 be anything but a rubber stamp of the Arbitrator's
7 decision, would it not be in violation of these terms?

8 A. So I'm certainly not an attorney, but my
9 understanding is pretty clear, that if whatever solution
10 we would take to the jurisdictions for approval, and if
11 they would deny that, you would basically start this
12 process really, for all intents and purposes, over.

13 Q. And so in this process, too, it defines that
14 each owner must deliver to the Arbitrator a solution set.
15 So you know, don't know what that is because you don't
16 know what the issue is you're trying to resolve, of
17 course. But the Arbitrator's really only then allowed to
18 rule on either the one that Company A offered or the one
19 that Company B offered. So here that would be Kentucky
20 or Wheeling Power.

21 They can't go out and create a new answer to the
22 question. And so ideally you would think that both of
23 these companies run and operate these facilities. They
24 understand this business. So the Arbitrator would be
25 ruling on what I would assume would be a

1 commercially-acceptable solution. You'd bring that to
2 your Commission for approval and ideally they would
3 approve if it was fair and prudent.

4 Q. Ideally. And I understand that. You know, my
5 question is one of these two Commissions, either one,
6 were to find just, you know, one term or, you know, one
7 portion of that agreement not in the interest of the
8 state's ratepayers, and were to deny it, you're saying
9 the whole process would start over? It wouldn't amend
10 the decision of the Arbitrator. It would just --- would
11 it nullify it?

12 A. Like I said, I'm not an attorney, but my
13 understanding is it would start over. It would kind of
14 resemble the process we're currently in today.

15 Q. Okay. Sticking with your Rebuttal Testimony
16 that we were on before. Let's see. Page 15 of 17. You
17 stated that setting aside Section 9.6 would still be
18 reasonable. Is that an accurate summary?

19 A. That is something that we have offered in an
20 ability to try and get agreement between both
21 jurisdictions, yes.

22 Q. And so on the next page, on page 16, is it your
23 testimony that if Article 9.6 is stricken, then Article
24 12.4 should be stricken as well?

25 A. Yes. So what we would say there is if 9.6 was

1 dropped, everything related to 9.6 would then have to be,
2 you know, removed from the document. So we believe that
3 the majority of that arbitration piece in 12.4 would go
4 with it.

5 Q. Okay. Thank you. I just have a couple more
6 questions. So with your Supplemental Direct Testimony
7 back to the CTB-S2 attachment, which is the redline
8 version of a modified proposed Ownership Agreement
9 showing the comparison with the original agreement. Page
10 5 of 40, and I'm looking at the numbers at the top of the
11 page, not the bottom.

12 A. So I don't --- I'm sorry. The copy I have only
13 has page numbers on the bottom. So if you could maybe
14 tell me ---

15 Q. Sure. It's ---

16 A. --- what article you're under and the number.

17 Q. --- number three, page three, the I'm looking
18 at, and it's Article 1.8.

19 A. Article 1.8. It starts with notwithstanding the
20 provisions. That's where you're at?

21 Q. Yes, sir.

22 A. Okay. I'm there.

23 Q. Thank you. So Article 1.8 says notwithstanding
24 the provisions of this Article 1, to the extent that
25 either owner funds or bears an amount greater than 50

1 percent of any capital expenditures or ELG Capital
2 Expenditures as contemplated in the Capital Budget or
3 this Agreement, the directly resulting portion of any
4 property, plant and equipment, or improvements thereto
5 shall be owned by the Owners in proportion to their
6 respective amounts funded. Now, if you would keep that
7 open, but please pull out your Rebuttal Testimony from
8 April 4th and page 5 of 17.

9 A. Okay.

10 Q. The question was, is the unit interest swap as
11 proposed in Section 9.6 of the revised Ownership
12 Agreement a reasonable outcome? Your answer was yes.
13 Even though Wheeling Power Company owns 50 percent of the
14 Mitchell Plant and will pay for 100 percent of ELG, it's
15 not possible to assert 100 percent unilateral control
16 over the Mitchell Plant under any condition because
17 Kentucky Power has equal rights to the other 50 percent
18 undivided interest in all non-ELG parts of the plant.
19 Are those two statements from your Direct Testimony and
20 the other from your Rebuttal Testimony consistent?

21 A. So I certainly believe they are, yes. And so
22 what we're trying to basically say here is that based on
23 the Order that West Virginia gave us, we are moving
24 forward with ELG investment. And based on the Order
25 Kentucky gave us, they will not pay for any of the ELG

1 investment. So West Virginia agreed to pay for it all.
2 And so what these sections are trying to say is, is so
3 100 percent of the cost of ELG will be charged to the
4 West Virginia customer and it will be put on Wheeling
5 Power's books. Kentucky Power will not see any book
6 value increase for their portion of the units for ELG
7 investment.

8 The Q and A that you referenced on page five,
9 what we're trying to say there is, is even though that
10 investment is happening and Wheeling Power and the West
11 Virginia customer are funding it, each Kentucky Power and
12 Wheeling Power both still only control 50 percent, own 50
13 percent of the undivided interest of the Mitchell Plant
14 except for the ELG investment, which would be owned 100
15 percent by the West Virginia customer.

16 Q. So but section --- Article 1.8 in the agreement
17 states that in the event that either owner funds or bears
18 an amount greater than 50 percent of any capital
19 expenditures, they will own it in proportion to their
20 respective amounts funded. So is it your testimony that
21 West Virginia's interest in capital investments, I'm
22 sorry, capital costs are capped at 50 percent regardless
23 of investments and shared capital expenditures?

24 A. No. I'm sorry. I must not be being clear. So
25 what we're saying is, is Wheeling Power and the West

1 Virginia customers will be responsible for 100 percent of
2 the capital costs for ELG and any operations cost
3 associated with it. That's what we're saying. And then
4 what we're also saying, is even though that's going to
5 happen, undivided ownership interest still stays 50
6 percent Kentucky Power, 50 percent Wheeling Power.

7 ATTORNEY HEAD:

8 Okay. Thank you, sir. I have no
9 further questions, Your Honor.

10 CHAIR:

11 Commissioner Larrick?

12 COMMISSIONER LARRICK:

13 I have nothing further.

14 CHAIR:

15 Commissioner Raney?

16 COMMISSIONER RANEY:

17 Yes, Madam Chairman. I've got some
18 questions here. Mr. Beam, like you, I didn't go to law
19 school. So I'm trying to fix who all was --- sometimes
20 maybe referred to as gibberish, but nevertheless. As I
21 say, you've got to get it down to fifth grade language or
22 level for me to understand.

23 This line of questioning Mr. Altmeyer
24 and Mr. Head, what would happen, Mr. Beam, if we just
25 simply approved the ownership change, just did an order

1 and said Wheeling Power's the operator? Would that be
2 all right for a little while?

3 A. So --- but the way the documents are currently
4 drafted, though, the Ownership Agreement is where it
5 allows us to do that. And that's why we need the
6 Ownership Agreement and the O & M agreement. And so ---
7 and I mentioned earlier in this hearing under testimony
8 was that these exact same documents are filed in front of
9 Kentucky today.

10 Q. Right.

11 A. And so if we were to modify or change these
12 documents in any way, then you have --- you basically
13 kind of start this entire process over again. And so
14 that's why we're asking if the documents could be
15 approved as written or filed or if there's just too much
16 concern around 9.6, we would be willing to drop 9.6 out
17 and move forward with the approval of the documents and
18 we basically would address really the provisions of 9.6
19 in the future.

20 COMMISSIONER RANEY:

21 So in essence that would be what I
22 initially asked, would it not, if you dropped 9.6?

23 A. In a roundabout way, it would get you there,
24 yes.

25 COMMISSIONER RANEY:

1 Okay. Perhaps unrelated, but can you
2 tell me what the stockpile is at Mitchell today?

3 A. I don't know. I'm sorry.

4 COMMISSIONER RANEY:

5 Huh?

6 A. I honestly don't know.

7 COMMISSIONER RANEY:

8 We're very concerned about those kind
9 of things.

10 A. Witness Kerns could have answered that, I bet
11 you, but I cannot. I'm sorry.

12 COMMISSIONER RANEY:

13 It's amazing how they get out of here,
14 isn't it?

15 A. But I mean, we can --- if you're interested, we
16 can certainly get it for you.

17 COMMISSIONER RANEY:

18 Yeah. We're very much interested in
19 those kinds of things. That doesn't need to be a
20 post-hearing exhibit.

21 A. We'll just get it for you.

22 COMMISSIONER RANEY:

23 It can be a text, if necessary. What
24 about Conner Run? What happens here with Conner Run in
25 all of this?

1 A. Great question. And so sticking with the Orders
2 from this Commission. So Conner Run currently is not a
3 Wheeling Power asset. It is a Kentucky Power asset. And
4 no matter what would happen with Kentucky Power's
5 ownership, Wheeling Power would never assume any Conner
6 Run assets going forward.

