

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.

Witness: Deryle B. Mattison



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March 16, 2022

Via Electronic Mail

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

03:26 PM MAR 16 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:

Pursuant to the Commission's March 11, 2022 Order in the above-referenced matter, please find enclosed for filing the Supplemental Responses of Appalachian Power Company and Wheeling Power Company to CAD's First Data Request. 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. Should you have any questions regarding this correspondence, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith D. Fisher".

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

Enclosure

cc: Certificate of Service

03:26 PM MAR 16 2022 EXEC SEC DIV

**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*

**SUPPLEMENTAL RESPONSES OF APPALACHIAN POWER COMPANY AND
WHEELING POWER COMPANY TO CAD'S FIRST DATA REQUEST**

Appalachian Power Company ("APCo") and Wheeling Power Company ("WPCo") (together, "the Companies") file the following as their Supplemental Responses to CAD's First Data Request in the above-referenced matter:

**APPALACHIAN POWER COMPANY &
WHEELING POWER COMPANY
WEST VIRGINIA CASE NO. 21-0810-E-PC
CAD Set 1**

Request CAD 1-04

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

Response CAD 1-04

The Companies filed an objection to this question on January 20, 2022.

Supplemental Response CAD 1-04

Because the requested document contains confidential information, it will be made available to the Staff, the CAD, and any other parties that have executed a Confidentiality Agreement, and provided under seal to the Commission.

**APPALACHIAN POWER COMPANY &
WHEELING POWER COMPANY
WEST VIRGINIA CASE NO. 21-0810-E-PC
CAD Set 1**

Request CAD 1-05

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. [Modified by CAD on Jan. 27, 2022 to request only "the parties' written offers and counter offers with respect to the anticipated transfer of KPCo to Liberty."]

Response CAD 1-05

The Companies filed an objection to this request on January 20, 2022. Without waiving that objection, the Companies respond as follows:

The 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.

Supplemental Response to Modified CAD 1-05

The Stock Purchase Agreement drafts exchanged between AEP and Liberty Utilities Co., as well as the exchanged drafts of the Mitchell Plant Ownership Agreement and Mitchell Plant Operations and Maintenance Agreement that are the subject of this proceeding, constitute the parties' written offers and counter-offers with respect to the anticipated transfer of KPCo to Liberty. Because those drafts contain confidential information, they will be made available to the Staff, the CAD, and any other parties that have executed a Confidentiality Agreement, and provided under seal to the Commission.

**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 "Supplemental Responses of Appalachian Power Company and Wheeling Power Company to CAD's First Data Request" was served upon the following, via electronic mail, on this 16th day of March, 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)



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Keith D. Fisher
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March 17, 2022

Via Electronic Mail

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

02:48 PM MAR 17 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 Amend Procedural Schedule 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,

A handwritten signature in black ink that reads "Keith D. Fisher". The signature is written in a cursive, flowing style.

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

Enclosure

cc: Certificate of Service

02:48 PM MAR 17 2022 EXEC SEC DIV

**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 AMEND PROCEDURAL SCHEDULE**

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

1. On November 19, 2021, pursuant to the Commission's orders in Case No. 20-1040-E-CN, the Companies filed a Petition for the Commission's approval of a new Mitchell Plant Ownership Agreement and a new Mitchell Plant Operations and Maintenance Agreement. Copies of those agreements were provided with the Companies' Petition.

2. Also on November 19, 2021, Kentucky Power Company ("KPCo") initiated a proceeding before the Kentucky Public Service Commission ("KPSC") seeking approval of the same agreements (sometimes referred to herein as "the Kentucky proceeding").

3. On January 25, 2022, this Commission entered a procedural order requiring the intervenors to file direct testimony by March 17, 2022 and all parties to file rebuttal testimony by March 31, 2022. The Commission also set a hearing in this matter for April 7, 2022.

4. A hearing was held in the Kentucky proceeding on March 1, 2022. Based on matters discussed at hearing, the KPSC entered an order on March 3, 2022 permitting KPCo to file a proposed amendment to the Mitchell Ownership Agreement by March 16, 2022. The KPSC noted in its order that it was discussed at hearing “the possibility of filing an amendment to the Mitchell Ownership Agreement to include the possibility of dividing Mitchell Power Plant’s (Mitchell) two units between Kentucky Power and Wheeling Power Company.”

5. On the evening of March 15, 2022, KPCo made a filing with the KPSC that included supplemental testimony and a revised Mitchell Plant Ownership Agreement addressing “the possibility of dividing” Mitchell’s two units between KPCo and WPCo.

6. As noted in CAD’s Motion, the Companies provided a copy of that revised agreement to the parties in this matter, via email, on the evening of March 15, 2022. The Companies followed up the next morning by providing copies of the supplemental testimony filed in Kentucky the night before. The Companies provided this information to the other parties informally in the interest of transparency and as expeditiously as possible.

7. The Companies understand and appreciate the CAD’s concern that the revised agreement is not yet on file with this Commission and that intervenor direct testimony is due only two days after the revised agreement was circulated.

8. Accordingly, the Companies plan to file the revised agreement with this Commission, accompanied by supplemental testimony, on Friday, March 18, 2022.

9. Furthermore, the Companies propose that the procedural schedule in this matter be amended to postpone the direct testimony of Staff and Intervenors to March 28, 2022 and rebuttal testimony of all parties to April 4, 2022. The hearing date should remain April 7, 2022, given it is the Companies' understanding that the Kentucky proceeding will resume hearing on March 30, 2022. Approval of the Mitchell agreements is a condition precedent to the sale of KPSCo, and the KPSC is statutorily required to rule on the proposed sale by May 4, 2022.

WHEREFORE, the Companies respectfully request that the Commission amend the procedural schedule in this matter as set forth herein.

Respectfully submitted this 17th day of March, 2022.

**APPALACHIAN POWER COMPANY and
WHEELING POWER COMPANY**

By Counsel,



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**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 Amend Procedural Schedule" was served upon the following, via electronic mail, on this 17th day of March, 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>
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Keith D. Fisher (WV State Bar #11346)

03:41 PM MAR 18 2022 EXEC SEC DIV



Keith D. Fisher
Senior Counsel

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Charleston, WV 25301
304.348.4154
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March 18, 2022

Via Hand Delivery

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

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:

On behalf of Appalachian Power Company and Wheeling Power Company (together, “the Companies”), and as indicated in their “Response to CAD’s Motion to Amend Procedural Schedule” filed in this matter on March 17, 2022, I file herewith the original and twelve (12) copies of the Supplemental Direct Testimony of Christian T. Beam. On this date, copies thereof were served in accordance with the Certificate of Service.

Thank you for your attention to this matter. Should you have any questions regarding this correspondence, please do not hesitate to contact me.

Sincerely,

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

Enclosures
cc: Certificate of Service

COMPANY EXHIBIT CTB-S

**SUPPLEMENTAL DIRECT TESTIMONY OF
CHRISTIAN T. BEAM
ON BEHALF OF APPALACHIAN POWER COMPANY AND
WHEELING POWER COMPANY
BEFORE THE PUBLIC SERVICE COMMISSION OF
WEST VIRGINIA IN CASE NO. 21-0810-E-PC**

1 **Q. PLEASE STATE YOUR NAME.**

2 A. My name is Christian T. Beam.

3 **Q. ARE YOU THE SAME CHRISTIAN T. BEAM WHO FILED DIRECT**
4 **TESTIMONY IN THIS PROCEEDING?**

5 A. Yes.

6 **Q. FOR WHOM ARE YOU TESTIFYING IN THIS PROCEEDING?**

7 A. I am testifying on behalf of Appalachian Power Company (“APCo”) and Wheeling
8 Power Company (“WPCo”), (together, “the Companies”). APCo and WPCo, although
9 separate companies, have operated with common rates, as mandated by the Commission,
10 for many years. APCo is not a party to the subject agreements in this proceeding and is a
11 joint petitioner solely because of its having common rates with WPCo.

12 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY IN THIS**
13 **PROCEEDING?**

14 A. The purpose of my supplemental testimony is to sponsor and discuss a modified Mitchell
15 Plant Ownership Agreement that includes a Unit Interest Swap alternative to the Fair
16 Market Value backstop structure in the original proposed Mitchell Plant Ownership
17 Agreement. This Unit Interest Swap alternative was developed and filed in the parallel
18 proceeding before the Kentucky Public Service Commission (“KPSC”) in an attempt to
19 address perceived issues with the original Ownership Agreement filed in Kentucky.

20 **Q. ARE YOU SPONSORING ANY EXHIBITS?**

1 A. I am sponsoring the following exhibits, consisting of a clean and redline version of the
2 Mitchell Plant Ownership Agreement, previously filed as an exhibit to my Direct
3 Testimony in this proceeding, that includes an additional Unit Interest Swap provision.

<u>Exhibit</u>	<u>Description</u>
CTB-S1	Mitchell Plant Ownership Agreement redrafted with Unit Interest Swap Transaction
CTB-S2	Redline of Mitchell Plant Ownership Agreement redrafted with Unit Interest Swap Transaction, showing comparison to the original proposed Mitchell Ownership Agreement

4 **Q. PLEASE EXPLAIN THE CURRENT OWNERSHIP AND OPERATION OF THE**
5 **MITCHELL PLANT.**

6 A. WPCo and Kentucky Power Company (“KPCo”) each own an undivided 50 percent
7 interest in the Mitchell Plant (i.e. each owns half of each of the two coal-fired units and
8 common equipment at the plant). KPCo presently operates Mitchell under an agreement
9 with WPCo that was approved by the Federal Energy Regulatory Commission (“FERC”)
10 and by this Commission.

11 **Q. WHY IS WPCO SEEKING TO INCLUDE CHANGES TO THE ORIGINAL**
12 **PROPOSED MITCHELL PLANT OWNERSHIP AGREEMENT THAT WAS**
13 **PREVIOUSLY FILED IN THIS PROCEEDING?**

14 A. The original proposed Ownership Agreement was filed with this Commission as well as
15 the Kentucky Public Service Commission (“KPSC”) on November 19, 2021. Ultimately,
16 the same agreement will have to be approved by both commissions as well as the FERC.
17 For various reasons, there seem to be misgivings about Article 9.6 of the original
18 proposed Ownership Agreement, which established a Fair Market Value Buyout for the
19 Mitchell Plant in the future. As a result of discovery and discussions with stakeholders in

1 the Kentucky proceeding, a modified proposed Ownership Agreement was developed and
2 filed in Kentucky on March 15, 2022.

