COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Electronic Application Of Kentucky Power Company	)	
For Approval of A Certificate of Public Convenience	)	
And Necessity For Environmental Project	)	
Construction At The Mitchell Generating Station, An	)	Case No. 2021-00004
Amended Environmental Compliance Plan, And	)	
Revised Environmental Surcharge Tariff Sheets	)	

REPLY BRIEF OF KENTUCKY POWER COMPANY

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I. INTRODUCTION

Kentucky Power Company ("Kentucky Power" or the "Company"), pursuant to the Public Service Commission of Kentucky's ("Commission") June 3, 2021 Order, respectfully submits its Reply Brief in support of its Application and proposals in this case. The Company anticipated and fully addressed in its Initial Brief the majority of the legal and factual arguments that intervenors raise in their briefs.[1] In the interest of administrative economy, and in recognition of the briefing schedule and statutory deadline for the Commission's decision in this proceeding,[2] the Company relies upon the evidence and arguments presented in its Initial Brief and will not reiterate previously-articulated arguments here. To assist the Commission in its review of those issues, the Company provides the following list cataloging intervenors' arguments and those portions of the Company's Initial Brief in which each argument was addressed:

- Intervenors' arguments regarding the cost of solar resources[3] are addressed on pages 23-25 of the Company's Initial Brief.[4]
- Sierra Club's economic analysis[5] is addressed on pages 26-33 of the Company's Initial Brief.

[1] Initial Brief of Kentucky Power Company (June 15, 2021) ("Kentucky Power Br.").

[2] Order (Feb. 12, 2021); KRS 278.183(2).

[3] Response Brief of Attorney General and Kentucky Industrial Utility Customers, Inc. ("AG/KIUC Br.") at 4 (June 24, 2021); Response Brief of Sierra Club ("Sierra Club Br.") at 11, 17 (June 24, 2021).

[4] AG/KIUC's speculation regarding the price of a 10-year PPA after the term of an initial 20-year PPA (*id.* at 5) tellingly does not address the Company's rebuttal testimony regarding the lower rate base – and greater affordability – of a 30-year owned resource in year 21, or that AG/KIUC's flawed analysis references solar PPAs that would come on-line 5 years before they were needed to replace Mitchell's capacity. Kentucky Power Br. at 24; Becker Rebuttal Test. at R13-R14.

[5] Sierra Club Br. at 7-11.

- AG/KIUC's suggestion to consider hypothetical future securitization financing[6] is addressed on pages 33-34 of the Company's Initial Brief.[7]

- AG/KIUC's arguments regarding future risks and flexibility[8] are addressed on pages 35-36 of the Company's Initial Brief.

- AG/KIUC's unsupported recommendation that Kentucky Power use currently-authorized depreciation rates in the Environmental Surcharge for the approved environmental compliance projects, in contravention of Generally Accepted Accounting Principles, FERC accounting instructions, and fundamental cost-of-service ratemaking principles,[9] is addressed on pages 36-38 of the Company's Initial Brief.

- AG/KIUC's inappropriate recommendation to delay recovery of Mitchell Plant's remaining net book value through the Decommissioning Rider[10] is addressed on pages 38-40 of the Company's Initial Brief.[11]

Those portions of the Company's Initial Brief cited above are specifically incorporated herein by reference.

As set forth in the Company's Initial Brief and below, the record demonstrates that the Commission should approve the Company's request for a certificate of public convenience and

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[6] AG/KIUC Br. at 9-11; *see also* Sierra Club Br. at 11.

[7] AG/KIUC's attempt to analogize the possibility of future securitization to the possibility of future carbon regulation (*id.* at 9) is a red herring. The two are completely unrelated, and future carbon regulation is much less uncertain than securitization, which has failed to gain traction in Kentucky in more than the last 15 years. Kentucky Power Br. at 34; Mattison Rebuttal Test. at R2-R3.

[8] AG/KIUC Br. at 11-14.

[9] *Id.* at 8-9.

[10] *Id.* at 7-8.