7 COMMISSIONER RANEY:

8 Do you need Conner Run to continue to
9 operate?

10 A. No, sir.

11 COMMISSIONER RANEY:

12 Okay.

13 A. The operations of the facility have been changed
14 and it's no longer needed.

15 COMMISSIONER RANEY:

16 I see. So Conner Run is not active at
17 this point at all?

18 A. Not active from the power plant's usage, no. I
19 believe the mine is still using it.

20 COMMISSIONER RANEY:

21 I see. Okay. I think I asked Mr. Kern
22 this and perhaps I'm sure you heard it. You were sitting
23 back there. But in our Order in October, we talked about
24 operating the plants at 69 percent capacity whenever
25 possible or hopefully. I don't think we even had that

1 qualification on it. But has Wheeling Power been able to
2 achieve that?

3 A. So I would think the answer to that is no. I
4 think Witness Kerns maybe referenced that a little bit.
5 So there's all kinds of things that go into, of course,
6 achieving that. As you're well aware. Right? So
7 scheduled outages, forced outages, the amount of fuel you
8 have on the ground available to you. And currently where
9 we sit today on that facility, we have a couple of fuel
10 contracts that are not meeting their contractual
11 deliveries. And so it is shorting us on fuel for that
12 facility and or others.

13 And so we are managing our fuel in a way that
14 will make those units available when the market is most
15 volatile, or another way to say it is when energy's the
16 highest priced. And then we will dispatch those units to
17 our customer's benefit to minimize that volatility.

18 COMMISSIONER RANEY:

19 With the hopeful achievement of 69
20 percent?

21 A. Well, or more if we can get the fuel. Yes, sir.

22 COMMISSIONER RANEY:

23 Okay. Let me see. I, like Mr.
24 Altmeyer, have got to pick through all these notes that I
25 --- I think you've answered almost everything here.

1 Well, the one question I asked him, and I think you've
2 probably answered it in a multiple ways, but presuming if
3 you separate this out, 50 percent belongs to Wheeling and
4 50 percent belongs to Kentucky. Can you service the West
5 Virginia customers that you have with the Wheeling Power
6 50 percent of Mitchell?

7 A. Yes, we can.

8 COMMISSIONER RANEY:

9 Okay. Madam Chairman, I think that's
10 all the questions I've got. I'm sure I'll think of some
11 when it's all over with.

12 CHAIR:

13 That's okay. I've got a lot of
14 questions. And if you remember some, you can chime in.
15 Mr. Beam, when can Wheeling Power actually start
16 construction of ELG? Forget all of the agreements. When
17 can you actually boots on the ground?

18 A. We'll need permits in hand to be able to do
19 that. And so we can't apply for the permits yet because
20 we're not the operator yet. So maybe clarify a little.
21 So engineering work has been ongoing since the Order we
22 received here. We release the engineer within a week
23 after the Order. Detailed engineering is currently
24 ongoing as we speak. But physical work in the field,
25 moving first, building things, we cannot do that until we

1 have the permits.

2 CHAIR:

3 But you have the equipment and you have
4 all of the stuff you need to do the ELG?

5 A. We have not bought all the equipment yet. We
6 will --- detailed engineering has to get far enough along
7 before we can place the purchase orders.

8 CHAIR:

9 Okay. Let's go back to Conner Run
10 again. When Wheeling acquired a 50 percent undivided
11 interest in Mitchell, we required that Wheeling would not
12 be responsible for the Conner Run dam or impoundments.
13 We required that AEP provide a guarantee that if there
14 were any future costs related to Conner Run, it would
15 indemnify Wheeling against any such costs.

16 I do not recall that Kentucky was
17 similarly insulated from costs related to Conner Run.
18 Under the proposed Transfer Agreement, if there are
19 judgements or costs for closing, dewatering, remediating,
20 repairing or anything else needed to the fly ash and
21 bottom ash impoundments, including the dam, is it APCo's
22 position that Kentucky's liability transferred to
23 Wheeling or does Kentucky or AEP retain those liabilities
24 and responsibilities?

25 A. It's ---.

1 CHAIR:

2 And I hope you don't ask me to repeat
3 that.

4 A. I will not. It's a great question. And so
5 currently Wheeling Power has no association with Conner
6 Run. And no matter what would happen in these type of
7 agreements that we're talking about, none of that would
8 ever come back to Wheeling Power. So if Kentucky Power
9 decides to keep the unit, of course they would keep their
10 50 percent share of that. AEP owns the other 50. The
11 parent company, AEP, under a company called AEG, owns the
12 other 50 percent.

13 CHAIR:

14 And that includes the impoundment and
15 everything?

16 A. Yes.

17 CHAIR:

18 Okay.

19 A. And we actually define Mitchell Plant in these
20 documents. The Mitchell Plant definition of what
21 Mitchell Plant really is, is defined as everything except
22 Conner Run.

23 CHAIR:

24 Okay. Okay. On page ten of your
25 Rebuttal Testimony, you state, pursuant to Exhibit C,

1 Wheeling Power and Kentucky Power can negotiate economic
2 equalization payments in the event the unit interest swap
3 provision is triggered. Such payments would account for
4 differences between the two companies, including any
5 unequally shared capital expenditures like ELG. Please
6 explain what is meant by economic equalization payments
7 and give me an example of how an economic equalization
8 payment would work in the unit interest swap scenario.

9 A. Okay. That's also a really good question. So
10 the way we've determined this to work is so the West
11 Virginia Commission and the West Virginia customers and
12 Wheeling Power are putting in all ELG equipment a hundred
13 percent. Costs are also associated to us for that. So
14 if we would do a unit swap agreement, as anticipated in
15 this agreement, what that really means is, is you're
16 going to have really each company will own a single unit.
17 And of course then we'll try to dispatch that unit to
18 however they choose.

19 The problem, though, is, is we've now installed
20 ELG equipment so both units can run. And those costs
21 were fully to the West Virginia customer. So for that
22 unit agreement swap to work, under these agreement
23 payments that you referenced, basically either Kentucky
24 Power or whoever would be Kentucky Power's owner would
25 basically pay the West Virginia customers for that

1 equipment. So that could be done through a Lease
2 Agreement to use it, Operation And Maintenance Agreement,
3 purchase --- you know, we'd have to figure all that out
4 in the future, right, but that's how that would work.

5 CHAIR:

6 Okay. Thank you. You state on page 14
7 of your Rebuttal Kentucky Power has an undivided 50
8 percent interest in the Mitchell Plant and Wheeling Power
9 is investing in ELG and the entire plant to preserve the
10 option to operate the plant past 2028. The Kentucky
11 Public Service Commission has found in its previous
12 Orders that the Mitchell Plant will essentially no longer
13 be in Kentucky Power's generation mix beyond 2028. Do
14 you agree that without the ELG investment, the plant
15 cannot be operated after 2028?

16 A. Agree 100 percent, yes.

17 CHAIR:

18 If the plant cannot be operated after
19 2028 without the ELG investment, shouldn't the Kentucky
20 50 percent share be valued as a plant that cannot
21 operate?

22 A. And so clearly not an accountant here, but
23 there's value in that asset. What it is, I don't know.
24 We would have to figure that out going forward. But as I
25 said earlier, right, it would be the Wheeling Power's

1 benefit and our customers' benefit to, of course, make
2 that as cheap as possible. But what that value is, I
3 don't know.

4 CHAIR:

5 When APCo abandoned the units at
6 Phillips Form and retired them from being active
7 generation units, how much did APCo receive from the sale
8 of the APCo units and what was the book value of those
9 units?

10 A. Oh, boy. So the actual dollar value, I do not
11 know that was on the books. And the sale was done for
12 the Form Plant was actually what's called a negative
13 sale, which means we paid the person to take it. We can
14 certainly get you those numbers, but off the top of my
15 head, I don't have them.

16 CHAIR:

17 I would like those to be a post-hearing
18 exhibit. Are those numbers confidential?

19 A. Yes.

20 CHAIR:

21 So I would like that to be a
22 post-hearing exhibit. I guess Commission Post Hearing
23 Exhibit 2 (sic). And I want the same information for
24 Kanawha River and Glenn Wynne.

25 (Commission's Post Hearing Exhibit 3

1 was requested.)

2 A. And just maybe a little update. So Kanawha
3 River and Glenn Wynne are still owned by the company, so
4 just so you know. But we'll get you all the stuff.

5 CHAIR:

6 Okay. So do you have a value for those
7 plants on your books?

8 A. We'll have to get it for you, yeah.

9 CHAIR:

10 Okay. Okay. Thank you. Do you think
11 there's any reasonable scenario where Kanawha --- or
12 Kentucky Power could refuse to share an ELG investment in
13 any way and yet after 2028 still rely on its 50 percent
14 interest for either meeting its PJM capacity obligations
15 or to produce energy for its use?

