

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, 2021<sup>1</sup> 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.

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<sup>1</sup> 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.

Witness: Deryle B. Mattison



An AEP Company

BOUNDLESS ENERGY

Keith D. Fisher  
Senior Counsel

500 Lee Street East, Suite 800  
Charleston, WV 25301  
304.348.4154  
kdfisher@aep.com

February 7, 2022

Via Electronic Mail

Karen Buckley  
Acting Executive Secretary  
Public Service Commission of West Virginia  
201 Brooks St.  
Charleston, WV 25301

03:51 PM FEB 07 2022 EXEC SEC DIV

**Re: Case No. 21-0810-E-PC**  
**Appalachian Power Company and Wheeling Power Company**  
*Petition for Commission Consent and Approval to Enter into Ownership and Operating Agreements for the Mitchell Plant*

Dear Ms. Buckley:

Please find enclosed for filing in the above-referenced matter the Response of Appalachian Power Company and Wheeling Power Company to CAD's Motion to Compel filed in this matter. On this date, copies thereof were served in accordance with the Certificate of Service.

This filing is made via electronic mail in accordance with the Commission's General Order No. 262.3 *Regarding Processing of Cases During COVID-19 West Virginia State of Emergency.*

Thank you for your attention to this matter.

Sincerely,

Keith D. Fisher (WV State Bar #11346)  
*Counsel for Appalachian Power Company and Wheeling Power Company*

Enclosure

cc: Certificate of Service

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**CASE NO. 21-0810-E-PC**

**APPALACHIAN POWER COMPANY and  
WHEELING POWER COMPANY,**  
public utilities.

*Petition for Commission Consent and Approval  
to Enter into Ownership and Operating Agreements  
for the Mitchell Plant*

**RESPONSE OF APPALACHIAN POWER COMPANY  
AND WHEELING POWER COMPANY  
TO CAD'S MOTION TO COMPEL**

COME NOW Appalachian Power Company ("APCo") and Wheeling Power Company ("WPCo") (together, the "Companies"), by counsel, and for their Response to the Motion to Compel filed by the Consumer Advocate Division ("CAD"), state as follows:

1. On January 6, 2022, CAD filed its first request for information containing six questions directed to the Companies.
2. On January 20, 2022, the Companies filed objections to two of those questions, Question Nos. 1-4 and 1-5.
3. For reference, CAD's questions and the Companies' objections thereto are as follows:

**Question No. 1-4**

Please produce the Confidential Information Memorandum or its equivalent put forward by Barclays, Goldman Sachs Co., and/or others who served as AEP's financial and strategic advisors related to the sale of Kentucky Power.

**Objection to 1-4**

The Companies object to Question No. 1-4 on grounds of relevance. The Companies' Petition in this matter seeks the Commission's approval of new Ownership and Operating Agreements whereby WPCo would replace Kentucky Power Company ("KPCo") as operator of the Mitchell Plant. As explained in that Petition, and regardless of the proposed sale of KPCo to Liberty Utilities Co. ("Liberty"), it is necessary for WPCo to become operator of the Mitchell Plant due to the conflicting decisions of this Commission and the Kentucky Public Service Commission ("KPSC") as to CCR/ELG upgrades at the plant. CAD Question No. 1-4 seeks only information related to the proposed sale of KPCo, which is the subject of a proceeding pending not before this Commission, but before the KPSC (*see* Case No. 2021-00481). Accordingly, this question is not reasonably calculated to lead to the discovery of relevant, admissible evidence in this proceeding. The Companies further object to the extent Question No. 1-4 seeks information that is confidential and privileged.

**Question No. 1-5**

Please produce all information provided to AEP by Algonquin Power & Utilities Corporation subsidiary Liberty Utilities Company or others related to Liberty's plans for Kentucky Power and Mitchell if it were successful in the acquisition, including any conditions related to Mitchell included in its offer.

**Objection to 1-5**

The Companies object to Question No. 1-5 on the grounds that the term "all information" is vague, ambiguous, and overbroad and, further, to the extent the question seeks information that is confidential, privileged, and/or not likely to lead to the discovery of relevant, admissible evidence in this proceeding. As the Companies noted in their objection to Question No. 1-4, the proposed sale of KPCo to Liberty is the subject of a separate proceeding before a different commission (*see* KPSC Case No. 2021-00481).