3 WPCo and KPCo want to ensure each has fair and reasonable options available
4 regarding future treatment of the Mitchell Plant if they are to obtain approval of the
5 agreements by their respective commissions. Thus, I am sponsoring here as Exhibit
6 CTB-S1 the same modification to the proposed Ownership Agreement that was filed in
7 Kentucky.

8 **Q. WILL THE UNIT INTEREST SWAP PROVISION PROVIDE THE OWNERS OF**
9 **MITCHELL ADEQUATE OPTIONS REGARDING THE MITCHELL PLANT IN**
10 **THE FUTURE?**

11 A. Yes. The Unit Interest Swap provision allows for an additional option in the future,
12 which would be for each owner to move to a divided interest in its ownership of the
13 Mitchell Plant. This approach would help alleviate concerns about the Fair Market Value
14 Buyout included in the original proposed Ownership Agreement.

15 **Q. PLEASE SUMMARIZE THE UNIT INTEREST SWAP PROVISION THAT IS**
16 **NOW INCLUDED IN THE MODIFIED PROPOSED MITCHELL PLANT**
17 **OWNERSHIP AGREEMENT.**

18 A. As was the case in the original agreement that was included with my direct testimony as
19 Company Exhibit CTB-D3, WPCo and KPCo may enter into a Buyout Transaction on
20 mutually agreeable terms and conditions whereby KPCo would transfer its Ownership
21 Interest in the Mitchell Plant to WPCo on or prior to December 31, 2028. As set forth in
22 Article 9.6(a) of the modified proposed Ownership Agreement, the purchase price would
23 be an amount mutually agreed to by WPCo and KPCo and also is required to be approved
24 by this Commission and the KPSC. If WPCo and KPCo cannot reach mutual agreement

1 on the purchase price or if any mutual agreement is not approved by this Commission and
2 the KPSC, then as set forth in Article 9.6(b), WPCo and KPCo would have the option to
3 seek to divide their interests in the Mitchell Plant by unit. Upon completion of the
4 division, each owner would be able to deal with the unit it owns independently, subject
5 only to such approval from its regulator(s) as might be required. Considering the PJM
6 auction rules, WPCo and KPCo would need to determine if a mutual agreement can occur
7 by May 2025 so that each of its determinations is synchronized with the PJM capacity
8 planning cycle, under which generation capacity commitments are generally made three
9 years in advance. However, the unit split would not be consummated until December 31,
10 2028, unless otherwise agreed, and plant investments made after a determination to
11 divide the units would follow the provisions of the agreement. Such a plan would allow
12 each owner to make future investments in its own Mitchell unit that are consistent with
13 its intentions for future operation of its specific unit.

14 Q. **WHAT ARE THE CHANGES TO THE OWNERSHIP AGREEMENT THAT**
15 **ALLOW FOR THE UNIT INTEREST SWAP APPROACH?**

16 A. The key changes to the modified proposed Mitchell Ownership Agreement are found in
17 Article 9.6, although there are other modifications that are needed for consistency with
18 those key changes. Under the proposed Unit Interest Swap approach, WPCo can
19 negotiate a purchase of KPCo's undivided interest or split the units and, if needed,
20 execute an agreement under which KPCo could utilize WPCo's Effluent Limitation
21 Guidelines ("ELG") compliance assets, which would also facilitate a sale by KPCo of its
22 interest to a third party. The unit split also presents further opportunities for how KPCo
23 would pay any decommissioning costs.

1 **Q WHAT IS THE PROPOSED TIMELINE FOR THE ALTERNATIVE PROCESS**
2 **FOR A BUYOUT OR UNIT INTEREST SWAP?**

3 A. The proposed timeline is as follows. At any time before 2025, either Owner may request
4 that the other Owner enter into good faith discussions about a mutually agreed buyout of
5 KPCo's interest. December 30, 2024, is the deadline to complete negotiation and
6 execution of a mutually agreed Buyout Transaction, after which the Owners have until
7 May, 2025 to obtain applicable regulatory approvals for the Buyout Transaction (based
8 on typical PJM capacity market deadlines). If the Owners are unable to mutually agree
9 on a buyout by the end of December 2024, they are required to commence negotiation
10 and enter into a Unit Interest Swap on mutually agreed terms. In addition, if the Owners
11 enter into a Buyout Transaction on mutually agreed terms but are not able to obtain the
12 necessary regulatory approvals by May 1, 2025, then the Owners are required to enter
13 into the Unit Interest Swap on mutually agreed terms. Generally speaking, the Owners
14 have from May 1, 2025, to December 31, 2028, to negotiate the Unit Interest Swap and
15 obtain applicable regulatory approvals. December 31, 2028 is the deadline for closing
16 the Buyout Transaction or Unit Interest Swap. All of the above dates are also subject to
17 change by the Mitchell Operating Committee if the PJM capacity market dates are
18 changed (e.g., delayed) as they have been changed recently.

19 **Q. HOW WOULD THE UNIT INTEREST SWAP BE IMPLEMENTED?**

20 A. The Mitchell Operating Committee – with equal representation by WPCo and KPCo –
21 would determine a fair division of the undivided interests and then seek the appropriate
22 regulatory approvals. The Operating Committee would need to properly divide the
23 common facilities shared by both units and associated costs, and any inventories of coal
24 and consumables present when the interests are divided. A new “Exhibit C” to the

1 modified proposed Mitchell Plant Ownership Agreement, as reflected in Company
2 Exhibit CTB-S1, provides guidance to the Operating Committee on the matters it will
3 need to take into account in implementing the Unit Interest Swap.

4 **Q. WHAT ARE SOME OF THE ACTIONS REQUIRED TO IMPLEMENT THE**
5 **UNIT INTEREST SWAP?**

6 A. The Operating Committee will work with the Owners to determine the particular unit to
7 be owned by each Owner, any economic equalization payments between the Owners to
8 account for differences between the units or unequal ownership of plant facilities,
9 disposition of inventories, arrangements for purchasing or using the common facilities,
10 arrangements when units are retired at different dates, the need for real estate and other
11 consultants, and operational and cost responsibilities of the Owners for each unit.

12 **Q. WOULD CERTAIN IMPLEMENTATION ACTIONS IN CONNECTION WITH**
13 **THE UNIT INTEREST SWAP VARY DEPENDING ON KPCCO'S DECISION**
14 **WHETHER TO OPERATE ITS UNIT BEYOND 2028?**

15 A. Yes. If KPCCo does not plan to operate its unit past 2028, then the Operating Committee
16 must determine the arrangements for the common facilities should WPCo decide to
17 continue operating its unit. KPCCo could agree to pay decommissioning costs up front, or
18 over time as costs are incurred when the whole plant is retired. In addition, if the owner
19 of KPCCo's interest in the plant intends to use the ELG equipment beyond 2028, an
20 agreement with WPCo would be required to appropriately reflect this Commission's prior
21 Orders and WPCo's ELG investment made in that unit, as well as any other investments
22 that were not shared equally.

1 **Q. HOW COULD WPCO ALLOW FOR OPERATIONS OF BOTH UNITS BEYOND**
2 **2028 GIVEN THAT THE ELG INVESTMENT THAT MADE SUCH**
3 **OPERATION POSSIBLE WAS NOT SHARED EQUALLY?**

4 A. The revised language of Article 9.6 expressly acknowledges that both Owners would
5 need to seek and obtain all necessary regulatory approvals related to the Unit Interest
6 Swap. Any deviation from prior Commission orders that could occur as a result of
7 pursuing one of the options in the Unit Interest Swap provision would require additional
8 approvals before being final.

9 For example, in paragraph three of the Conclusions of Law in the Commission's
10 October 12, 2021 Order in Case No. 20-1040-E-CN, the Commission stated:

11 3. Unless KPSC and VSCC allow Kentucky Power and the Virginia
12 jurisdictional customers of APCo to pay for their share of costs for ELG
13 improvements and continuing operations costs necessary to operate beyond
14 2028, the benefit of capacity and energy made possible by the improvements
15 and operating beyond 2028 shall inure to the benefit of West Virginia
16 customers and FERC jurisdictional customers that do share in the ELG
17 compliance and continuing operations costs.

18
19 Thus, to the extent that WPCo makes any agreement with another party to own
20 and/or operate the ELG equipment that will be constructed at the Mitchell Plant, such an
21 agreement would require regulatory approval from this Commission to reflect the
22 investments made for ELG compliance at the Mitchell Plant.

23 **Q. IS THE MODIFIED PROPOSED MITCHELL OWNERSHIP AGREEMENT**
24 **CONTAINING THE UNIT INTEREST SWAP PROVISION REASONABLE AND**
25 **IN THE PUBLIC INTEREST?**

26 A. Yes. The terms and conditions of the modified proposed Mitchell Plant Ownership
27 Agreement remain reasonable. The addition of the proposed Unit Interest Swap approach
28 benefits the Companies and their West Virginia customers by providing transparency,

1 clarity, and flexibility regarding Mitchell's continued operations, cost allocation, and
2 ownership. The modifications are consistent with the terms of the regulatory orders
3 regarding cost allocation at Mitchell, provide a process through which WPCo can acquire
4 full ownership of Mitchell, and allow an option for WPCo to continue operations after
5 2028. The Unit Interest Swap approach also provides WPCo with the option to divide the
6 units and continue operation of its ownership share of Mitchell.

7 In sum, the modified proposed Ownership Agreement and the proposed
8 Operations and Maintenance Agreement offer benefits to both WPCo and KPCo and do
9 not give either company any undue advantage over the other, nor do they adversely affect
10 the public in West Virginia.

11 **Q. DOES THAT CONCLUDE YOUR SUPPLEMENTAL DIRECT TESTIMONY?**

12 A. Yes, it does.

Company Exhibit CTB-S1
Page 1 of 36

**Exhibit B [Unit Interest Swap Transaction]
Draft – March 15, 2022**

[RATE SCHEDULE NO. 303]

MITCHELL PLANT OWNERSHIP AGREEMENT

KENTUCKY POWER COMPANY

and

WHEELING POWER COMPANY

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- Exhibit A – Capital Budget, Initial Budgets and Forecast
- Exhibit B – Form of Monthly Sample Report
- Exhibit C – Unit Interest Swap Transaction Implementation

THIS MITCHELL PLANT OWNERSHIP AGREEMENT (this "Agreement"), with an effective date of [] (the "Effective Date"), is by and among Kentucky Power Company, a Kentucky corporation qualified as a foreign corporation in West Virginia ("KPCo"); Wheeling Power Company, a West Virginia corporation ("WPCo") (such parties hereinafter sometimes referred to as an "Owner" and together the "Owners"); and, solely with respect to Section 13.4, American Electric Power Service Corporation, a New York corporation ("AEPSC").