16 A. Okay. I hate to do this, but can you repeat
17 that again? I'm sorry.

18 CHAIR:

19 Do you think there is any reasonable
20 scenario where Kentucky Power could refuse to share an
21 ELG investment in any way and yet after 2028 still rely
22 on its 50 percent interest for either meeting its PJM
23 capacity obligations or to produce energy for its use?

24 A. Okay. And so the answer to that, I believe is
25 definitely no. And my supplemental testimony, too, on

1 page 14, my understanding from what's going on in the
2 Kentucky hearings and stuff that is going on over there,
3 and I put it in my testimony is that the Kentucky
4 Commission may actually require Kentucky, if they want to
5 run it past '28, to apply for a CPCN for that capacity
6 and energy.

7 So basically it would be like they would have to
8 go apply like they were building a new facility. So from
9 that perspective, we believe Kentucky Power come, you
10 know, 12/31/28, we believe this asset is really --- their
11 opinion is they're out.

12 CHAIR:

13 Is it possible to construct a limited
14 amount of ELG compliance equipment that would be used and
15 useful for only one of the Mitchell units?

16 A. Yes. I think certainly not the design engineer
17 on this, but I think the answer could always be yes. I
18 think that's probably a more expensive option at the end
19 of the day. The amount of gallons of flow that run
20 through this facility is in the hundreds of thousands per
21 hour that you have to deal with. And so when you start
22 talking about that kind of flow, it's very expensive to
23 start dealing with it. And the best way to deal with it
24 is on a bulk. And bulk would be two units at once versus
25 two standalone separate units.

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CHAIR:

Assume the ELG compliance equipment that can serve both units is installed and paid for by only Wheeling, and assume that the proposal to divide ownership into two units specific interest is implemented in the future. Under those circumstances, if the owner of the Kentucky unit wanted to operate the unit after 2028, does the proposed sale or Transfer Agreement clearly provide that the entity would have to compensate Wheeling for the investment it made to make that unit ELG-compliant?

A. Yes. That's part of the equalization payments we talked about a minute ago. That's where they would have to pay their share.

CHAIR:

If the ELG compliance equipment that can serve both units is installed and Wheeling did not receive compensation for the ELG equipment, if the plant ownership was divided into two separating generating units under the proposed agreements, can Wheeling withhold permission or forbid the use by the other Mitchell Plant unit operator of the ELG equipment which Wheeling had paid for and owned?

A. So certainly the way the agreements are set up is they couldn't take advantage of the West Virginia

1 customer. I think that's what we're talking about,
2 right, is they would be basically using the West Virginia
3 investment for their benefit. And these are set up to
4 where that should not and cannot happen.

5 CHAIR:

6 Okay. Could you --- do you know where
7 that is in the document?

8 A. Well, so that would be where we would come back
9 and ask for approval. So the Operating Committee, of
10 course, would have to agree on whatever that operation
11 configuration would look like. Of course, then vote.
12 But I will tell you from a Wheeling Power perspective,
13 we're not going to agree to vote on anything that
14 disadvantages the Wheeling customer. And the way these
15 agreements are written up, then it allows Wheeling Power
16 to move forward, if we have to.

17 CHAIR:

18 Okay. On page 15 of your Rebuttal at
19 line 17, you state, as a result, Wheeling Power can only
20 bid its 50 percent share of the Mitchell Plant's capacity
21 and energy in the PJM after 2028 if it has not acquired
22 Kentucky Power's interests. What do you mean by bid
23 capacity in PJM?

24 A. Yeah. So this is talking about what would we
25 do. So --- you know, what this basically says is since

1 we're currently today a 50 percent ownership share of the
2 common facility, along with Kentucky owning the other 50
3 percent, if we're not able to address the ownership piece
4 at the facility and after '28 is over, all I would be
5 allowed to do as Wheeling Power would be to bid in 50
6 percent share of the capacity of the facility. And so
7 for instance, if Kentucky Power would shut down the unit,
8 let's say their ownership unit, I could only bid in 50
9 percent of really what's left. So it would be half of
10 one unit.

11 CHAIR:

12 Do you bid capacity in now?

13 A. We do bid capacity in.

14 CHAIR:

15 Okay.

16 A. It's bid in common. So it's the unit capacity's
17 bid in common today.

18 CHAIR:

19 Okay. Assuming that the word bid can
20 mean either bidding capacity under the RPM construct or
21 counting on self-supplied capacity under the FRR
22 construct, I want you to focus on that sentence and I
23 want to ask you about that testimony from the viewpoint
24 of Kentucky. Would you agree that the sentence I just
25 asked you about in that section of your testimony would

1 accurately describe Kentucky's options by saying Kentucky
2 Power can bid none or zero percent of its 50 percent
3 share of the Mitchell Plant's capacity and energy in the
4 PJM after 2028 if it has not paid for ELG compliance?

5 A. We would agree with that.

6 CHAIR:

7 Okay. Okay. Now let's look at your
8 present Operating Agreement.

9 A. Okay.

10 CHAIR:

11 7.6.2.

12 A. Okay. Give me one second. 7.6.2?

13 CHAIR:

14 Yes.

15 A. Yes, ma'am. I'm there.

16 CHAIR:

17 That section specifies that either
18 party to the ownership of Mitchell can commit and call
19 upon its own use 100 percent of the generation from the
20 plant when the other party does not commit to call on its
21 share of the plant. Considering your testimony from page
22 14 of your Rebuttal that the Kentucky PSC has found in
23 its previous Orders that the Mitchell Plant will
24 essentially no longer be in Kentucky Power's generation
25 mix beyond 2028, doesn't that mean that after 2028,

1 Wheeling can call on 100 percent of the generation from
2 the plant after 2028 and Kentucky Power cannot exercise
3 an option to take its share from the plant after 2028
4 even if it retained 50-percent ownership?

5 A. Yeah. So we don't agree with that. Because we
6 don't own that portion, I don't think we can bid it in,
7 because we're not the owner and there's no contractual
8 agreement with us between them to do something.

9 CHAIR:

10 Okay. So the 50 percent undivided
11 interest doesn't give you that right?

12 A. Yes. We don't think so.

13 CHAIR:

14 Just a minute. I have a few more
15 questions. You said a single Commission cannot determine
16 value of the Kentucky interest. Certainly we can
17 determine the value that we will accept for ratemaking
18 purposes, can't we?

19 A. Most definitely.

20 CHAIR:

21 Okay. And earlier, I think before
22 lunch, you said something about the way the market has
23 changed in the last six months. What did you mean by
24 that?

25 A. Yeah. So that was referencing the cost of

1 energy and where it has went, the cost of fuel and where
2 it has went. I would say probably we are in
3 unprecedented times for where the cost of fuel is. And
4 so of course the cost of fuel impacts the cost of energy,
5 and of course that impacts the customer's bill. So that
6 was my reference.

7 Q. Okay. And as I understand your testimony about
8 the arbitration clause, that's if there is a disagreement
9 between the two owners the Arbitrator would make a
10 decision and then whatever that decision is would have to
11 go to the two Commissions for either approval or
12 rejection?

13 A. Right. Assuming it would be something that the
14 Commission would have to rule on. It could be something
15 as, you know, --- I don't know. It could be something
16 really small. Right? So it could be how do you staff
17 the plant. We wouldn't come back to the Commission and
18 ask that question. But if it's talking about ownership
19 split or ownership share or dispatching and those things,
20 then of course those would be things that we would bring
21 to you.

22 CHAIR:

23 Did APCo ever consider just proposing
24 to this Commission and the Kentucky Commission a Modified
25 Operating Agreement?

1 A. So certainly was discussed and where we've
2 landed on why we have what we have here today is of
3 course there is the possibility that there will be
4 nonaffiliate moving forward. And because of that
5 nonaffiliated, and also because of the new what I'll call
6 cost structures that are going to be in place, we felt we
7 needed certainly more detail on how to do that and also
8 kind of really the instructions on how to comply. And
9 that's why we wrote the Orders --- the agreements how
10 we've written them.

11 CHAIR:

12 Okay. Ms. Blankenship?

13 ATTORNEY BLANKENSHIP:

14 Thank you. Just a few questions.

15 REDIRECT EXAMINATION

16 BY ATTORNEY BLANKENSHIP:

17 Q. Mr. Beam, I'm going to go back to some of the
18 questions you received earlier by Mr. Naum, on behalf of
19 Energy Users Group. Just attempt to clarify things for
20 the record. Mr. Naum had asked you about the Companies'
21 position in revising the proposed Ownership Agreement to
22 contemplate a sale to a third party. Do you recall that?

23 A. I do.

24 Q. And isn't it true, however, that the existing
25 proposed revised agreement that's on the table right now

1 before the Commission does contemplate a sale to a third
2 party because it is not prohibited?