4. On January 26, 2022, with their responses to the remainder of CAD's discovery questions, the Companies responded to Question No. 1-5, without waiving their previously-filed objections, as follows:

The [Stock Purchase Agreement (SPA)] between AEP and Liberty Utilities (*see* response to CAD 1-03) and the new Mitchell Ownership Agreement and Mitchell O&M Agreement reflect the plans for both parties, including Liberty's plans for Mitchell. Specifically, the SPA states that:

- Kentucky Power and Wheeling Power will take the actions necessary to obtain the regulatory approvals of the Mitchell Ownership Agreement and Mitchell O&M Agreement;

- The new Mitchell Ownership Agreement and Mitchell O&M Agreement must receive all regulatory approvals and be signed by Kentucky Power and Wheeling Power as necessary conditions to closing the sale of Kentucky Power; and
- The new Mitchell Ownership Agreement and Mitchell O&M Agreement are exhibits to the SPA and contain what AEP and Liberty have agreed to regarding Mitchell including operations and cost allocations.

5. The thrust of CAD's Motion to Compel is that the proposed sale of Kentucky Power Company ("KPCo") to Liberty Utilities Co. ("Liberty") is relevant to the instant proceeding and, therefore, CAD should be able "to conduct discovery related to the proposed sale of KPCo." (Motion at 4.) However, to use CAD's own terminology, its Motion "misses the mark."

6. As was pointed out in the Companies' objections to Question Nos. 1-4 and 1-5, it is necessary for WPCo to become operator of the Mitchell Plant, pursuant to the proposed ownership and operating agreements, because of the conflicting decisions of this Commission and the Kentucky Public Service Commission ("KPSC") as to CCR/ELG upgrades at the plant.

7. This Commission stated in its October 12, 2021 Order in Case No. 20-1040-E-CN that "the changes in the [current] Operating Agreement for the Mitchell plant or changes in ownership of the Mitchell plant necessary to accommodate the continued operation of the plant without the involvement of Kentucky Power Company or Kentucky jurisdictional customers shall be filed for approval by this Commission."

8. Likewise, the KPSC stated that it "expects Kentucky Power and Wheeling to promptly seek modifications to the Mitchell operating agreement should Wheeling move forward with the ELG project, in particular the provisions designating Kentucky Power the operator of Mitchell and assigning it certain responsibilities in that role." *In the Matter of: Electronic Investigation of the Service, Rates and Facilities of Kentucky Power Company*, Case No. 2021-00371, Order at 9 (Ky. P.S.C. Oct. 8, 2021).

9. Accordingly, the Companies filed the instant Petition seeking this Commission's approval of the proposed ownership and operating agreements necessary to effectuate the transition of WPCo to operator of the Mitchell Plant.

10. Dispositive of CAD's Motion to Compel is the fact that WPCo must become the operator of the Mitchell Plant regardless of the proposed sale of KPCo to Liberty. This was explained in both the Companies' Petition and in the testimony submitted with that Petition. (*See* Petition at 6, 10; Direct Testimony of Christian T. Beam at 12 ("The New Mitchell Agreements are appropriate to govern the relationship regarding the Mitchell Plant whether or not the ownership of the KPCo changes, as they address the requirements of this Commission and the KPSC.").)

11. CAD fails to offer a cogent explanation of how, in light of this fact, the proposed sale of KPCo to Liberty is not only relevant to this proceeding, but permits such far-reaching discovery as to include the confidential communications between AEP and its "financial and strategic advisors" and "all information" provided to AEP by Liberty.

12. While CAD seems to be on the right path in stating that the "responsibilities related to the future ownership and operation of the Mitchell Plant" are relevant (such responsibilities are addressed in the proposed agreements, after all), it is quite a leap for CAD to then conclude that it "is entitled to conduct meaningful discovery to address questions and concerns it has about the complete picture, which obviously includes the sale of KPCo." (Motion at 3-4.)

13. Because the transition of WPCo to operator of the Mitchell Plant must occur regardless of the sale of KPCo, the Companies submit that Question Nos. 1-4 and 1-5 do not seek information that is “obviously” relevant or pertinent to the substantial issues in this proceeding. *See* W. Va. Code R. § 150-1-13.6.2; W. Va. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action[.]”). These questions are simply outside the scope of permissible discovery. *Id.*

14. The West Virginia Rules of Evidence provide that “[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” W. Va. R. Evid. 401.