[11] Although AG/KIUC claim that "[t]he Company will be able to fully recover the remaining net book value [assuming] retirement in 2028 through its Decommissioning Rider" (*id.* at 8-9), they recognize that such recovery presently is not authorized. *Id.* at 8 (arguing the Commission could authorize Decommissioning Rider recovery in a future proceeding prior to Mitchell Plant's retirement).

necessity to complete the construction activities necessary to comply with both the federal Coal Combustion Residuals ("CCR") Rule and the Steam Electric Effluent Limitation Guidelines ("ELG") Rule at the Mitchell Generating Station. As the Company has proven, completing both CCR and ELG compliance investments ("Case 1") is reasonable and appropriate.

It is undisputed that the public convenience and necessity support Kentucky Power's approximately $18 million investment to comply with the CCR Rule.[12] The Company's proposal to recover costs through the Environmental Surcharge ("Tariff E.S."), proposed modification to Tariff E.S. to include construction work in progress costs, return on equity proposal, and requested accounting treatment also are unopposed.[13] Regardless of the fact that they are unopposed, the Company has demonstrated that each of these proposals are reasonable and appropriate, and the Commission should approve them.

Intervenors ask the Commission to reject the Company's proposal to also make the approximately $49 million ELG compliance investment at Mitchell Plant. Their arguments in support of the CCR-Only alternative ("Case 2") invite the Commission to decide this case based upon speculation regarding hypothetical and uncertain future environmental regulations, carbon legislation,[14] yet-to-be enacted securitization legislation, solar power purchase agreement ("PPA") pricing, and other occurrences. The Commission should decline those invitations and decide this case based upon the known and measurable facts and evidence before it.

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[12] *Id*. at 2 (supporting the issuance of a CPCN to complete CCR compliance work); Sierra Club Br. at 1 (taking no position regarding CCR compliance work).

[13] *See* Kentucky Power Br. at 13-17, 36.

[14] *See* Sierra Club Br. at 12-15.

II. INTERVENORS' FEW ARGUMENTS NOT ANTICIPATED IN THE COMPANY'S INITIAL BRIEF ARE WITHOUT MERIT.

The Company demonstrated in its Initial Brief the errors in intervenors' analyses. Intervenors' response briefs raise a handful of arguments that the Company did not expressly address in its first brief. Those arguments, too, are unavailing.

A. The Company's Nominal Dollar Analysis is Appropriate and Probative, and the Commission has Discretion to Consider and Rely upon it in Deciding this Case.

Intervenors' arguments criticizing the Company's nominal dollar analysis demonstrating the savings associated with Case 1 compared to Case 2 are misplaced.[15] The Company's nominal dollar analysis is appropriate and provides a different perspective from which to evaluate the two proposals in this case. That the Commission has in past cases considered NPV analyses, when only an NPV analysis was presented,[16] does not preclude the Commission from also considering the Company's nominal dollar analysis in this proceeding. There is no requirement that the Commission evaluate a CPCN on the basis of an NPV analysis. It is well within the Commission's considerable discretion to rely upon the nominal dollar analysis evidence that Kentucky Power has offered.[17] Nonetheless, Kentucky Power also analyzed both options presented in this case on a NPV basis, as AG/KIUC concede.[18]

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[15] *Id*. at 16-17; AG/KIUC Br. at 3-4.

[16] *See* AG/KIUC Br. at 4, n.7.

[17] *Citizens for Alternative Water Solutions v. Pub. Serv. Comm'n*, 378 S.W.3d 488, 490 (Ky.App. 2011), citing *Energy Regulatory Comm'n v. Ky. Power Co.*, 605 S.W.2d 46 (Ky.App. 1980).

[18] Kentucky Power Br. at 9-10, 21.

B. Intervenors' Arguments Regarding Potential Economic Benefits Associated with Replacement Resources as Compared to Mitchell Plant are Speculative and Unavailing.

Intervenors' argument that retirement of Mitchell Plant in 2028 under Case 2 would create new resource investment, tax revenue, and job opportunities in the Commonwealth not available under Case 1 is misplaced for several reasons.[19] First, paramount among the Commission's statutory responsibilities is ensuring that the Company's customers receive "adequate, efficient and reasonable service" at "fair, just and reasonable rates."[20] The possibility of economic development, although important, does not trump this fundamental principle of utility regulation.