WITNESSETH:

WHEREAS, KPCo and WPCo, as of the date hereof, each own a fifty percent (50%) undivided ownership interest in the Mitchell Power Generation Facility (each such percentage interest, an Owner's "Ownership Interest"), which consists of two coal-fired generating units (each, a "Unit"), with each Unit having a nominal nameplate capacity of 800 MW, located in Moundsville, West Virginia (as further defined herein, the "Mitchell Plant");

WHEREAS, KPCo, WPCo and AEPSC are parties to that certain Mitchell Plant Operating Agreement, dated as of December 31, 2014 (the "Original Operating Agreement");

WHEREAS, the Original Operating Agreement sets forth certain rights and obligations of the Owners and AEPSC with respect to the Mitchell Plant and the Owners' ownership thereof;

WHEREAS, pursuant to the Original Operating Agreement, KPCo is responsible for the day-to-day operations and maintenance of the Mitchell Plant;

WHEREAS, the Owners and AEPSC desire to replace the Original Operating Agreement to set forth the rights and obligations of the Owners with respect to the Mitchell Plant and their ownership thereof and to remove AEPSC as a party thereto;

WHEREAS, in connection with the execution of this Agreement, the Owners desire to execute a separate operations and management agreement to provide for the day-to-day operation and maintenance responsibilities in respect of the Mitchell Plant (as may be amended from time to time the "O&M Agreement"); and

WHEREAS, the Owners have agreed that, subject to the terms and conditions of the O&M Agreement, on and after the Effective Date WPCo shall replace KPCo as the operator of the Mitchell Plant (the "Operator").

NOW THEREFORE, in consideration of the premises and for the purposes hereinabove recited, and in consideration of the mutual covenants hereinafter contained, the signatories hereto agree as follows:

ARTICLE ONE
OWNERSHIP AND OPERATIONS

1.1 To the greatest extent permitted by Applicable Law, the Mitchell Plant and all assets (tangible and intangible) and property (real and personal) owned, leased, held, developed, constructed or acquired solely for or in connection with the Mitchell Plant or the operation, maintenance or Decommissioning of the Mitchell Plant by or on behalf of an Owner or the Owners

(together, the "Project Assets") shall be owned and held and deemed to be owned and held by the Owners as tenants in common in proportion to their respective Ownership Interests (except for any capital items owned in a different proportion in accordance with Section 1.8) or, in the event any Project Asset cannot be held directly by both of the Owners due to, inter alia, any pre-existing legal or contractual restrictions that cannot be altered or satisfied or where effectuating such ownership structure would result in unreasonable additional expense to the Owners, by the Operator as trustee for the Owners as tenants in common in proportion to their respective Ownership Interest. If the ownership of any Project Asset is registered or recorded in the name of one of the Owners, and notwithstanding the Owners' efforts such Project Asset cannot be held directly by both Owners as contemplated above, then such Owner in whose name ownership is registered or recorded shall hold such Project Asset in trust for itself and the other Owner in proportion to their respective Ownership Interests and, to the extent necessary or requested by the Operator or other Owner, make such Project Assets (or the benefits thereof) available for the use and benefit of the Owners (in proportion with their respective Ownership Interests), including, to the extent consistent with the foregoing, by such Owner subcontracting, sublicensing, subleasing, delegating or granting a limited power of attorney or similar appointment as agent to Operator to administer such Project Assets.

1.2 At the request of either Owner, and in accordance with Section 1.1, each Owner and the Operator shall execute all documents and do all things necessary or appropriate to register or record the Project Assets in the names of the Owners in proportion to their respective Ownership Interests (or such different proportion as any capital item may be owned in accordance with Section 1.8).

1.3 All assets (tangible and intangible) and property (real and personal) held, developed, constructed or acquired by or on behalf of the Operator for or on behalf of the Owners jointly, or any of them, shall constitute "Project Assets" subject to the ownership of both Owners as set forth in Sections 1.1 and 1.2. Except as otherwise agreed by the Owners, the Operator shall not have any right, title or interest in or to any such assets, or in or to any money paid to, collected or received by the Operator for or on behalf of either Owner, except as the agent or representative of, or for the use and benefit of, such Owners as set forth in this Agreement and in proportion to each Owner's respective Ownership Interest.

1.4 Each Owner hereby waives any rights it may have at law or equity to bring an action for partition or division of the Mitchell Plant or any Project Asset or any contracts related thereto, and agrees that it shall not (a) seek partition or division of the Mitchell Plant or any Project Asset or any contracts related thereto, or (b) take any action, whether by way of any court order or otherwise, for physical partition or judicial sale in lieu of partition of the Mitchell Plant or any Project Asset or any contracts related thereto. Nothing in this Section 1.4 shall affect the right of either Owner to dispatch its respective share of the Total Net Capability under Article Two or to Dispose of its Ownership Interest in accordance with Article Nine.

1.5 On and after the Effective Date, WPCo shall be the Operator responsible for the day-to-day operations and maintenance of the Mitchell Plant and shall operate, maintain and Decommission the Mitchell Plant for the sole benefit (and on behalf) of the Owners and in accordance with the terms and conditions of this Agreement and the O&M Agreement. KPCo agrees to take all actions reasonably necessary to facilitate WPCo's operation, maintenance and

Decommissioning of the Mitchell Plant pursuant to the terms of the O&M Agreement, including providing or permitting reasonable access to the Mitchell Plant to third party contractors and other contract counterparties of each Owner or the Operator with respect to the administration, implementation and satisfaction of such contracts or agreements executed or assumed by the Operator on behalf of either Owner relating to the Mitchell Plant, including all Facility Agreements (as defined in the O&M Agreement).

1.6 The Owners shall establish and maintain such bank accounts as may from time to time be required or appropriate for paying the costs and expenses, including capital expenditures, in respect of the ownership, operation, maintenance and Decommissioning of the Mitchell Plant. The Owners shall designate only the Operator, and its representatives as reasonably requested by the Operator, as authorized signatories to such bank accounts. All withdrawals made by the Operator (or its representatives) from such bank accounts shall be made only in connection with the performance of the Operator's obligations set forth in this Agreement and the O&M Agreement.

1.7 The initial capital budget for the period from the Effective Date through December 31, 2028 (including agreed allocations of costs for capital projects between the Owners) (the "Capital Budget"), the initial annual operating budget and the initial forecast of operating and capital costs to be incurred for the period from the Effective Date through December 31, 2028 are attached hereto as Exhibit A.

1.8 Notwithstanding the provisions of this Article One, to the extent that either Owner funds or bears an amount greater than 50% of any capital expenditures or ELG Capital Expenditures as contemplated in the Capital Budget or this Agreement, the directly resulting portion of any property, plant and equipment, or improvements thereto shall be owned by the Owners in proportion to their respective amounts funded and shall be included only in such proportion in each Owner's ownership accounts for regulatory, accounting, tax and other purposes.

ARTICLE TWO APPORTIONMENT OF CAPACITY AND ENERGY

2.1 The total net capability of the Mitchell Plant at low-voltage busses of the Units, after taking into account auxiliary load demand, is 1,560,000 kilowatts (the "Total Net Capability") as of the Effective Date. The Owners may from time to time modify the Total Net Capability of the Mitchell Plant as they may mutually agree.

2.2 The total net generation of the Mitchell Plant during a given period, as determined by the requirements of each Owner, shall mean the electrical output of the Mitchell Plant generators during such period, measured in kilowatt hours by suitable instruments, reduced by the energy used by auxiliaries for each Unit during such period (the "Total Net Generation").

2.3 Each Owner shall be entitled to receive 50% of the Total Net Capability and the Total Net Generation (with respect to each Owner, such Owner's "Assigned Capacity"), and all associated energy, capacity, ancillary services and other energy products, in accordance with this Agreement.

2.4 Except as may be determined by the Operating Committee in accordance with Section 7.6, in any hour, each Owner shall share 50% of the minimum load responsibility of each Unit.

2.5 In any hour during which any Unit is out of service, the Owners shall bear equally the cost of energy used by the out-of-service Unit's auxiliaries during such hour, which may be provided by the applicable local utility Affiliate of an Owner. Alternatively, the Owners may mutually agree in writing to each provide 50% of such energy.

ARTICLE THREE REPLACEMENTS, ADDITIONS, AND RETIREMENTS

3.1 The Owners shall take all actions within their respective control to cause the Operator, pursuant to the O&M Agreement, from time to time to make or cause to be made any necessary or appropriate additions to, replacements of, and retirements of, capitalizable facilities associated with the Mitchell Plant in accordance with the Capital Budget and the O&M Agreement or as may otherwise be mutually agreed upon by the Owners.

3.2 Unless a Buyout Transaction has been consummated, each Owner shall, upon the retirement of the Mitchell Plant (or any individual Unit), (a) cooperate in good faith and take all actions reasonably necessary to facilitate the relevant Decommissioning thereof, including negotiating in good faith any contracts or agreements (including liability transfer arrangements) on behalf of either Owner or Operator, including transfers, conveyances or assignments of Facility Equipment (as defined in the O&M Agreement), as reasonably requested by either Owner or Operator to facilitate such Decommissioning and (b) take, and/or instruct the Operator pursuant to the O&M Agreement to take, such actions, at the sole cost and expense of WPCo, to continue operating and maintaining the barge loading facilities and gypsum conveyor system at the Mitchell Plant and providing use of such facilities and system to the applicable contract counterparty and its representatives in accordance with, and until the expiration or earlier termination of, the CertainTeed Contract.

ARTICLE FOUR WORKING CAPITAL REQUIREMENTS

4.1 The Owners shall periodically mutually determine the amount, timing and invoicing processes for funds required for use as working capital, for operating, capital and other expenses incurred in the operation, maintenance and Decommissioning (including the Decommissioning Costs) of the Mitchell Plant, and in buying equipment, materials, parts, fuel and other supplies and services necessary to operate, maintain and Decommission the Mitchell Plant and to make the timely payments of any expenses required under the O&M Agreement.

4.2 Each Owner shall, in accordance with the timing set forth in a determination made pursuant to Section 4.1, promptly provide 50% of any such amount required by the Owners pursuant to Section 4.1, except as otherwise provided for in Section 6.7.