3 A. Yes, that's true.

4 Q. So do you feel there is a need to add any
5 additional provision to allow for that?

6 A. I do not.

7 Q. There were also some questions from Mr. Naum and
8 from others about the option of not approving the
9 Ownership Agreement. And I know you had talked about the
10 fact that the Ownership Agreement talks about the
11 operator. And just for everyone's benefit, because I
12 don't think it was specified, that would be in Section
13 1.5 of the Ownership Agreement, is that correct, which
14 specifies who the operator is?

15 A. That sounds right.

16 Q. Okay.

17 If you want to take a second to look, just to
18 confirm, I think it's on page three. And I'm looking at
19 Exhibit CTB-S2. I need my Readers.

20 A. And you referenced, what was it, 1.?

21 Q. Section 1.5.

22 A. 1.5.

23 Q. If you could just confirm, that's the section I
24 think that we were referring to that addresses the
25 operator of Mitchell. And that's why the Ownership

1 Agreement is important to be included in this request?

2 A. Right. And that --- and I think like I've said
3 several times, that ties into the permitting, which then
4 of course ties into the physical work being able to start
5 onsite.

6 Q. Right. Thank you. And I think you've addressed
7 that a number of times and have been able to clear that
8 up. That the timing and the reason that the time is of
9 the essence in this is because of the goal of meeting the
10 Commission's Orders and of meeting the EPA requirements
11 for ELG guidelines; is that correct?

12 A. Agree.

13 Q. I know you had had some questions from different
14 attorneys about that. Just to be clear, the ELG work
15 that has been initiated and that can be done without the
16 approval of these agreements is only the engineering work
17 and not anything that's required by a permit, which would
18 be moving dirt and construction-type work; is that
19 correct?

20 A. Agree.

21 Q. Okay. There were also some questions earlier on
22 regarding whether or not the timing importance has
23 anything to do with the potential sale to Liberty. Just
24 for the record, does that have anything to do with these
25 Revised Agreements that we're asking to be approved?

1 A. It does not.

2 Q. Would we be here asking for the agreements to be
3 revised and seeking the Commission's approval even if
4 there were no proposed sale of Kentucky Power on the
5 table?

6 A. We would just based on the Orders we've received
7 from both Commissions.

8 Q. And with regard to the revisions that were made
9 to the Proposed Agreement that were not reflected in the
10 minutes in CAD Exhibit, Cross Exhibit Number 2, were
11 those revisions made with any regard to the proposed sale
12 to Liberty?

13 A. No, they were not.

14 Q. And can you explain one more time, just to make
15 it clear, why were those revisions made?

16 A. Yeah. So and I think we said this earlier, but
17 the revisions are trying to get commonality and agreement
18 between both Commissions, Kentucky and West Virginia, to
19 get these agreements approved. Once again, most
20 importantly, change the operator, allow us to apply for
21 the permits so we can start the physical work in the
22 field on the ELG scope of work.

23 ATTORNEY BLANKENSHIP:

24 Okay. Thank you. Just one second,
25 please. Okay. That's all I have. Thank you.

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CHAIR:

Thank you. Thank you, Mr. Beam.

A. Thank you.

CHAIR:

Ms. Blankenship, does that conclude
your witnesses?

ATTORNEY BLANKENSHIP:

It does. Can Mr. Beam be excused?

CHAIR:

I'm sorry?

ATTORNEY BLANKENSHIP:

I was asking, can Mr. Beam be excused?

CHAIR:

Oh, yes.

ATTORNEY BLANKENSHIP:

He has excused himself, I believe.

CHAIR:

I don't know. I think he should sit
here through the rest of it.

ATTORNEY BLANKENSHIP:

Fine by me.

CHAIR:

Yes, he may be excused. Okay. Mr.
Murthy, do you want to call your witness?

ATTORNEY MURTHY:

1 Thank you, Your Honor. For West
2 Virginia Citizens Action Group, Solar United Neighbors,
3 and Energy Efficient West Virginia, we call Jim Wilson.
4 Your Honor, does Mr. Wilson have to be sworn in to
5 testify?

6 DIRECT EXAMINATION

7 BY ATTORNEY MURTHY:

8 Q. Mr. Wilson, could you please state your full
9 name and your address for the record?

10 A. James F. Wilson, Wilson Energy Economics, 4800
11 Hampden Lane, H-A-M-P-D-E-N, Bethesda, Maryland, 20814.

12 Q. You're testifying today on behalf of West
13 Virginia Citizens Action Group, Solar United Neighbors
14 and Energy Efficient West Virginia; is that right?

15 A. That's correct.

16 Q. On March 28th of this year, you submitted Direct
17 Testimony consisting of 17 pages of questions and
18 answers; is that right?

19 A. Yes.

20 Q. That included three exhibits; is that right?

21 A. Yes.

22 Q. Do you have that testimony in front of you?

23 A. I do.

24 Q. Do you have any corrections to that testimony?

25 A. I do not.

1 Q. Mr. Wilson, if you were asked the same questions
2 right now, would your answers be the same?

3 A. They would.

4 Q. Are you ready to answer questions regarding your
5 testimony today?

6 A. Yes.

7 Q. Mr. Wilson, do you adopt your testimony as part
8 of your evidence in this case?

9 A. I do.

10 ATTORNEY MURTHY:

11 Your Honor, Mr. Wilson's testimony is
12 already entered into the record. We ask that it be
13 entered as Exhibit JFM-S.

14 CHAIR:

15 Okay. It can be. And Mr. Porth, Mr.
16 Fisher or Ms. Blankenship?

17 ATTORNEY FISHER:

18 That would be me, Your Honor.

19 CHAIR:

20 Okay. Mr. Fisher.

21 CROSS EXAMINATION

22 BY ATTORNEY FISHER:

23 Q. Good afternoon, Mr. Wilson.

24 A. Good afternoon.

25 Q. I understand from your testimony --- I'm sorry.

1 Hold on. Okay. I understand from your testimony, you
2 have reviewed the Original Proposed Ownership Agreement,
3 as well as the Revised Proposed Ownership Agreement. Is
4 that fair?

5 A. Parts thereof, yes.

6 Q. Understood. And you have focused your analysis
7 on the Ownership Agreement; is that correct?

8 A. I looked at sections of both, I believe.

9 Q. Okay. And would --- and I'm just going to ask
10 you something about the Revised Ownership Agreement real
11 quick.

12 A. Okay.

13 Q. You mentioned possibly adding some additional
14 language regarding, quote, applicable regulatory
15 approvals, end quote. Do you remember that?

16 A. Yes.

17 Q. And those regulatory approvals, those are
18 approvals that would take place, if at all, in the
19 future; correct?

20 A. Yes.

21 Q. Okay. And so here in West Virginia, when
22 Wheeling Power would possibly seek one of those
23 regulatory approvals, it would look to whatever the law
24 was at the time, correct, in deciding what to ask for,
25 how to bring it and so forth. Is that fair?

1 A. The law and the agreements, yes.

2 Q. And so that law, whatever it may be, can
3 certainly change, right, between now and then?

4 A. Yes.

5 Q. Okay. And I just want to make sure I have this
6 or we're on the same page here, but the buyouts
7 transaction that you've discussed here in your testimony,
8 that's something that would come before the Commission in
9 the future. We're not looking at the buyout itself
10 today, are we?

11 A. Correct.

12 ATTORNEY FISHER:

13 And that's all the questions I have.

14 Thank you.

15 CHAIR:

16 Mr. Naum?

17 ATTORNEY NAUM:

18 No questions, Your Honor.

19 CHAIR:

20 Ms. Osborn?

21 ATTORNEY OSBORN:

22 No questions. Thank you.

23 CHAIR:

24 Mr. Altmeyer?

25 ATTORNEY ALTMEYER:

1 No questions, Madam Chairman.

2 CHAIR:

3 Mr. Head?

4 ATTORNEY HEAD:

5 No questions.

6 CHAIR:

7 Commissioner Larrick?

8 COMMISSIONER LARRICK:

9 No questions.

10 CHAIR:

11 Commissioner Raney?

12 COMMISSIONER RANEY:

13 No, Madam Chairman. I have no
14 questions.

15 CHAIR:

16 Mr. Wilson, why don't you just give us
17 a brief summary of what it is you're recommending in this
18 case?

19 A. Well, I felt it was unclear whether if these
20 transactions were to go forward in the future it would
21 necessarily be required to provide a showing that the
22 capacity was needed and that the transaction was in the
23 interest of West Virginia customers. It seemed unclear
24 to me that that was necessarily going to be something to
25 happen in the future. So I just felt it should be

1 clarified that at such time as this transaction occurs
2 that the Companies would provide a showing asserting or
3 trying to demonstrate that the capacity was needed and
4 that the transaction was in the interest of West Virginia
5 customers. That's simple as that.