Second, the intervenors' position assumes without any factual basis that replacement capacity would be located in the Company's service territory or even Kentucky. As Company Witness Becker explained, however, the location of replacement resources will be a consideration when evaluating the economics of replacement resources.[21] There is no certainty that resources located in Kentucky Power's service territory (or the Commonwealth) will be the most economic option in 2028. Certainly, PPAs will not directly produce capital investment, tax revenues, or jobs. Nor is there certainty that other replacement resources – particularly wind and solar resources, which have low staffing needs – will create a significant number of jobs, even if those resources are sited in Kentucky.

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[19] AG/KIUC Br. at 11-12; Sierra Club Br. at 18 n.35.

[20] KRS 278.030(2); KRS 278.030(1). KRS 278.020(1), which authorizes the Commission to "consider the policy of the General Assembly to foster and encourage use of Kentucky coal by electric utilities serving the Commonwealth," appears inapposite because the Company is not seeking a certificate to construct a base load generating facility.

[21] Becker Direct Test. at 21.

Third, AG/KIUC's observation regarding Mitchell Plant's fuel mix in 2020[22] has no bearing on the source of Mitchell Plant's coal supply in future years. It is not knowable what proportion of the coal burned at Mitchell in the future will come from Kentucky. Certainly, it is possible that with the enactment of KRS 278.277, effective July 1, 2021, a greater proportion of coal burned at Mitchell Plant will be sourced from the Commonwealth. As the Kentucky Attorney General recognized with respect to former 807 KAR 5:056, § 3(5), which was substantively identical to KRS 278.277,[23] the law's "adjustment to offset coal severance taxes would cause Kentucky coal to be priced more competitively in comparison to some states . . . depending on which states have chosen to enact severance taxes and at what rate" and "might . . . benefit coal producers in Kentucky relative to those" in states with lower or no severance taxes.[24] Thus, going forward, coal produced in Kentucky, subject to a 4.5% severance tax,[25] might be more economic – and therefore purchased and burned in greater quantities – than coal produced elsewhere.

C. Any Tax Abandonment Loss Savings that Might Accrue to the Company if Mitchell Plant were Retired in 2028 are Immaterial to the Commission's Evaluation of this Case.

AG/KIUC point to Mr. Kollen's calculation of an abandonment loss tax benefit that would accrue in 2028 as a further reason to forego the ELG compliance investment required to allow Mitchell Plant to operate through 2040.[26] The value of any abandonment loss savings,

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[22] AG/KIUC Br. at 11-12.

[23] *Compare* former 807 KAR 5:056, § 3(5), *with* KRS 278.277.

[24] Ky. Op. Att'y Gen. No. 20-04, 2020 WL 2120187, *3 (Mar. 4, 2020).

[25] *Id.* at *2.

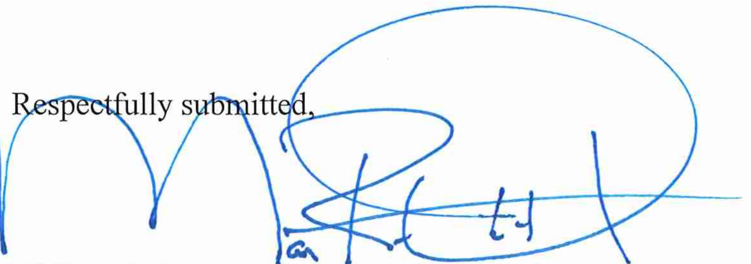
[26] AG/KIUC Br. at 5-7. Kentucky Power on June 30, 2021 filed an updated response to its supplemental response to AG-KIUC 2-6 to correct the tax basis information in the supplemental response. Mr. Kollen in his Supplemental Direct Testimony relied on the earlier supplemental response, which inadvertently overstated tax basis, to calculate his estimate of a $28.8 million net present value of the tax benefit of the 2028 Mitchell abandonment loss. Using the updated tax basis information, the net present value benefit

however, is immaterial in light of the overall economics of either Case 1 or Case 2. The Commission, in its discretion, need not consider this issue in reaching its decision.

III. CONCLUSION

For the reasons set forth above and in the Company's Initial Brief, Kentucky Power respectfully requests that the Commission approve the Company's Application and grant the relief requested therein.

Respectfully submitted,



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of any abandonment loss based on Mr. Kollen's straight line method of projecting the tax basis from December, 2020 to December, 2028 would have been $8.5 million and not the $28.8 million Mr. Kollen calculated using the earlier supplemental response.