4.3 Each Owner agrees that if such Owner fails at any time during the Term to satisfy the Ratings Requirement, it will, within thirty (30) days of such failure, provide in favor of the other Owner and maintain credit support in the form of (a) a cash deposit, (b) a guaranty issued by

an Affiliate of such Owner that satisfies the Ratings Requirement in form and substance reasonably acceptable to the other Owner or (c) a letter of credit in form and substance reasonably acceptable to other Owner, issued by a commercial bank or other financial institution with a Credit Rating of at least "A-" by S&P Global Ratings, or any successor thereto ("S&P") or at least "A3" by Moody's Investors Service, Inc., or any successor thereto ("Moody's"), and in an amount equal to (i) one-half ($\frac{1}{2}$) of the then-applicable annual operating budget for the Mitchell Plant established pursuant to Section 7.2 from time to time, plus (ii) the sum of such Owner's allocated amount of capital expenditures for such year contained in the then-applicable Capital Budget, plus (iii) an amount equal to the latest estimate of Decommissioning Costs prepared by the Operator, determined on a net present value basis using a discount rate equal to the WACC as of the date of determination. Such credit support posted in favor of an Owner shall be promptly returned within thirty (30) days of the other Owner furnishing written evidence demonstrating that it satisfies the Ratings Requirement.

4.4 The Operator shall provide such credit support, including guarantees, cash deposits, letters of credit or other forms of credit support, to third parties (including contractual counterparties and Governmental Authorities) as required for the Owners' ownership, operation, maintenance and Decommissioning of the Mitchell Plant. To the extent that the Operator is required to provide such credit support to a third party in connection with any activity performed in respect of the Mitchell Plant under this Agreement (including the procurement of fuel as described in Section 5.1), the Owners shall share the reasonable and documented out-of-pocket cost of the third-party credit support incurred by the Operator (including of any credit support furnished by an Affiliate of the Operator) in accordance with their respective Ownership Interests.

ARTICLE FIVE INVESTMENT IN FUEL

5.1 The Operator shall procure, establish and maintain reserves of coal in common stock piles for the Mitchell Plant of such quality and in such quantities as the Operating Committee shall determine to be required to provide adequate fuel reserves against interruptions of normal fuel supply and as is necessary to maintain the number of tons in such coal stock piles, after taking into account the coal consumption from such coal stock piles by each Unit during each month. For purposes of this Agreement, "consumables" shall be as defined in account 502 of the Uniform System of Accounts administered by the Federal Energy Regulatory Commission ("FERC").

5.2 The quality of any coal or consumable product provided by the Operator must be reasonably acceptable to both Owners. Any coal being utilized shall be deemed to be acceptable to the Owners if it meets the following requirements: (a) coal previously utilized at the Mitchell Plant with satisfactory operating performance shall be considered acceptable for use in the Mitchell Plant, unless deemed unacceptable due to a required change of the engineering specifications making the coal no longer viable; (b) coal from any new seam or source shall be acceptable if such supply is shown to perform satisfactorily in the Mitchell Plant and is mutually acceptable to each Owner; or (c) as otherwise mutually agreed to by each Owner. Consumables from any new seam or source shall be acceptable if such supply is shown to perform satisfactorily to both Owners in the Mitchell Plant and conform to the then current engineering specifications for the Mitchell Plant or as otherwise mutually agreed by each Owner.

5.3 Each Owner shall be responsible for, and own, 50% of the investment in the common coal stock piles.

5.4 Fuel oil and consumables charged to operation for the Mitchell Plant shall be owned and accounted for between the Owners in the same manner as coal.

ARTICLE SIX APPORTIONMENT OF STATION COSTS

6.1 The allocation to the Owners of fuel expense associated with each Unit shall be determined by the Operating Committee as follows:

(a) In any calendar month, the average unit cost of coal available for consumption from the Mitchell Plant common coal stock piles shall be determined based on the prior month's ending inventory dollar and ton balances plus current month receipts delivered to the Mitchell Plant common coal stock piles. Each Owner's average unit-cost will be the same, and receipts and inventory available for consumption amounts will be allocated to each Owner based on monthly usage.

(b) The number of tons of coal consumed by the Mitchell Plant in each calendar month from the Mitchell Plant common coal stock piles shall be determined and shall be converted into a dollar amount equal to the product of (i) the average cost per ton of coal associated with the Mitchell Plant in the Mitchell Plant common coal stock pile at the close of such month, and (ii) the number of tons of coal consumed by the Mitchell Plant from the Mitchell Plant common coal stock piles during such month. Such dollar amount shall be credited to the Mitchell Plant fuel in the stock pile and charged to the Mitchell Plant fuel consumed.

(c) In each calendar month, each Owner's respective shares of the Mitchell Plant fuel consumed expense as determined by the provisions of Section 6.1(b) shall be proportionate to each Owner's dispatch of the Mitchell Plant in such month.

(d) Fuel oil reserves will be owned and accounted for in the same manner as coal stock piles, and fuel oil consumed will be allocated to the Owners in the same manner as coal consumed.

6.2 For each calendar month, the Operator will, to the extent practicable and in accordance with the O&M Agreement, determine all of the Mitchell Plant's operations expenses and associated overheads, as accounted for under the FERC Uniform System of Accounts.

6.3 For each calendar month, the Operator will, to the extent practicable and in accordance with the O&M Agreement, determine all the Mitchell Plant's maintenance expenses and associated overheads, as accounted for under the FERC Uniform System of Accounts.

6.4 In each calendar month, each Owner's respective shares of operations and maintenance expenses associated with the Mitchell Plant, as determined in accordance with this Article Six, shall be allocated as follows:

(a) Each Owner's respective share of the Mitchell Plant steam expenses as recorded in FERC Account 502, and emission tons, with allowance expenses as recorded in FERC Account 509, shall be proportionate to each Owner's dispatch of the Mitchell Plant in such month.

(b) In each calendar month, the maintenance of boiler plant expenses as recorded in FERC Account 512, and maintenance of electric plant expenses as recorded in FERC Account 513, shall be directly assigned to each Unit or designated as a common expense attributable to both Units. In each calendar month, each Owner's respective share of these expenses shall be proportionate to each Owner's dispatch of the applicable Unit, or both Units in the case of common expenses, over the previous sixty (60) calendar months.

(c) In each calendar month, each Owner shall be responsible for 50% of all other Steam Power Generation Expenses (FERC Accounts 500 - 515) not addressed in Section 6.4(a) and Section 6.4(b). Administrative and General Expenses (FERC Accounts 920 – 935) shall be assigned to the Mitchell Plant through an annual wages and salaries allocator applied to monthly Administrative & General Expenses. Each Owner shall be responsible for 50% of this monthly amount; provided, however, that, for the avoidance of doubt, each Owner shall be individually responsible for any fees, costs or other charges, including but not limited to those imposed by PJM Interconnection, L.L.C. ("PJM") or any regional transmission operator or any other Governmental Authority in respect of, or which are attributable to, the sale or transmission of the capacity or energy associated with its Ownership Interest, as the case may be.

(d) Notwithstanding the foregoing clauses (a) through (c) or anything else in this Agreement or the O&M Agreement to the contrary, in each calendar month, any operations and maintenance or other expenses to the extent attributable to any ELG Upgrade (regardless of the FERC Account to which it is charged) shall be allocated exclusively to and paid by WPCo.

(e) In each calendar month, each Owner's respective share of Construction Work In Progress charged to FERC Account 107 shall be allocated on the same basis as capital expenditures, as set forth in Section 6.7.

(f) In each calendar month, the net change in Mitchell Plant storeroom inventory (inventory purchases less issuances of inventory) charged to FERC Account 154 shall be allocated 50% to each Owner.

(g) Each Owner shall be charged 50% of Operating Costs, as defined in and in accordance with Section 7.2 of the O&M Agreement, except to the extent a different allocation for specific FERC Accounts or otherwise is specified in this Article Six.

6.5 All taxes, duties or assessments levied against or with respect to each Owner's Ownership Interest, or an Owner's purchase, use, ownership or beneficial interest in, or income from, the Mitchell Plant shall be the sole responsibility of, and shall be paid by, the Owner upon whose purchase, use, ownership interest or beneficial interest or income said taxes or assessments are levied. Without limiting the foregoing, in each calendar month, each Owner's respective share of Employee Payroll Taxes charged to FERC Account 408 shall be 50%.

6.6 Notwithstanding any other provision of this Agreement or any other agreement to the contrary, each Owner hereby acknowledges and agrees that (a) each Owner prior to the

Effective Date has treated, and subsequent to such date shall continue to treat, the co-ownership and operation of the Mitchell Plant as excluded from Subchapter K of the Internal Revenue Code of 1986, as amended (the "Tax Code"), pursuant to Section 761(a) thereof, for all federal, state and local income tax purposes, (b) each Owner prior to the Effective Date affirmatively elected not to apply any of the provisions of Subchapter K of the Tax Code to such Owner's interest in the Mitchell Plant, with such election having been formally filed in connection with the Owners' applicable income tax returns for the taxable year ending on December 31, 2020 and each Owner has taken all actions necessary to implement such election and (c) each Owner prior to the Effective Date has reported, and subsequent to such date shall report, its share of all income, gains, deductions, losses, credits, etc. from its Ownership Interest on its tax returns consistent with such exclusion from the provisions of Subchapter K of the Tax Code.

6.7 Subject to clauses (b) and (c) below the cost of any replacement, addition, improvement or upgrade of each Unit or any portion of the Mitchell Plant, and any restoration or remediation required in connection therewith, shall be allocated between the Owners in accordance with the allocations for such capital items contained in the Capital Budget. With respect to any such capital item not contained in the Capital Budget, the costs of such capital item shall be allocated as follows, unless the Operating Committee agrees upon a different allocation:

(a) Capital expenditures (other than ELG Capital Expenditures) that the Operating Committee determines have been or will be incurred exclusively for one Owner shall be allocated exclusively to, and paid for by, that Owner.

(b) Notwithstanding anything to the contrary herein, ELG Capital Expenditures shall be allocated exclusively to, and paid for exclusively by, WPCo and CCR Capital Expenditures shall be allocated 50% to (and paid for by) each Owner; provided, that, the Operating Committee shall engage or retain a Technical Expert to make recommendations with respect to determining which capital expenditures are ELG Capital Expenditures and which capital expenditures are CCR Capital Expenditures.