6 CHAIR:

7 Well, do you agree that that is a
8 determination to be made by the Commission?

9 A. Yes.

10 CHAIR:

11 Okay. Okay. Thank you. That's all I
12 have. Mr. Murthy? Okay.

13 ATTORNEY MURTHY:

14 Nothing for me. Thank you, Your Honor.

15 CHAIR:

16 Thank you, Mr. Wilson. Ms. Osborn?

17 ATTORNEY OSBORN:

18 Thank you, Chairman. The CAD calls
19 Emily Medine to the stand.

20 -----

21 EMILY MEDINE, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS
22 FOLLOWS:

23 -----

24 DIRECT EXAMINATION

25 BY ATTORNEY OSBORN:

1 Q. Will you please state your name and business
2 address for the record, please?

3 A. Sure. It's Emily Medine. My company is Energy
4 Ventures Analysis and business address is 1901 North
5 Moore Street, Suite 1200, Arlington, Virginia, 22209.

6 Q. And Ms. Medine, you're testifying on behalf of
7 the Consumer Advocate Division in this case?

8 A. Yes, I am.

9 Q. And in that role as a witness for the CAD, did
10 you prepare Direct Testimony, both a public and
11 confidential version to be filed with the Commission?

12 A. I did.

13 Q. Okay. The date of that being March 28th of
14 2022. And Ms. Medine, do you have any corrections or
15 additions to make to your testimony?

16 A. No, I don't.

17 Q. And if I were to ask you the same questions
18 today that were set forth in your written testimony,
19 would your answers be the same?

20 A. Yes.

21 Q. Do you adopt this testimony as part of your
22 evidence in this proceeding?

23 A. Yes, I do.

24 ATTORNEY OSBORN:

25 And with that, I believe, the witness

1 is tendered for cross.

2 CHAIR:

3 Thank you. Mr. Porth?

4 ATTORNEY PORTH:

5 Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY ATTORNEY PORTH:

8 Q. Good afternoon, Ms. Medine. How are you doing?

9 A. Good. How are you?

10 Q. I am fine. A little tired, but fine. Who is
11 the current operator of the Mitchell Plant?

12 A. Kentucky Power.

13 Q. And do you agree that it is necessary for
14 Wheeling Power to become the operator of the Mitchell
15 Plant, one reason in particular for that being in order
16 for Wheeling to perform the ELG work on Mitchell, which
17 this Commission has mandated?

18 A. I'm sure Kentucky Power's competent enough to
19 perform the ELG work as long as Wheeling Power is funding
20 it. But I believe you're referring, perhaps, to the
21 Kentucky Order, which addressed this issue. And the
22 Kentucky Order, from my reading, doesn't mandate. It
23 basically says a certain timeline it expects that the
24 transfer would occur to Wheeling Power.

25 Q. Is it your reading of the Kentucky Orders that

1 the Kentucky Commission wants Wheeling to be the operator
2 of Mitchell, and that it will not permit Kentucky Power
3 to do any work on that or have the work be done while the
4 permits are in Kentucky Power's name?

5 A. That was not my interpretation of the Order.

6 Q. It was not? Okay.

7 A. That being said, they strongly encouraged it,
8 but I don't believe there was explicit prohibition.

9 Q. Would you agree with what Mr. Beam testified to,
10 that it is Section 1.5 of the new Ownership Agreement
11 that makes Wheeling Power the operator of Mitchell?

12 A. I don't have that in front of me.

13 Q. Did you review that?

14 A. I did, but I don't have it in front of me.

15 Q. Okay. And if it's the question of what
16 particular provision in that agreement affects that, I
17 won't, you know, press you on that. But do you recall
18 that the new Ownership Agreement does make Wheeling the
19 operator?

20 A. The new O & M Agreement makes Wheeling the
21 operator.

22 Q. Doesn't the new Ownership Agreement do that?

23 A. I don't specifically recall.

24 Q. Okay.

25 A. That wasn't my focus on reading the Ownership

1 Agreement.

2 Q. Would you agree that approval of the new
3 Ownership Agreement for Mitchell and the new Operating
4 Agreement for Mitchell requires the approval of both this
5 Commission and the Kentucky Commission?

6 A. I believe that the --- for the transaction to
7 proceed, it is Commission precedent. It's not clear to
8 me at this moment that the Ownership Agreement is
9 required to achieve that. But it's certainly my
10 understanding that that is a Commission precedent of the
11 sale to Liberty.

12 Q. I'm --- I'm sorry. I'm not asking you at all
13 about the sale to Liberty.

14 A. But I know, but that's --- they're unfortunately
15 very linked. And so I think that ---

16 Q. Well.

17 A. --- the reality is, is that if there wasn't an
18 imminent sale, it would be a different discussion.

19 Q. Let me put it to you a different way. For
20 Kentucky Power and Wheeling Power to enter into a new
21 Ownership Agreement, have it become effective, they
22 cannot do that without the approval of both Commissions.
23 Is that correct?

24 A. I would think that would be the case. But
25 again ---.

1 Q. And the same for the Operating Agreement?

2 A. But again, I'll go with those nonlawyers. I
3 cannot provide my legal opinion, since I'm not a lawyer.

4 Q. To the extent that approvals from those two
5 Commissions are needed, would those approvals have to be
6 consistent?

7 A. I think they'd have to be consistent. That
8 doesn't --- again, doesn't mean they have to be done
9 simultaneously.

10 Q. Okay. Let me --- let me clarify. Would the two
11 Commissions have to approve the same Ownership Agreement
12 and the same Operating Agreement?

13 A. One would think so.

14 Q. Okay. Do you perceive any time pressures on
15 Wheeling Power undertaking, performing and completing the
16 ELG work on the Mitchell Plant, which this Commission has
17 mandated it to perform?

18 A. I think both utilities are under time pressure
19 to do this. Because absent doing the work on ELGs, they
20 no longer would be qualified to stay online until 2028.
21 And as we all know from the ELG proceeding, that that was
22 a requirement to be agreeable to meet the ELG deadlines.
23 So I think both utilities are similarly exposed if they
24 don't get the work done. So I don't think it's on
25 Wheeling Power any more than it's on Kentucky Power.

1 Q. But --- but on focusing on ELG work, Kentucky
2 Power would not be doing anything on the ELG work. Is
3 that correct?

4 A. I don't know. I'm not involved in the ---
5 again, I don't see the mandate that every permit be
6 changed. I think it's an aspirational goal to get all
7 the permits changed, both parties agree. And any failure
8 to start the work on an interim basis when Wheeling has
9 agreed to fund is somewhat at each party's option.

10 Q. So ---.

11 A. So I --- I don't necessarily agree.

12 Q. And if you have no understanding about this,
13 please just tell me. Do you have any understanding of
14 the Kentucky Commission from Kentucky Power, we do not
15 authorize you to do any ELG work on the Mitchell Plant?

16 A. The --- well, I believe what --- what the
17 message that was communicated is we want it perfectly
18 clear that we will not be responsible for any costs. I
19 personally can't say that I saw a line that said we
20 prohibit you from doing any work.

21 Q. Okay. You greatly dislike, if that's a fair
22 characterization, Section 9.6, of the Revised Ownership
23 Agreement. Is that correct?

24 A. I --- it's not that I dislike it. I feel it's
25 inconsistent with what this Commission ordered.

1 Q. Instead of dislike then you oppose it?

2 A. I do not recommend approval, because, again, I
3 find it to be not consistent with what the Order of this
4 Commission was.

5 Q. Okay. Let me ask you some questions about it.
6 Do you have it in front of you?

7 A. I do not.

8 Q. Okay. You have read it; however; is that
9 correct?

10 A. Unfortunately.

11 Q. You're --- it's unfortunate that you have read
12 it?

13 A. Yes.

14 Q. Okay. Do you recall that 9.6 contains an A
15 section and a B section? The A section involving a
16 potential buyout transaction, and the B section involving
17 a potential unit interest swap section?

18 A. You're talking about the latest version of 9.6?

19 Q. Correct.

20 A. Yeah, I don't have that in front of me, and I
21 don't recall specifically.

22 Q. Okay. Do you recall that both of those options
23 are what is in 9.6?

24 A. Yes.

25 Q. Okay. Do you agree that both the buyout --- any

1 buyout transaction and any unit swap transaction can only
2 be done after receipt of applicable regulatory approvals?

3 A. What --- the way I disagree with what's been
4 testified before and what's just being asked of me today
5 is there's nothing to have prevented that component being
6 included in this agreement, and receiving regulatory
7 approval today. We have enough information to know how
8 to handle that today. And all you've done is basically
9 defer what is a complicated situation to some future
10 point in time and almost looking for a legal dispute. We
11 know enough information today to actually tell you how
12 that transfer occurs.

13 Q. Thank you for that comment. Let me get back to
14 my question though. Does 9.6 require by its expressed
15 terms that either of those transactions, a buyout
16 transaction or a unit interest swap transaction, are
17 subject to receipt of applicable regulatory approval?

18 A. I can't specifically recall, but I assume that
19 they do.

20 Q. Okay. And if they do, approvals would be needed
21 from both the West Virginia Commission and the Kentucky
22 Commission. Is that correct?