15. Although CAD asserts that the proposed sale of KPCo is relevant to the instant proceeding, there is no explanation or analysis in the Motion to Compel as to how the “Confidential Information Memorandum” (Question 1-4) and the “parties’ written offers and counteroffers with respect to the anticipated transfer of KPCo to Liberty” (Question 1-5, modified) have a tendency to make material facts more or less probable here. There is but a passing reference to “how the parties arrived at the terms of the Stock Purchase Agreement for KPCo” (Motion at 5), which purchase agreement is not before this Commission. This is fatal to CAD’s request for relief.

16. The proposed ownership and operating agreements were also presented to the KPSC in a proceeding similar to this one. *See* KPSC Case No. 2021-00421. Then, in a separate proceeding, the KPSC is considering a “Joint Application for Authority to Transfer Ownership of Kentucky Power Company to Liberty Utilities Co.” *See* KPSC Case No. 2021-00481.

17. Again, whether or not KPCo is sold to Liberty, both WPCo and KPCo are seeking approval of the proposed ownership and operating agreements to address the conflicting CCR/ELG decisions and ensure continued operation of the Mitchell Plant. A fishing expedition by CAD into the separate matter of the proposed sale of KPCo to Liberty is not warranted (or permissible) here. See W. Va. Code R. § 150-1-13.6.2; W. Va. R. Civ. P. 26(b)(1); W. Va. R. Evid. 401.

WHEREFORE, the Companies respectfully request that the Commission deny CAD's Motion to Compel and permit the Companies' objections to stand.

Respectfully submitted this 7<sup>th</sup> day of February, 2022.

**APPALACHIAN POWER COMPANY and  
WHEELING POWER COMPANY**

By Counsel,



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William C. Porth (WV Bar #2943) wcp@ramlaw.com  
Anne C. Blankenship (WV Bar #9044) acb@ramlaw.com  
Robinson & McElwee PLLC  
P.O. Box 1791  
Charleston, WV 25326

James R. Bacha  
AMERICAN ELECTRIC POWER  
SERVICE CORPORATION  
1 Riverside Plaza  
Columbus, Ohio 43215  
jrbacha@aep.com

Keith D. Fisher (WV State Bar #11346)  
AMERICAN ELECTRIC POWER  
SERVICE CORPORATION  
500 Lee Street East, Suite 800  
Charleston, West Virginia 25301  
(304) 348-4154  
kdfisher@aep.com

*Counsel for Appalachian Power Company  
and Wheeling Power Company*



**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**CASE NO. 21-0810-E-PC**

**APPALACHIAN POWER COMPANY and  
WHEELING POWER COMPANY,**  
public utilities.

*Petition for Commission Consent and Approval  
to Enter into Ownership and Operating Agreements  
for the Mitchell Plant*

**CERTIFICATE OF SERVICE**

I, Keith D. Fisher, counsel for Appalachian Power Company and Wheeling Power Company, do hereby certify that a true and correct copy of the foregoing "Response of Appalachian Power Company and Wheeling Power Company to CAD's Motion to Compel" was served upon the following, via electronic mail, on this 7th day of February, 2022:

Lucas R. Head, Esq. Public Service Commission of West Virginia 201 Brooks Street Charleston, WV 25301 <i>Counsel for Staff of WV Public Service Commission</i>	Robert F. Williams, Esq. Heather B. Osborn, Esq. John Auville, Esq. Consumer Advocate Division 300 Capitol Street, Suite 810 Charleston, WV 25301 <i>Counsel for Consumer Advocate Division</i>
Susan J. Riggs, Esq. Jason C. Pizatella, Esq. Spilman Thomas & Battle, PLLC 300 Kanawha Blvd E Charleston, WV 25301 <i>Counsel for WVEUG</i>	Derrick P. Williamson, Esq. Barry A. Naum, Esq. Spilman Thomas & Battle, PLLC 1100 Bent Creek Blvd, Suite 101 Mechanicsburg, PA 17050 <i>Counsel for WVEUG</i>
Emmett Pepper, Esq. Pepper & Nason 8 Hale Street Charleston, WV 25301 <i>Counsel for CAG, SUN, and EEWW</i>	H. Brann Altmeyer, Esq. Jacob C. Altmeyer, Esq. Phillips, Gardill, Kaiser & Altmeyer, PLLC 61 Fourteenth Street Wheeling, WV 26003 <i>Counsel for WV Coal Association, Inc.</i>



Keith D. Fisher (WV State Bar #11346)

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 8<sup>th</sup> day of February 2022.