(c) Notwithstanding anything to the contrary herein, if the in-service date of a capital item is reasonably anticipated by the Operating Committee to be after December 31, 2028, then the capital expenditures for such capital item shall be allocated exclusively to, and paid for by, WPCo.

(d) If the Operating Committee determines, including based on Depreciable Lives of similar assets previously approved by applicable Governmental Authorities, that a capital item (other than an ELG Upgrade) has a Depreciable Life that extends beyond December 31, 2028, then (i) KPCo shall be responsible for and shall pay 50% of the expenditures for such capital item, multiplied by (A) the number of months (not to exceed the Depreciable Life of such capital item) between the reasonably anticipated in-service date of such capital item and December 31, 2028, divided by (B) the Depreciable Life of such capital item and (ii) WPCo shall be responsible for the remaining amount of such capital expenditure not allocated to KPCo pursuant to the foregoing clause (i).

(e) Any other capital expenditures shall be allocated 50% to (and paid for by) each Owner, subject to the written approval of the Operating Committee for budget overruns to the extent required pursuant to Section 5.3.2 of the O&M Agreement.

6.8 Each Owner shall be responsible for 50% of all Decommissioning Costs, unless a different allocation is expressly specified for such item in the Capital Budget (as agreed by the Owners) or the Owners mutually agree to allocate such costs in another manner (including in connection with any Unit Interest Swap Transaction).

6.9 Notwithstanding anything contained in this Agreement, an Owner's obligation to pay its obligations under this Agreement shall not in any way be conditioned upon or affected by any regulatory order or other determination disallowing, limiting or deferring rate recovery of the costs and expenses paid or payable by an Owner in respect of its Ownership Interest.

ARTICLE SEVEN OPERATING COMMITTEE AND OPERATIONS

7.1 By written notice to each other, each Owner shall name one representative (the "Operating Representative") and one alternate to act for it in matters pertaining to operating arrangements under this Agreement and the O&M Agreement. An Owner may change its Operating Representative or alternate at any time by written notice to the other Owner. The Operating Representatives for the respective Owners, or their alternates, shall comprise the "Operating Committee". All decisions, directives, or other actions by the Operating Committee must be by unanimous agreement of the Operating Representatives of the Owners. If the Operating Representatives are unable to agree on any matter, such matter will be resolved through the dispute resolution procedures set forth in Article Twelve.

7.2 The Operating Committee shall have the following responsibilities, which decisions are reserved exclusively for the Operating Committee and may not be made individually by the Operator or any Owner:

(a) Review and approval of any amendments to the Capital Budget, and adoption of an annual operating budget, annual operating plan and a six-year forecast of operating and capital expenses, each as delivered to the Operating Committee by the Operator pursuant to Section 7.8, including determination of the emission allowances required to be acquired by each Owner with respect to their Ownership Interests; provided, that an Owner's Operating Representative shall have the right to amend the Capital Budget solely to include any capital expenditures for which such Owner shall be allocated greater than 75% of the costs pursuant to Section 6.7, up to an aggregate amount of such capital expenditures that does not exceed \$3 million per year allocated to the other Owner. Allocations of new capital expenditures added to the Capital Budget shall be consistent with Section 6.7; provided, that if the Operating Committee cannot agree upon the Depreciable Life of a capital item or the allocation of a capital expenditure between the Owners (including determining which capital expenditures are ELG Capital Expenditures and which capital expenditures are CCR Capital Expenditures), the matter shall be resolved in accordance with the Technical Dispute resolution procedures set forth in Section 12.1 and Section 12.3 and the Owners shall implement any resolution of the Technical Dispute through adjustments or true-up payments, as appropriate. If the Operating Committee fails to adopt an

annual operating budget, the approved annual operating budget from the previous year (other than one-time or other non-recurring or inapplicable items) shall apply until such time as the new annual operating budget is approved.

(b) Establishment, modification and review of procedures, guidelines and systems for scheduling and dispatch, notification of dispatch, and Unit commitment under this Agreement, including any Unit-commitment pursuant to Section 7.5 or Section 7.6.

(c) Establishment and monitoring of procedures for communication and coordination with respect to the Mitchell Plant capacity availability, fuel-firing options, and scheduling of outages for maintenance, repairs, equipment replacements, scheduled inspections, and other foreseeable cause of outages at the Mitchell Plant, as well as the return the Mitchell Plant to availability following an unplanned outage. The Operating Committee shall use commercially reasonable efforts, consistent with Prudent Operation and Maintenance Practices (as defined in the O&M Agreement), to schedule the implementation of ELG Upgrades during planned maintenance and repair outages so as to eliminate or minimize incremental outages.

(d) To the extent not included in the Capital Budget, decisions on capital projects, including Unit upgrades and re-powering, except that an Owner's Operating Representative shall have the right to approve any such capital projects for which such Owner shall be allocated greater than 75% of the costs pursuant to Section 6.7 and Section 7.2(a).

(e) Determinations as to allocations between the Owners of expenses pursuant to Section 6.1.

(f) Determinations as to changes in the Unit capability.

(g) Establishment and modification of billing procedures under this Agreement or under the O&M Agreement.

(h) Approval of material contracts for fuel supply or transportation.

(i) Establishment and modification of specifications of fuels; oversight of fuel procurement, inspection and certification arrangements, policies and procedures; and management of fuel inventories for the Mitchell Plant.

(j) Establishment of, termination of, and approval of any change or amendment to the operating arrangements (including the O&M Agreement) between the Owners and the Operator (or any successor Operator or replacement third-party Operator) and selection of any replacement Operator, except as otherwise permitted by Section 7.9.

(k) Review and approval of plans and procedures designed to ensure compliance at the Mitchell Plant with all Applicable Law, including procedures for allocating and using emission allowances or for any programs that permit averaging at more than one Unit for compliance.

(l) Amendment, termination, extension or modification of the O&M Agreement, and supervision of the performance of, and provision of direction as needed to, the Operator.

(m) Decisions regarding the retirement, permanent removal from service or Decommissioning of a Unit or any material portion of the Mitchell Plant and any restoration or remediation required in connection therewith.

(n) Establishment of an insurance program to provide property and general liability insurance on behalf of each Owner, to be procured by the Operator pursuant to the O&M Agreement.

(o) Decisions not reserved hereunder to the individual Owners regarding any Buyout Transaction or Unit Interest Swap Transaction (including in each case the implementation thereof), to the extent not otherwise mutually agreed by the Owners.

(p) Other duties as assigned by agreement of the Owners.

7.3 The Operating Committee shall meet at least quarterly, or at such other frequency as determined by the Operating Committee, and at such other times as an Owner may reasonably request. The Operator shall provide operations reports to the Operating Committee each month (presented on a monthly basis) and each quarter (presented on a quarterly basis) substantially in the form of Exhibit B hereto.

7.4 The Owners and the Operator shall cooperate in providing to the Operating Committee the information it reasonably needs to carry out its duties, and to supplement or correct such information on a timely basis.

7.5 Subject to Section 7.6, each Unit shall be scheduled and dispatched on a joint and equal basis by the Owners, including bidding the Mitchell Plant or any Unit as a single bid, consistent with procedures and guidelines established by the Operating Committee. The Owners shall make an initial Unit-commitment one business day ahead of real-time dispatch, or on such other timetable as the Operating Committee may determine. In each calendar month, each Owner's respective shares of the Emissions Allowances consumed as determined in accordance with the provisions of Section 7.7 shall be proportionate to each Owner's dispatch of the Mitchell Plant in such month.

7.6 In the event an Owner desires to separately schedule and dispatch any Unit, subject to the receipt of any necessary regulatory approvals or waivers, the Operating Committee shall establish and implement procedures and systems for separate scheduling and dispatch by each Owner, consistent with all of the requirements of any Person or regional transmission organization, such as PJM, supervising the collective transmission or generation facilities of the power region in which the Mitchell Plant is located that is charged with coordination of market transactions, system-wide transmission planning and network reliability and shall allocate costs and responsibilities in respect of any such separate dispatch (including with respect to Emission Allowances) consistent with such separate dispatch.

7.7 Emission Allowances. Prior to the earlier of any Buyout Transaction or December 31, 2028 (or earlier retirement of the Facility), to the extent that emission allowances issued by the U.S. Environmental Protection Agency (“USEPA”) pursuant to Title IV of the Clean Air Act Amendments of 1990 and any regulations thereunder, and any other emission allowance trading program created under the Clean Air Act and administered by USEPA or the State of West Virginia, including but not limited to the Cross-State Air Pollution Rule 40 C.F.R. Part 97, and any amendments thereto (the “Emission Allowances”), are required for operation of the Mitchell Plant, each Owner will be entitled to receive for its own benefit 50% of any Emissions Allowances allocated to the Mitchell Plant. Each Owner will be responsible for acquiring any additional Emission Allowances needed to satisfy the Emission Allowances required because of such Owner’s dispatch of energy from the Mitchell Plant. Additionally, prior to such time, each Owner will be responsible for acquiring the Emission Allowances required, to the extent necessary in addition to its share of the Emissions Allowances allocated to the Mitchell Plant, to satisfy 50% of the Emission Allowance surrender obligations attributable to the Mitchell Plant imposed under the Consent Decree entered in *United States, et al. v. American Electric Power Service Corp., et al.*, Civil Action Nos. C2-99-1182 and C2-99-1250 and *United States, et al. v. American Electric Power Service Corp., et al.*, Civil Action No. C2-05-360 and *Ohio Citizen Action, et al. v. American Electric Power Service Corp.*, Civil Action No. C2-04-1098 dated December 10, 2007 as subsequently modified or amended, it being understood that the Owners may be subject to additional rights and obligations under any applicable agreement among the Owners (and/or their Affiliates) and American Electric Power Company, Inc. (and/or its Affiliates) pertaining to the allocation of emission limitations associated with the Mitchell Plant. As early as possible, but no later than three business days after the deadline for submitting final electronic data to the EPA for compliance purposes, the Operator shall notify each Owner of the number of annual or seasonal Emission Allowances that are needed to offset each Owner’s share of emissions for the previous year or season. Each Owner shall supply its respective share of allowances, with a reasonable compliance margin as determined by the Operating Committee, by transferring the applicable allowances to the Mitchell Plant’s Allowance Facility Account on or before 15 days prior to the remittance date. In the event that an Owner fails to surrender the required number of Emission Allowances in accordance with the prior paragraph, the other Owner shall have the option to purchase the required number of Emission Allowances, and the Owner that failed to surrender the required number of Emission Allowances shall reimburse the other Owner for any amounts it shall have incurred to make such purchases, with interest at the “Federal Funds Rate” (as published by the Board of Governors of the Federal Reserve System as from time to time in effect) running from the date of such purchases to the date of payment. The Operating Committee will develop procedures to be implemented after the end of each calendar year to account for each Owner’s share of the Emission Allowances required by the use of the Mitchell Plant and to correct any imbalance between the Emission Allowances supplied and the Emission Allowances used through the end of the preceding year by settlement or payment.