23 A. I presume.

24 Q. Okay. Now, tell me why --- well I won't assume
25 that you think this. I'll ask you. Isn't the

1 requirement in Section 9.6 for the future approval of
2 either of those two kinds of transactions by this
3 Commission and the Kentucky Commission sufficient
4 protection to ensure that any future buyout or any future
5 interest swap proposal that may be implemented is
6 acceptable to this West Virginia Commission?

7 A. I don't think so.

8 Q. Could you explain why?

9 A. Well, I'll give you one example but I'm sure
10 there are others. I think one of the big discussion
11 points here today is --- is how generous Kentucky Power's
12 being willing to reimburse Wheeling Power for its ELG
13 expense if it decides to continue to operate the plant.
14 The reality is that when Kentucky Power declined to fund
15 that, they basically caused that plan to be retired in
16 all but a physical sense. They basically put for them to
17 continue to operate. And the only reason that Kentucky
18 Power would either want to continue to operate it or
19 would sell it at a positive value is because of the value
20 that has been added to that plant through the ELG
21 investment, and there's been zero discussion about the
22 fact that the only reason it's an asset worth acquiring
23 is because it got a second life from West Virginia.

24 Q. We'll focus now on this Commission. If the
25 buyout transaction is proposed to this Commission in the

1 future, and this Commission approves it, does that not
2 make that that transaction is satisfactory to the West
3 Virginia Commission?

4 A. The Commission can approve whatever it wants.
5 If you're asking my opinion as to what the flaws of that,
6 those sections are, that's a huge flaw in that section.

7 Q. Right, and you seemed to indicate earlier that
8 your chief objection to 9.6 was that it was contrary to
9 the Commission's orders?

10 A. Correct, and I guess I think that that could be
11 resolved today and there's no reason to leave the whole
12 situation in doubt. I think failure to provide that
13 approval today in those --- that specific language leaves
14 both Wheeling Power and Kentucky Power at --- at loose
15 ends as to how to operate that power plant. If Wheeling
16 Power knows they're investing in the ELGs, that becomes
17 their plant 1/1/29, no later, could come sooner if they
18 want. But 1/1/29, no later. They have a different
19 attitude to how they run that plant. If they're
20 concerned about having to share ownership with an unmown
21 entity, be it Liberty or a third party or just have it
22 shut down, I think that changes their entire attitude
23 toward that power plant.

24 Q. Do you view it as necessary for the moment in
25 which the Mitchell Plant is going to be operated after

1 January 1, 2029 to be resolved today?

2 A. I think it's very helpful.

3 Q. Do you think it's necessary?

4 A. I think it's necessary given the fact that all
5 the parties seem to disagree on what the order actually
6 said and what the order actually said is at after 1/1 ---
7 beginning 1/1/29, all the energy and the capacity of that
8 plant belonged to Wheeling Power.

9 Q. Do you think trying to thrash out any disputes
10 over that today is going to accelerate and make easier
11 the process of getting consistent orders from this
12 Commission and the Kentucky Commission on a new Ownership
13 Agreement or Operating Agreement?

14 A. Well of course it's going to delay it from where
15 we are today, but we've been ready and able to
16 participate in that discussion for months because it was
17 obvious when it first came out that was an issue. And so
18 I'm a little confused why all of a sudden the clock
19 starts today. But the reality is, it's not that
20 complicated if you basically have a basic agreement as to
21 what the terms of that exchange are. And we could come
22 up with a term sheet that we could agree to, probably get
23 the Commission to approve, and worry about the details
24 later as long as it was consistent with the term sheet.

25 Q. In that regard, what are your suggestions being,

1 as being that the parties should go back to the original
2 agreement that was proposed in Mr. Beams' direct
3 testimony, but establish in there that the valuation of
4 the buyout would not be by the mechanism proposed there
5 of different appraisers and all that, but would simply be
6 to set it at a \$1?

7 A. For the sake of an argument, but yes, \$1.

8 Q. Okay. And if that were approved by this
9 Commission, do you think there would be a likelihood of a
10 consistent approval coming from the Kentucky Commission
11 at this time?

12 A. Again, I can't speak for Kentucky but I did
13 provide in my testimony which I hope you've read, an
14 explanation of how Kentucky has handled stranded costs
15 from coal plants in the past. And they basically, in the
16 case of Big Sandy 2 setup a decommissioning order where
17 basically they put all the remaining netbook value in
18 there, and then it becomes a charge to customers. They
19 are well aware that when they decline to fund ELG, they
20 basically reduce the plant value to \$0, or \$1, because
21 the plant could no longer continue to operate after 2028.
22 And so I --- I don't know how they would object to it
23 because it does not in fact differ from what they've
24 ultimately included in the ELG proceeding.

25 Q. Okay. So obviously I'm not asking you to

1 predict what they'll do, but you've just ---?

2 A. I'm saying the economic justification is ---

3 Q. Yeah.

4 A. --- is everywhere. I mean, I've seen more coal
5 power plants retire at zero cost or at a dollar than ---
6 than, you know, than you can imagine. Pretty much that
7 is the current value. It --- the value in 2028 has no
8 benefit to Kentucky Power. They didn't risk their
9 dollars, they didn't risk their efforts. They basically
10 did a deal so they would have adequate capacity as they
11 green to fleet which had nothing to do with the fact that
12 the markets have changed. We all know the markets have
13 changed. This is what is the value today when Kentucky
14 Public Service Commission turned down the ELG investment.
15 And they converted that power plant to an idle stranded
16 cost, period.

17 Q. So if I'm understanding what you've just told
18 me, you --- you can see no valid reason why the Kentucky
19 Commission would not agree to put in a buyout provision
20 in the Operating Agreement that specified the valuation
21 of Kentucky Power's interest in Mitchell at \$1?

22 A. Well, of course I can see a reason. I mean
23 because all their customers are going to get charged with
24 the stranded cost. That's not the point. The point is
25 they are stranded costs, and it's not Wheeling's

1 obligation to assume those stranded costs. It's not West
2 Virginia's obligation to. I mean the only reason they're
3 stranded is because the Kentucky Commission declined to
4 let them invest in the ELG, period.

5 Q. But to go back a little bit, you did agree did
6 you not that it's necessary for there to be consistent
7 approvals of an Operating Agreement, an Ownership
8 Agreement by both --- let me finish, please. By both
9 Commissions, and that there's time pressure on --- on
10 accomplishing it?

11 A. I think it's catastrophic for both utilities not
12 to get that approval if you're holding up the ELG and the
13 ELG compliance work until there's a transfer of permits
14 and all those deals are done. So I think it's
15 catastrophic --- it's catastrophic for both sides,
16 because you're going to probably have to shut down both
17 units in 2023. I mean, it's not just simply catastrophic
18 for Wheeling or catastrophic for Kentucky Power, it's for
19 both.

20 So I think it's silly to say who --- who has
21 skin in the game, everybody has skin in the game. The
22 point is that the deal was it became Wheeling's asset.
23 Let's document it. Let's put it in there. If there's a
24 little --- you know, you want little dollars for X, Y and
25 Z, tell us what those little dollars are. But it's

1 there. So to pretend it's not there and to pretend any
2 value that accrues through this investment belongs to
3 Kentucky Power is not acceptable.

4 Q. Thank you very much.

5 A. If you want to know how I feel.

6 ATTORNEY PORTH:

7 That's all, Your Honor.

8 CHAIR:

9 Mr. Naum.

10 ATTORNEY NAUM:

11 No questions, Your Honor.

12 CHAIR:

13 Mr. Murthy.

14 ATTORNEY MURTHY:

15 No questions Your Honor. Thank you.

16 CHAIR:

17 Mr. Altmeyer.

18 ATTORNEY ALTMEYER:

19 Madam Chairman, just one question.

20 Sorry.

21 CROSS EXAMINATION

22 BY ATTORNEY ALTMEYER:

23 Q. We're turning back to Mr. Porth's line of
24 questioning regarding the permits and the complications
25 that the Witness Beam discussed and he did regarding

1 operating or beginning ELG improvement costs with who the
2 operator of the permit is. In your experience, is it
3 possible to transfer the owner or operator on a permit
4 that's already in place? For example, if Kentucky Power
5 had the ELG permits issued in their name and these
6 agreements are finalized later, can it then be freely
7 transferred to Wheeling Power?

8 A. I don't know --- I don't know how easy it is,
9 but obviously permits get transferred every day, all
10 kinds of permits. So yes.

11 Q. Thank you.

12 ATTORNEY ALTMAYER:

13 That's all.

14 CHAIR:

15 Mr. Head.

16 ATTORNEY HEAD:

17 No questions for this witness, Your
18 Honor.

19 CHAIR:

20 Commissioner Larrick.

21 COMMISSIONER LARRICK:

22 No questions.

23 CHAIR:

24 Commissioner Raney.

25 COMMISSIONER RANEY:

1 Yes, Madam Chairman. I think I just
2 got one, but --- Emily, it's good to see you, as always.
3 But based on everything that we've heard today, is it
4 accurate to presume that if we don't make --- if we don't
5 agree to these things that are proposed to us today and
6 all the approvals don't come, that the entire Mitchell
7 Plant would have no value come 2028?