CASE NO. 21-0810-E-PC

APPALACHIAN POWER COMPANY and  
WHEELING POWER COMPANY,  
public utilities.

Petition for consent and approval to enter into Ownership and Operating Agreements for the Mitchell Plant.

**COMMISSION ORDER**

The Commission grants two petitions to intervene.

**BACKGROUND**

On November 19, 2021, Appalachian Power Company and Wheeling Power Company (together, Companies) filed a petition (Petition) for consent and approval to enter into Ownership and Operating Agreements for the Mitchell Plant. As a part of that Petition, the Companies requested exemption from the requirement to provide the financial information specified in Rule 21 of the Commission Rules of Practice and Procedure (Procedural Rules), 150 C.S.R. 1. Petition at 2.

On January 25, 2022, the West Virginia Coal Association (WVCA)<sup>1</sup> filed a petition to intervene. WVCA stated that it is comprised of twenty-nine general members many of which sell their coal to the Companies for use at the Mitchell Plant. The demand for the coal mined by the members of the WVCA could be significantly altered by the outcome of this proceeding, and accordingly, the WVCA has a significant interest in its outcome.

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<sup>1</sup> For purposes of this case, WVCA members include Alliance Coal, LLC, American Consolidated Natural Resources, Inc., Appalachian Resource Company, LLC, Arcelor Mittal WV, Arch Resources, Baylor Mining, Inc., Blackhawk Mining, Bluestone Minerals, Century Mining, Consol Energy, Cornerstone Minerals, LLC, Elk Horn Coal Company, Imperial Colliery, Investment Management Group, Inc. (IMG), JMP Coal Holdings, LLC, LP Mineral, LLC, Marsh Fork Development Company, Peerless Mining, Phoenix Resources, Pritchard Mining Company, Inc., RAMACO, Raven Crest Mining, LLC, Red Bone Mining, Southern Minerals, South Fork Coal Company, Tyler Morgan Coal Company, United Coal Company, LLC, White Forest Resources, and Wyoming Eagle.

On January 28, 2022, West Virginia Citizens Action Group, Solar United Neighbors, and Energy Efficient West Virginia (CAG/SUN/EEWV) filed a petition to intervene. CAG and EEWV share an interest in demand-side resources for West Virginia. Additionally, CAG has a long history of advocating for environmental protection and West Virginia customers. SUN's mission is to promote equal access to solar energy in states including West Virginia.

### **DISCUSSION**

Pursuant to Procedural Rule 12.6 any person having a legal interest in the subject matter of a pending proceeding may petition to intervene. WVCA and CAG/SUN/EEWV stated a legal interest in this matter. No objections were filed to the petitions to intervene. The Commission will grant intervenor status to WVCA and CAG/SUN/EEWV.

### **FINDINGS OF FACT**

1. No party objected to WVCA's request to intervene. See file generally.
2. No party objected to CAG/SUN/EEWV's request to intervene. See file generally.

### **CONCLUSIONS OF LAW**

1. WVCA has a legal interest in the outcome of this proceeding. Procedural Rule 12.6.
2. CAG/SUN/EEWV has a legal interest in the outcome of this proceeding. Procedural Rule 12.6.

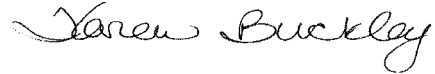
### **ORDER**

IT IS THEREFORE ORDERED that West Virginia Coal Association's Petition to Intervene is granted.

IT IS FURTHER ORDERED that West Virginia Citizens Action Group, Solar United Neighbors, and Energy Efficient West Virginia's Petition to Intervene is granted.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Staff by hand delivery.

A True Copy, Teste,

A handwritten signature in cursive script that reads "Karen Buckley".

Karen Buckley, Acting Executive Secretary

SMS/pb  
210810ca

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*

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Brett Mattison

Commonwealth of Kentucky )

County of Boyd )

) Case No. 2021-00004

Subscribed and sworn before me, a Notary Public, by Brett Mattison this 11<sup>th</sup> day of February, 2022.

*Scott F. Bishop*

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Notary Public

My Commission Expires June 24, 2025

Notary ID Number: KYNP 32110