7.8 At least ninety (90) days before the start of each operating year, the Operator shall submit to the Operating Committee any proposed amendments to the Capital Budget and an annual operating budget for such operating year with respect to the Mitchell Plant, a proposed annual operating plan with respect to the Mitchell Plant for such operating year, and a forecast of operating and capital costs to be incurred during the next six-year period. The annual operating budget and amendments to the Capital Budget shall be presented on a month-by-month basis, and shall include an operating budget, a capital budget, and an estimate of the cost of any major repairs or

improvements that are anticipated to occur during the relevant period with respect to the Mitchell Plant, and an itemized estimate of all projected fixed and variable operating expenses relating to the operation of the Mitchell Plant during that operating year. The members of the Operating Committee will meet and work in good faith to agree upon the final annual operating budget, final annual operating plan and any amendments to the Capital Budget. Once approved, the annual operating budget and annual operating plan shall remain in effect throughout the applicable operating year, subject to such changes, revisions, amendments, and updating as the Operating Committee may determine. If the Operating Committee determines to retire the Mitchell Plant prior to December 31, 2028, the members of the Operating Committee will meet and work in good faith to amend the Capital Budget to remove any future ELG Capital Expenditures and any other future capital expenditures no longer required, to the extent practicable and consistent with Applicable Law. The Capital Budget shall remain in effect throughout the Term, subject to such amendments as the Operating Committee may determine.

7.9 Notwithstanding anything in this Agreement to the contrary, (i) in the case of the O&M Agreement or any other agreement relating to the Mitchell Plant that is entered into jointly by or on behalf of the Owners, on one hand, with an Affiliate of an Owner (or with an Owner itself, as in the case of the O&M Agreement) on the other hand, the non-Affiliate Owner shall have the sole and exclusive right to exercise any and all affirmative or elective rights of the Owners, including remedies (including delivering notices of and pursuing or settling disputes or delivering notices of default or making and pursuing claims for indemnification) and any termination rights (including rights of termination for convenience, if any) thereunder (for the avoidance of doubt, without first obtaining the consent of the other Owner or the Operating Committee) and (ii) in the case the O&M Agreement is terminated pursuant to Section 8.2 thereof, KPSC shall have the sole and exclusive right to select and designate any successor "Operator" or replacement third-party Operator, in each case so long as such successor replacement is a "Qualified Replacement Operator" (as defined in the O&M Agreement); provided, however, that notice of any such action described in this Section 7.9 shall be sent to the other Owner at the time such action is taken if such other Owner is not the Operator. For purposes of this Agreement, "Affiliate" shall mean, with respect to any person or entity, any other person or entity that directly or indirectly, controls, is controlled by, or is under common control with such person or entity. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

ARTICLE EIGHT EFFECTIVE DATE AND TERM

8.1 This Agreement shall be effective as of the Effective Date.

8.2 Subject to FERC approval or acceptance of any termination, if necessary, this Agreement shall remain in force until the earlier of (a) the date on which this Agreement is terminated by mutual agreement of the Owners (including in connection with any Unit Swap Transaction) or (b) the consummation of a Buyout Transaction (the period from the Effective Date through such date, the "Term").

ARTICLE NINE TRANSFERS

9.1 Neither Owner may assign, transfer or otherwise dispose of its Ownership Interest, either in whole or part, whether by sale, lease, division, declaration or creation of a trust, by operation of law or otherwise (“Dispose” or a “Disposition”) to any person or entity (the “Proposed Purchaser”) without the prior written consent of the other Owner (the “Non-Offering Owner” and the Owner proposing the Disposition, the “Offering Owner”), which consent may be granted or withheld in the Non-Offering Owner’s sole discretion; provided, that, the foregoing shall not restrict the Owners from pursuing or consummating the Buyout Transaction. Notwithstanding the foregoing, either Owner may Dispose of, all (but not less than all) of its Ownership Interest to a state regulated utility Affiliate, provided that (i) the Disposition shall not relieve the Offering Owner of its obligations under this Agreement, (ii) the Disposition shall be made in compliance with the Consent Decree entered in *United States, et al. v. American Electric Power Service Corp., et al.*, Civil Action Nos. C2-99-1182 and C2-99-1250 and *United States, et al. v. American Electric Power Service Corp., et al.*, Civil Action Nos. C2-04-1098 and C2-05-360, and all amendments or modifications thereto, as in effect as of the date of the Disposition, (iii) the Proposed Purchaser shall agree to and assume, in respect of the Ownership Interest subject to the Disposition, the rights and obligations of the Offering Owner and its Affiliates under any applicable agreement with American Electric Power Company, Inc. (and/or its Affiliates) pertaining to the allocation of emission limitations associated with the Mitchell Plant, and (iv) in the event the Offering Owner (or any Affiliate thereof) shall be the Operator, the Proposed Purchaser shall also have been assigned, and agreed to have assumed, the rights and obligations of the Operator under this Agreement and the O&M Agreement as of the effective date of such Disposition; provided, that in the case of this clause (iv), a written consent from the Non-Offering Owner (which consent shall not be unreasonably withheld, conditioned or delayed) shall be obtained prior to such Disposition to the extent such Disposition results in the change of the Operator.

9.2 No Disposition shall be made unless all requisite regulatory and other approvals, consents and authorizations from all Governmental Authorities that are required to be obtained in connection with such Disposition have been obtained and as to which all conditions to the consummation of Disposition thereunder have been satisfied.

9.3 All costs associated with any Disposition of an Ownership Interest by an Owner shall be borne solely by the Offering Owner, provided that the foregoing shall not limit the Offering Owner’s right to seek reimbursement of any costs from the Proposed Purchaser in connection with any such Disposition.

9.4 Each Owner shall have the right to seek financing for all or a portion of such Owner’s Ownership Interest and to provide general security for such financing of its Ownership Interest, including through the creation of any Encumbrance thereon (and the right of the beneficiary thereof to enforce thereon, but not to foreclose upon or transfer such Owner’s Ownership Interest without the prior written consent of the other Owner), without the prior consent of the other Owner; provided that neither Owner may enter into any financing agreement or create any Encumbrance that would be reasonably likely to prohibit or otherwise restrict or condition the Buyout Transaction. Each Owner further agrees to cooperate reasonably and in good faith, and to cause its Affiliates to so cooperate, with an Owner seeking financing in connection with such

modifications and other rights and consents customary in transactions of such type, and not unreasonably to withhold its consent to such modifications as may be reasonably necessary or appropriate to allow such Owner to obtain such financing upon reasonably competitive terms, including obtaining consents to the assignment of such Owner's Ownership Interest in any of the Project Assets reasonably requested by such Owner's lender; provided that none of such proposed modifications shall (a) relieve the financing Owner of any of its obligations under this Agreement, the O&M Agreement or any other agreement related to the Mitchell Plant or any Project Asset, (b) decrease the economic benefits, or increase the costs, of the ownership and operation of the Mitchell Plant to the other Owner, (c) create any increased economic or legal risk to the other Owner in connection with the ownership and operation of the Mitchell Plant, (d) permit or allow any Encumbrances relating to any such financing to be placed upon any portion of or interest in the Project Assets other than the financing Owner's Ownership Interest, (e) permit partition of the Project Assets or any of them, including any partition upon a default by the financing Owner under any of the relevant financing documents or (f) prohibit or otherwise restrict or condition the Buyout Transaction.

9.5 Notwithstanding anything else herein to the contrary, no Disposition shall constitute a release of the Offering Owner from any liabilities to the Non-Offering Owner or the Operator arising from events occurring prior to or in connection with the Disposition, except as may be set forth expressly in a definitive transaction agreement for a Buyout Transaction.

9.6 Negotiation of a Buyout Transaction; Unit Interest Swap Transaction.

(a) At the request of either Owner, the Owners shall commence good faith discussions to negotiate a Buyout Transaction on mutually agreeable terms and conditions, subject to receipt of applicable regulatory approvals. Following any such request, the Owners shall cooperate in good faith to negotiate and execute definitive transaction documents for a mutually agreed Buyout Transaction not later than December 31, 2024, so as to allow the Owners to receive the applicable regulatory approvals not later than May 1, 2025 (or such other date as determined by the Operating Committee), and the transaction be consummated on or prior to December 31, 2028. Subject to Section 9.6(b) and Article Twelve with respect to a Unit Interest Swap Transaction in the absence of a Buyout Transaction, nothing in this Agreement is intended to be, and shall not be deemed to be, a binding commitment or obligation on the part of either Owner to enter into or consummate any Buyout Transaction.

(b) Except as otherwise expressly agreed in writing by the Owners, in the event mutually agreed definitive transaction documents for a Buyout Transaction are not entered into by December 31, 2024, a Buyout Transaction does not receive requisite regulatory approvals on or prior to May 1, 2025, or the signed definitive transaction documents therefor are otherwise terminated prior to consummation thereof, then the Owners shall enter into definitive transaction documents for a Unit Interest Swap Transaction on mutually agreeable terms and conditions (subject to Section 12.4) to be consummated on or prior to December 31, 2028, after receipt of applicable regulatory approvals. The terms and conditions of the Unit Interest Swap will be negotiated in good faith by the Operating Committee giving due consideration to and addressing, without limitation, the matters set forth in Exhibit C hereto. In the event the Owners do not mutually agree upon any element of definitive transactions documents for a Unit Interest Swap

Transaction (a "Unit Interest Swap Dispute"), then any Unit Interest Swap Dispute shall be resolved in accordance with ARTICLE Twelve.