8 A. It could be sooner than that.

9 COMMISSIONER RANEY:

10 Sooner being 2025 or ---?

11 A. Again, I'm not sure. I'd have to look it up in
12 terms of when their actual NPDES permit is. But I think
13 that because a notice of public --- of planned
14 participation was not provided on October 13th --- which
15 of course we all remember that day --- that means this
16 plant is no longer eligible to stay open until 2028. And
17 without completing ELG compliance by 2025.

18 I don't know if there's an interim issue that if
19 they stop building it or withdraw that, whatever.
20 Complaint whether the termination is sooner, I just don't
21 know the legal aspects of that. But certainly no later
22 than 2025, but possibly earlier.

23 COMMISSIONER RANEY:

24 I see. Thank you.

25 CHAIR:

1 And I don't have any questions, thank
2 you. Any Redirect? Does that conclude CAD's portion of
3 the testimony?

4 ATTORNEY OSBORN:

5 It does, yes.

6 CHAIR:

7 And do you want to move all of your
8 Cross Examination exhibits into the record?

9 ATTORNEY OSBORN:

10 I --- I would like to do that. So we
11 have CAD Cross 1, 2 and 3. Yes, I would like to move
12 those into the record, please.

13 CHAIR:

14 Okay. Thank you.

15 ATTORNEY OSBORN:

16 Thank you.

17 CHAIR:

18 Mr. Head.

19 ATTORNEY HEAD:

20 Staff would like to call Jim Weimer to
21 the stand.

22 -----
23 JAMES D. WEIMER, HAVING FIRST BEEN DULY SWORN, TESTIFIED
24 AS FOLLOWS:
25 -----

1 DIRECT EXAMINATION

2 BY ATTORNEY HEAD:

3 Q. Hello, sir. Can you state your name and
4 occupation for the record, please?

5 A. My name is James D. Weimer, and I'm an engineer
6 with the Public Service Commission.

7 Q. Okay. Did you --- did you submit Direct
8 Testimony in this case on March 28th?

9 A. I did.

10 Q. And did you submit Supplemental Direct Testimony
11 on April 1st?

12 A. Yes, I did.

13 Q. Do you have any additions, corrections or
14 deletions you'd like to make at this time?

15 A. Yeah, I think a couple on page eight of the
16 Direct on line 20. I inadvertently put Operating
17 Agreement and the second word in instead of ownership.
18 And also, it had been brought to my attention that I
19 failed to address the ownership of the plants at Wheeling
20 and --- and Kentucky Power as an EP Owen plant as opposed
21 to APCo.

22 Q. Okay. Anything else?

23 A. That's all.

24 Q. Okay. So you adopt those two documents as your
25 testimonies in this case?

1 A. Yes, I do.

2 Q. Okay, thank you.

3 ATTORNEY HEAD:

4 The witness is tendered for Cross.

5 CHAIR:

6 Mr. Fisher.

7 ATTORNEY FISHER:

8 Yes, Your Honor.

9 CROSS EXAMINATION

10 BY ATTORNEY FISHER:

11 Q. Good afternoon, Mr. Weimer.

12 A. Good afternoon.

13 Q. My first question I'm going to ask you, if I use
14 the term technical expert, do you know who I'm referring
15 to?

16 A. Yes, I do.

17 Q. Okay. So page seven of your Direct Testimony,
18 I'm looking at line 17. You refer to the technical
19 expert as yet to be hired. Do you see that?

20 A. Yes.

21 Q. I take it, then, when you prepared this
22 testimony, you were not aware that the Companies had
23 previously disclosed in discovery that the technical
24 expert was hired already in this case?

25 A. I believe they --- they noted it was a company

1 they hired as opposed to a person that they hired.

2 Q. Okay. Would you agree that the technical expert
3 had been hired?

4 A. Yes.

5 Q. Okay. And it's Burns & McDonnell?

6 A. Yes.

7 Q. I just wanted to clarify that. Thank you, sir.
8 And you go on to discuss the technical expert making
9 determinations as to the CCR and ELG cost allocations. I
10 just wanted to confirm, it's not your testimony that
11 we're trying to decide those allocations today; correct?

12 A. Yeah, that's correct.

13 Q. And right around the same portion of your Direct
14 that's on page eight, you were discussing the initial
15 allowances. Do you recall that portion of your
16 testimony?

17 A. Yes.

18 Q. I wanted to ask you if you agree with me that
19 Section 7.7 of the Revised Proposed Ownership Agreement
20 addresses ownership allowances. Would you agree with
21 that?

22 A. That was noted, yes.

23 Q. Okay. And still in the same area of your
24 Direct, I wanted to ask you just exactly what you meant
25 by repowering?

1 A. Well, obviously I'm aware of all the discussions
2 that's been going on with the potential sales and all of
3 the information estimates going on ---. And obviously, I
4 mean, we can change the supplier, we even changed the
5 type of fuel we're using. In one of the --- part of the
6 agreement they specifically defined, I believe,
7 repowering as a change in the type of fuel. And --- fuel
8 available would've been we changed the plan over to a
9 gas-powered plant.

10 Q. Okay. And you know, repowering it in and of
11 itself is not within the scope of this proceeding today;
12 is that correct?

13 A. That's correct.

14 Q. Okay. Would you agree with me ---? And this
15 question's been asked a couple times today. Maybe you
16 were here. I don't know if you were here earlier or not,
17 but would you agree that it's necessary to have
18 consistent decisions on these agreements from this
19 Commission and the Kentucky Commission in order for the
20 ELG work to proceed?

21 A. Well, again, that I would have to say that's
22 probably a legal definition and I --- I have a tendency
23 not to want to wander into legal issues. Are you aware
24 of that ---?

25 Q. I don't know, that's --- that's perfectly fine.

1 That's all the questions I have for you, sir. Thank you.

2 A. Thank you.

3 CHAIR:

4 Mr. Naum.

5 ATTORNEY NAUM:

6 No questions. Thank you.

7 CHAIR:

8 Ms. Osborn.

9 ATTORNEY OSBORN:

10 No questions. Mr. Weimer, thank you.

11 CHAIR:

12 Mr. Pepper --- I'm sorry, Mr. Murthy?

13 ATTORNEY MURTHY:

14 No questions, Your Honor.

15 ATTORNEY PEPPER:

16 I'm sorry, Your Honor. We just have a
17 few very quick questions.

18 CROSS EXAMINATION

19 BY ATTORNEY PEPPER:

20 Q. Good afternoon, Mr. Weimer.

21 A. Good afternoon.

22 Q. If I wanted ---.

23 CHAIR:

24 I'll take Mr. Pepper's answer. Go
25 ahead.

1 BY ATTORNEY PEPPER:

2 Q. I just wanted to look at page seven of your ---
3 of your Direct Testimony.

4 A. Yes.

5 Q. Here you discuss a preliminary detail about a
6 line item you provide by a technical expert on the ELG
7 cost to be paid by Wheeling and by Kentucky; is that
8 right?

9 A. Yes.

10 Q. Those costs that are paid by Wheeling would
11 ultimately be paid by Wheeling customers; is that
12 correct?

13 A. Yes, that is correct.

14 Q. So would you agree that the outline provided by
15 the expert could be helpful to Wheeling customers as to
16 help them start to understand what their share of the
17 costs would be for --- for this project?

18 A. Well, I think that the --- I guess the bulk
19 cost, which has already been identified, they would have
20 a fairly decent idea knowing what they were paying for.
21 My concern was if you --- on a construction site --- and
22 this construction is going to be extremely difficult.
23 How I sit there and make decisions about what should be
24 charged to ELG and what should not be charged to ELG,
25 because obviously, they're pretty close --- closely tied

1 together in the two plants.

2 And I would have wanted a very detailed
3 description upfront at least of a preliminary split. And
4 anything that might affect cost that would be transferred
5 to WPCo from Kentucky Power that was illegitimate, or the
6 other way around.

7 Q. Thanks. I just had one more question on page
8 ten of your testimony. Starting on line three here, you
9 say fourth, all decisions made regarding the disposition
10 of the two plants should be based on energy security and
11 employment for all affected interests, environmental
12 requirements and expense to ratepayers. When you see
13 --- when you say two plants there, are you referring to
14 the two Mitchell units?