ARTICLE TEN DEFAULTS AND REMEDIES

10.1 An Owner shall be deemed to be in default hereunder upon the occurrence of any of the following events with respect to such Owner (each of the following events to be referred to as an "Event of Default," the Owner in default to be referred to as the "Defaulting Owner" and the Owner not in default to be referred to as the "Non-Defaulting Owner"):

(a) an Owner fails to make any payment required by it as and when due and payable in accordance with the terms of this Agreement, the O&M Agreement or any other agreement related to the Mitchell Plant or any Project Asset and such failure is not remedied within ten (10) days after receipt of written notice thereof by such Owner from the other Owner; provided, that any such notice shall include a statement of the amount the Defaulting Owner has failed to pay (a "Payment Default"); or

(b) an Owner fails to perform any material obligation (other than as described in Section 10.1(a)) imposed upon such Owner under this Agreement and such failure is not remedied within thirty (30) days after such Owner receives written notice thereof from the other; provided that, if such thirty (30) day period is not sufficient to enable the remedy or cure of such failure in performance, and such Owner shall have upon receipt of the initial notice promptly commenced and diligently continues thereafter to remedy such failure, then such Owner shall have a reasonable additional period of time (but in no event longer than an additional ninety (90) days from the end of the initial thirty (30) day cure period) to remedy or cure such failure; provided, however, that an Owner shall not be in default of its obligations hereunder to the extent such failure is caused by or is otherwise attributable to a breach by the other Owner of its obligations under this Agreement.

10.2 Without limiting the rights and remedies available to the Non-Defaulting Owner under Applicable Law, in the case of an Event of Default, the Non-Defaulting Owner shall have the right (but not the obligation) to (x) pay all or a portion of the amounts that were the subject of the Payment Default on behalf of the Defaulting Owner and (y) perform the obligation(s) which the Defaulting Owner has failed to perform on behalf of and at the expense of the Defaulting Owner (in any such case subject to all limits on liability benefiting the Defaulting Owner as set forth in this Agreement); and, if such payment is made (the portion as so paid or expended in connection with such performance, the "Paid Amount"), to:

(a) charge the Defaulting Owner interest with respect to the Paid Amount, from the day the payment was made by the Non-Defaulting Owner until it is paid in full by the Defaulting Owner to the Non-Defaulting Owner, at the rate equal to the prime rate as published from time to time in *The Wall Street Journal* (or any successor publication) plus five (5) percentage points per annum, calculated daily, regardless of whether the Non-Defaulting Owner has notified the Defaulting Owner in advance of its intention to charge interest with respect to such Paid Amount;

(b) set off against the Paid Amount any sums due or accruing to the Defaulting Owner by the Non-Defaulting Owner in accordance with this Agreement;

(c) maintain an action or actions for the Paid Amount and interest thereon on a continuing basis as the Paid Amount becomes payable but is not paid by the Defaulting Owner, as if the obligation to pay those amounts and the interest thereon was a liquidated demand due and payable on the date the amounts were due to be paid, without any right or resort of the Defaulting Owner to set-off or counter-claim against the Non-Defaulting Owner; and any obligation to pay interest under this Section 10.2 shall apply until the Payment Default is rectified or remedied; and

(d) at the Non-Defaulting Owner's option, (i) draw on any letter of credit posted by the Defaulting Owner pursuant to Section 4.3 in an amount equal to the Paid Amount, including all interest accrued thereon or (ii) receive one hundred percent (100%) of any revenues arising from or attributable to the sale of capacity, energy, ancillary services or other energy products from the Mitchell Plant that the Defaulting Owner would otherwise be entitled to receive in respect of its Assigned Capacity until the Non-Defaulting Owner receives an amount equal to the Paid Amount, including all interest accrued thereon, *plus* all costs of collection incurred in connection therewith, and the Owners shall cooperate with each other, the Operator, applicable Governmental Authorities (including in respect of securing any regulatory approvals) or other third parties (including lenders) as may be reasonably necessary to facilitate the Non-Defaulting Owner's right to be paid and receive the revenues attributable to the Defaulting Owner's Assigned Capacity until the applicable Paid Amount, including all interest accrued thereon and all costs of collection incurred in connection therewith has been paid to the Non-Defaulting Owner in full, including facilitating any appropriate changes in the applicable settlement accounts with respect to which market revenues are credited or paid by PJM or other applicable regional transmission organizations and executing any documents required to assign over such market revenues to the Non-Defaulting Owner.

ARTICLE ELEVEN LIMITATION OF LIABILITY

11.1 Without limiting any other provision of this Agreement, each Owner's liability under this Agreement shall be limited to direct actual damages only. Such direct actual damages shall be the sole and exclusive remedy with respect to all claims arising under this Agreement and all other remedies or damages at law or in equity with respect to claims arising under this Agreement are waived, and unless expressly provided herein, no Owner shall be liable for consequential, punitive, incidental, exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort or in contract, under any indemnity provision or otherwise, with respect to claims arising under this Agreement. It is the intent of the Owners that the limitations herein imposed on remedies and the measure of damages be without regard to the cause or causes related thereto, including the negligence of any Owner, whether such negligence be sole, joint or concurrent, or active or passive. Notwithstanding anything herein to the contrary, the limitations set forth in this Section 11.1 shall not (a) limit or preclude any indemnification obligations of an Owner pursuant to Article Ten of the O&M Agreement, including with respect to indemnification for third-party claims or (b) apply to, limit or preclude recovery of Covered Losses under Section 12.4.

ARTICLE TWELVE DISPUTE RESOLUTION

12.1 If either Owner believes that a dispute (including a Technical Dispute or Unit Interest Swap Dispute) has arisen as to the meaning or application of this Agreement, it shall submit a written description of the disputed matter to the Operating Committee, and shall provide a copy of that submission to the other Owner.

12.2 If the Operating Committee does not reach agreement on the resolution of a dispute not constituting a Technical Dispute or Unit Interest Swap Dispute submitted to the Operating Committee pursuant to Section 12.1 within thirty (30) days after the dispute is presented to it, the matter shall be referred to senior executive officers with the authority to resolve such dispute of each of the Owners for resolution in the manner that such individuals shall agree is appropriate; provided, however, that either Owner may exercise any and all rights at law or equity at any time after the end of the thirty (30) day period provided for the Operating Committee to reach agreement if the Operating Committee has not reached agreement.

12.3 If the Operating Committee does not reach agreement on the resolution of a Technical Dispute submitted to the Operating Committee within ten (10) business days after such Technical Dispute is presented to it, then either Owner may refer such Technical Dispute to a Technical Expert. Within ten (10) business days following receipt of an Owner's notice referring a Technical Dispute to a Technical Expert, the Operating Representatives shall confer to agree upon a Technical Expert to hear the Technical Dispute. If the Owners are unable to agree upon the appointment of a Technical Expert, then at the end of such ten (10) business day period each Owner shall, within five (5) business days, notify the other Owner in writing of its designation of a proposed Technical Expert. The two proposed Technical Experts shall, within five (5) business days, select a Technical Expert (who may be one of the two Technical Experts designated by the Owners or another Technical Expert) and such Technical Expert shall hear the Technical Dispute. Each Owner shall be required to put forth and endorse one proposal, budget or solution, as the case may be, as its proposed resolution to the Technical Dispute, based on an agreed statement of the nature of the Technical Dispute and agreed facts surrounding such Technical Dispute. Each Owner's proposal, budget or solution shall be delivered to the Technical Expert and the other Owner no later than twenty (20) business days after the date of the notice of the Owner submitting the Technical Dispute to the Technical Expert. The Technical Expert shall be guided by consideration of (a) this Agreement, (b) all other agreements between the Owners relating to the Mitchell Plant, including the O&M Agreement and (c) Prudent Operation and Maintenance Practices (as defined in the O&M Agreement), and be required to select one of the proposals, budgets or solutions, as the case may be, and shall not be able to select any other proposal, budget or solution, except to the extent mutually agreed by the Owners. The Technical Expert shall render a decision resolving the matter within forty-five (45) days of the date of the notice of the Owner submitting such matter. The Technical Expert shall not award to either Owner any relief greater than that initially sought by such Owner. The decision of the Technical Expert shall be final and binding upon the Owners and not subject to appeal or review. The Owners shall bear equally all costs and expenses of the Technical Expert procedure and the Technical Expert shall not have the authority to award costs or attorneys' fees to either Owner. The Technical Expert shall act as an expert and not as an arbitrator and the provisions of the Federal Arbitration Act and the laws relating to arbitration shall not apply to the Technical Expert or the Technical Expert's

determination or the procedure by which a determination is reached. Except as provided in Section 7.2(a), the Technical Expert's decision shall not in any event result in deviations from the agreed allocations of costs between the Owners as set forth in this Agreement.

12.4 Unit Interest Swap Dispute.

(a) If the Operating Committee does not reach agreement by May 1, 2025 (or such other date as determined by the Operating Committee) with respect to the resolution of any Unit Interest Swap Dispute, then, at the request of either Owner, the Owners shall promptly (and in any event within ten (10) business days of such request) refer any controversy or claim arising out of or relating to such Unit Interest Swap Dispute to binding arbitration administered by the American Arbitration Association for resolution on an expedited basis in accordance with its Commercial Arbitration Rules (unless the American Arbitration Association does not accept (or otherwise indicates that it is not prepared to accept) the Unit Interest Swap Dispute for arbitration of such referral, in which case the Owners shall proceed with binding arbitration by the Arbitrator as set forth in Section 12.4(b) without the administration by the American Arbitration Association), and judgment on the award rendered by such arbitration shall be final and binding upon the Owners and not subject to appeal or review, and such judgment may be entered in any court having jurisdiction thereof.