15 A. Yeah, right. The two Mitchell units are what
16 I'm referring to.

17 Q. Okay. Thanks.

18 ATTORNEY PEPPER:

19 Nothing further for me, Your Honor.

20 Thank you.

21 CHAIR:

22 Mr. Altmeyer.

23 ATTORNEY ALTMAYER:

24 Madam Chairman, no questions.

25 CHAIR:

1 Commissioner Larrick.

2 COMMISSIONER LARRICK:

3 No questions.

4 CHAIR:

5 Commissioner Raney.

6 COMMISSIONER RANEY:

7 No, ma'am, I have no questions.

8 CHAIR:

9 All right. Mr. Weimer, I don't have
10 any questions. Thank you.

11 A. Thank you, Commissioner. Thank you, Chairman.

12 CHAIR:

13 You may be excused. Mr. Head, do you
14 want to call your next witness?

15 ATTORNEY HEAD:

16 Staff would call Geoffery Cooke to the
17 stand.

18 -----

19 GEOFFERY COOKE, HAVING FIRST BEEN DULY SWORN, TESTIFIED
20 AS FOLLOWS:

21 -----

22 DIRECT EXAMINATION

23 BY ATTORNEY HEAD:

24 Q. Good afternoon, sir.

25 A. Good afternoon.

1 Q. Would you please state your name and occupation
2 for the record?

3 A. My name is Geoffery, G-E-O-F-F-E-R-Y, Cooke,
4 C-O-O-K-E. And I'm a Utility Analyst for the Public
5 Service Commission of West Virginia.

6 Q. Okay. And you were assigned to this case that
7 we're having a hearing about today?

8 A. Yes.

9 Q. Did you submit Direct Testimony on March 28th,
10 2022?

11 A. I did.

12 Q. Do you have any additions, corrections or
13 deletions you would like to make at this time?

14 A. I do not.

15 Q. Okay. So if I asked you all those questions
16 today, your answers would be the same as they are in the
17 document?

18 A. They would be.

19 Q. Thank you very much.

20 ATTORNEY HEAD:

21 The witness is tendered for Cross.

22 CHAIR:

23 Okay. Thank you. Mr. Fisher.

24 ATTORNEY FISHER:

25 Yes, Your Honor.

1 CROSS EXAMINATION

2 BY ATTORNEY FISHER:

3 Q. Good afternoon, Mr. Cooke.

4 A. Good afternoon.

5 Q. I think I just have maybe one or two questions
6 for you. If you could turn to page six of your Direct
7 Testimony.

8 A. Okay.

9 Q. And I'm just looking at the Q & A that begins on
10 line six. And I just wanted to ask you, having --- you
11 were here today and listening to Mr. Beam testify;
12 correct?

13 A. Yes.

14 Q. And during that testimony, in response to
15 questions of others, he was addressing the concerns that
16 you've listed here on page six. Is that correct?

17 A. I believe he addressed some of them.

18 Q. Okay. And then with respect to the first of
19 this, of your concerns here regarding, you know, a
20 scenario where Kentucky Power wanted to run past 2028, is
21 that scenario addressed by Exhibit C to the Revised
22 Ownership Agreement? And specifically the discussion of
23 the economic equalization payments?

24 A. I feel like Exhibit C could be a little more
25 clear and actually talk about the ELG equipment.

1 Q. Okay. Now let me take a quick look at that.

2 CHAIR:

3 I'm sorry, Mr. Fisher, did you finish?

4 ATTORNEY FISHER:

5 No, no. I was looking for ---

6 CHAIR:

7 Okay.

8 ATTORNEY FISHER:

9 --- I wanted to look at Exhibit C.

10 Sorry about that, okay.

11 CHAIR:

12 No, I wanted to make sure I wasn't,
13 didn't miss something.

14 BY ATTORNEY FISHER:

15 Q. So --- so the, I'm looking at Exhibit C and
16 we're talking about equipment at the plants. Would that
17 term not encompass the ELG equipment?

18 A. It should, but I think, you know, you could make
19 comments in like also includes ELG equipment.

20 Q. Okay.

21 A. We make it ---.

22 Q. It's not excluded, though, is that correct, the
23 ELG equipment from that section?

24 A. I don't be so.

25 Q. Okay.

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ATTORNEY FISHER:

That's all the questions I had, Your Honor.

CHAIR:

Thank you. Mr. Naum.

ATTORNEY NAUM:

No questions. Thank you.

CHAIR:

Ms. Osborn.

ATTORNEY OSBORN:

CAD has no questions for Mr. Cooke.
Thank you.

CHAIR:

Mr. Murthy.

ATTORNEY MURTHY:

Nothing from us, Your Honor. Thank you.

CHAIR:

Mr. Altmeyer.

ATTORNEY ALTMAYER:

No questions, Madam Chairman.

CHAIR:

Commissioner Larrick.

COMMISSIONER LARRICK:

No questions.

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CHAIR:

Commissioner Raney.

COMMISSIONER RANEY:

No, Madam Chairman. I have no questions.

CHAIR:

And Mr. Cooke, I have no questions. So thank you, you may be excused.

A. Thank you.

CHAIR:

Now, I think that comes to a conclusion of this hearing.

ATTORNEY BLANKENSHIP:

Your Honor, I apologize for interrupting, but I think I may have missed something. I believe CAD moved to have their exhibits in the record. And I just wanted to reiterate our objection to CAD Cross Number 3, hence the evidence. Because Ms. Osborn attempted to introduce that through Mr. Beam, who didn't know anything about the document nor was he present at the Kentucky hearing. So it is a cover letter and a memo in the Kentucky Power case.

CHAIR:

It can be admitted into the record and given whatever weight the Commission deems appropriate.

1 ATTORNEY BLANKENSHIP:

2 Okay. Thank you.

3 ATTORNEY PEPPER:

4 Your Honor, respectfully, we'd like to
5 respectfully request the opportunity for post-hearing
6 briefing.

7 CHAIR:

8 Okay. You're getting ahead of yourself
9 here a little bit. Just give me time. Off the record.
10 OFF RECORD DISCUSSION

11 CHAIR:

12 Okay. Okay. Let's get an expedited
13 transcript. And I'm assuming the parties would like to
14 brief these issues. So if so, we'll have an expedited
15 transcript within three days, and then the initial briefs
16 will be due seven days after the transcript. And then,
17 reply briefs can be seven days after that. Mr. Williams.

18 ATTORNEY WILLIAMS:

19 Your Honor, we've got several
20 outstanding post-hearing exhibits requested.

21 CHAIR:

22 Well let me --- I'm going to get to
23 that.

24 ATTORNEY WILLIAMS:

25 Okay. All right. Thank you.

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CHAIR:

Let me go by my script. So now we have I think --- was it three Commission or four Commission requested exhibits? Okay. Okay, so we have Commission Requested Exhibits 1, 2 and 3. And those were the prices for Sporn, Kanawha River, and --- but no, I also had --- okay.

OFF RECORD DISCUSSION

CHAIR:

Yeah, the day-ahead prices, and the cost for one unit and two units. So I numbered those 1, 2 and 3. Okay. And so then the Consumer Advocate had a post-hearing request?

ATTORNEY OSBORN:

I believe we had two, Chairman. I believe the first one was a request for any minutes other --- any minutes of the Operating Committee. The Mitchell Operating Committee meeting minutes that are not part of CAD Cross 1, but which correspond to the request that's set forth on CAD Cross 1.

And then I believe the other post-hearing request was for costs related to the unexpected outages with Mitchell Unit 1 going back to the beginning --- the days that Mitchell had not been dispatched going back to the beginning of 2022. No, I

1 have --- I know what it is now. Going back to the
2 beginning of 2022, the number of days that the Mitchell
3 units have not been up and running. That's what it was,
4 sorry.

5 (CAD Post-Hearing Exhibit 2 was
6 requested.)

7 CHAIR:

8 Okay. Now were there any more
9 requested exhibits? Okay. If not, is there anything
10 else to come before the Commission? If not, thank you
11 all for your attention today. And normally I would come
12 down and shake everybody's hands, but today I'm not going
13 to. But thank you all for coming.

14 * * * * *

15 HEARING CONCLUDED AT 3:40 P.M.

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CERTIFICATE

I hereby certify, as the stenographic reporter,
that the foregoing proceedings were taken stenographically
by me, and thereafter reduced to typewriting by me or under
my direction; and that this transcript is a true and
accurate record to the best of my ability.

I certify that the attached transcript meets the
requirements set forth within article twenty-seven, chapter
forty-seven of the West Virginia Code.



Caitlin Henson,
Court Reporter

VERIFICATION

The undersigned, Brett Mattison, being duly sworn, deposes and says he is President and COO of Kentucky Power Company, that he has personal knowledge of the matters set forth in the foregoing responses and the information contained therein is true and correct to the best of his information, knowledge, and belief after reasonable inquiry.

Brett Mattison

Brett Mattison

Commonwealth of Kentucky)
)
County of Boyd)

Case No. 2021-00004

Subscribed and sworn before me, a Notary Public, by Brett Mattison this 13th day of April, 2022.

Scott E. Bishop

Notary Public

My Commission Expires June 24, 2025

Notary ID Number: KYMP 32110