(b) If any Unit Interest Swap Dispute is referred to binding arbitration administered by the American Arbitration Association in accordance with Section 12.4(a) and the American Arbitration Association does not accept (or otherwise indicates that it is not prepared to accept) such Unit Interest Swap Dispute for binding arbitration, then upon election of either Owner the Owners shall submit such Unit Interest Swap Dispute to binding arbitration before a single arbitrator, who shall be an independent expert in the electric utility industry who is mutually acceptable to both Owners (subject to the following proviso, the "Arbitrator"); provided, that if the Owners do not select a mutually acceptable Arbitrator within ten (10) business days following any such election by an Owner, each Owner shall select an independent expert in the electric utility industry within ten (10) business days, and the two independent experts shall be instructed by the Owners to then, within a further twenty (20) business days, mutually select an independent expert in the electric utility industry, who shall serve as the "Arbitrator". If an Owner fails to appoint an independent expert to select the Arbitrator within the timeframe allowed for such appointment then any independent expert in the electric utility industry appointed within such timeframe by the other Owner to select the Arbitrator shall be the Arbitrator (if such expert is willing to serve as such), and if an Arbitrator is in any event not duly appointed in accordance with the foregoing for any reason within thirty (30) Business Days following a request for binding arbitration before the Arbitrator in accordance with the above, then at the election of either Owner the Arbitrator shall be appointed by the American Arbitration Association acting as appointing authority. No later than the thirtieth (30th) business day following the engagement of the Arbitrator, each Owner shall be required to submit to the Arbitrator one proposal or solution, as the case may be, as its proposed resolution to such Unit Interest Swap Dispute (such Owner's "Proposal"). The Arbitrator may in its discretion require that related Unit Interest Swap Disputes be grouped together so that each Owner proposes a single package of Proposals to resolve such related Unit Interest Swap Disputes to promote internal consistency in resolving such related Unit Interest Swap Disputes. The Owners shall instruct the Arbitrator to resolve such Unit Interest Swap Dispute as soon as practicable following the engagement of the Arbitrator, and in resolving such Unit Interest Swap Dispute, the

Arbitrator shall (i) allow for each Owner to receive an allocation of property and rights that the Arbitrator deems to be fair and reasonable on an economic basis, after giving due consideration to any regulatory requirements applicable to each Owner, and (ii) be required to select the Proposal or package of Proposals, as the case may be, of one of the Owners and shall not be able to select any other Proposal, except to the extent mutually agreed by the Owners. The decision of the Arbitrator shall be final and binding upon the Owners and not subject to appeal or review. The Arbitrator shall have the sole power to rule on any challenge to its own jurisdiction without any need to refer such matters first to a court.

(c) The dispute resolution procedures of this Article Twelve shall be the sole and exclusive remedy of the parties hereto and their respective Affiliates for any Unit Interest Swap Dispute. Each of the parties hereto agrees, on behalf of itself and its Affiliates, to be fully bound by all arbitral awards or decisions resulting from the dispute resolution procedures of this Article Twelve. Subject to Section 12.4(d) and subject to and without limiting any other rights and remedies that may be available, the Owners shall bear equally all costs and expenses of the binding arbitration procedure contemplated by this Section 12.4. For the avoidance of doubt, nothing in this Section 12.4 shall preclude the Owners from reaching a mutually agreed settlement of any Unit Interest Swap Dispute (or any element thereof) at any time (but without limiting an Owner's right to elect binding arbitration hereunder).

(d) Each Owner acknowledges and agrees that the dispute resolution procedures of this Article Twelve are an integral part of the transactions contemplated by this Agreement and were a material inducement to the Owners' willingness to enter into this Agreement. It is expressly acknowledged and agreed that if any Owner or any of its Affiliates (the "Challenging Party") resists, ignores, contests or otherwise challenges the enforceability or validity of any provision of this Article Twelve or any arbitral award or decision resulting from the dispute resolution procedures of this Article Twelve (an "Enforceability Claim"), then (i) the other Owner shall be entitled to an injunction, specific performance and other equitable relief to enforce specifically the terms and provisions of this Article Twelve and such arbitral award or decision, as applicable, in each case, without proof of actual damages and without any requirement for the posting of security, and (ii) such Challenging Party shall indemnify, defend and hold harmless such other Owner and its Affiliates and any of their respective agents and representatives (collectively, the "Indemnified Parties") from and against any and all Covered Losses incurred or suffered by any of the Indemnified Parties to the extent arising out of or resulting from such Enforceability Claim. Without limiting the foregoing, each party hereto irrevocably waives, to the fullest extent permitted by applicable Law, any Enforceability Claim.

(e) For purposes of Section 12.4(d), "Covered Losses" shall mean any and all losses, liabilities, claims, fines, deficiencies, damages, payments, penalties, costs and/or expenses, including the fees and expenses of legal counsels and other advisors, in each case, plus interest with respect to such Covered Losses from the day such Covered Loss is paid or incurred until the applicable Indemnified Party is fully indemnified for such Covered Losses, at a rate equal to the prime rate as published from time to time in *The Wall Street Journal* (or any successor publication), plus five (5) percentage points per annum, calculated and accruing daily.

12.5 Except as provided in this Article Twelve, the existence, contents, or results of any settlement negotiations or the results thereof under this Article Twelve may not be disclosed

without the prior written consent of the Owners, provided, however, that either Owner may make disclosures as may be required to fulfill regulatory obligations to any Governmental Authority having jurisdiction, and may inform its lenders, affiliates, auditors, and insurers, as necessary, under pledge of confidentiality, and may consult with expert consultants as required in connection with any proceeding under pledge of confidentiality.

12.6 Nothing in this Agreement shall be construed to preclude either Owner from filing a petition or complaint with FERC with respect to any claim over which FERC has jurisdiction. In such case, the other Owner may request that FERC reject the petition or complaint or otherwise decline to exercise its jurisdiction. If FERC declines to act with respect to all or part of a claim, the portion of the claim not so accepted by FERC may be resolved through an action at law or equity. To the extent that FERC asserts or accepts jurisdiction over all or part of a claim, the decisions, findings of fact, or orders of FERC shall be final and binding, subject to judicial review under the Federal Power Act, 16 U.S.C. §§ 791a et seq., as amended from time to time, and any proceedings that may have commenced prior to the assertion or acceptance of jurisdiction by FERC shall be stayed, pending the outcome of FERC proceedings. To the extent that any decisions, findings of fact, or orders of FERC do not provide a final or complete remedy to an Owner seeking relief, such Owner may proceed at law or equity to secure such a remedy, subject to any FERC decisions, findings, or orders.

12.7 If an Owner (the "Contesting Owner") contests in good faith any amount paid pursuant to the terms of this Agreement following receipt of the written notice of the other Owner delivered pursuant to Section 10.1(a), and any portion of such amount is determined or resolved (including pursuant to the dispute resolution procedures of this Article Twelve) to be in excess of the actual amount due pursuant to the terms of this Agreement, then the Contesting Owner may charge the other Owner interest with respect to such excess amount from the day the payment was made until it is repaid to the Contesting Owner, at the rate equal to the prime rate as published from time to time in *The Wall Street Journal* (or any successor publication) plus five (5) percentage points per annum, calculated daily, regardless of whether the Contesting Owner has notified the other Owner in advance of its intention to charge interest with respect to such excess amount, and the other Owner shall make payment in full in respect of such excess amount and interest within thirty (30) days of written demand therefor.

ARTICLE THIRTEEN GENERAL

13.1 This Agreement shall inure to the benefit of and be binding upon the signatories hereto and their respective successors and permitted assigns, but this Agreement may not be assigned by any signatory without the written consent of the other parties hereto or as permitted by Article Nine hereof.

13.2 This Agreement is subject to the regulatory authority of any State or Federal agency having jurisdiction.

13.3 The interpretation and performance of this Agreement is governed by and shall be construed in accordance with the laws of the State of New York, exclusive of the conflicts of law provisions thereof that would require the application of the laws of a different jurisdiction. Each

Owner hereby agrees that any Action arising out of or relating to this Agreement brought by an Owner (or any of their respective successors or assigns) shall be brought and determined in any state or federal court sitting in the State of New York, within the Borough of Manhattan, City of New York, and the Owners hereby irrevocably submit to the exclusive jurisdiction of the aforesaid courts for themselves and with respect to their property, generally and unconditionally, with regard to any such Action arising out of or relating to this Agreement and the transactions contemplated hereby, and the appellate courts from any thereof in connection with any action arising out of or relating to this Agreement or any other agreement related to the Mitchell Plant or any Project Asset and the transactions contemplated hereby, and consents that any such action may be brought in such courts and waives any objection it may now or hereafter have to the venue of any such action in any such court or that such action was brought in an inconvenient court. EACH OWNER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE O&M AGREEMENT, OR ANY OTHER AGREEMENT RELATED TO THE MITCHELL PLANT OR ANY PROJECT ASSET.

13.4 This Agreement supersedes all previous representations, understandings, negotiations, and agreements, either written or oral between the signatories hereto or their representatives with respect to operation of the Mitchell Plant, including the Original Operating Agreement. Notwithstanding the foregoing, the amendment and restatement of the Original Operating Agreement effected hereby shall not relieve any party thereto of any undischarged obligation or liability of such party in respect of the period prior to the Effective Date under the Original Operating Agreement. This Agreement, together with the O&M Agreement (and any replacements thereof), constitutes the entire agreement of the signatories hereto with respect to the operation of the Mitchell Plant and the ownership thereof. The signatories hereto hereby agree that this Agreement shall amend the Original Operating Agreement to irrevocably remove AEPSC as a party thereto and, on and after the Effective Date, AEPSC shall no longer be a party thereto or hereto or entitled to rights, or subject to obligations, as a party to this Agreement; provided, however, that Operator shall be permitted to delegate any of its rights, duties and obligations under this Agreement and the O&M Agreement to AEPSC without the consent of KPSCo, but without relieving Operator of any of its obligations hereunder.

13.5 No amendments or modifications of this Agreement are valid unless in writing and signed by duly authorized representatives of the Owners.

13.6 Each Owner shall designate in writing a representative to receive any and all notices required under this Agreement. Notices shall be in writing and shall be given to the representative designated to receive them, either by personal delivery, certified mail, e-mail or any similar means, properly addressed to such representative at the address specified below:

KENTUCKY POWER COMPANY
[] _____
[] _____

Attn: _____

Phone: [] _____

Email: [] _____

WHEELING POWER COMPANY
[] _____
[] _____

Attn: _____

Phone: [] _____

Email: [] _____

All notices shall be deemed to have been given (a) when personally delivered, (b) when transmitted (except if not a Business Day then the next Business Day) via electronic mail (provided that no error message or other notification of non-delivery is generated with respect to the intended recipient), (c) the day following the day (except if not a Business Day then the next Business Day) on which the same has been delivered prepaid to a reputable national overnight air courier service or (d) the third Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case to the respective parties hereto at the address set forth below, or at such other address as such Owner may specify by written notice to the other Owner (or at such other address for an Owner as shall be specified in a notice given in accordance with this Section 13.6). Each Owner may, by written notice to the other Owner, change the representative or the address to which such notices are to be sent.

13.7 This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute for all purposes one agreement. Any signature hereto delivered by a party hereto by facsimile or other electronic transmission shall be deemed an original signature hereto.

13.8 Except as otherwise specifically provided, all fees, costs and expenses incurred by the parties hereto in negotiating this Agreement shall be paid by the party incurring the same, including legal and accounting fees, costs and expenses.

13.9 Any of the terms, covenants, or conditions hereof may be waived only by a written instrument executed by or on behalf of the Owners waiving compliance. No course of dealing on the part of any Owners, or its respective officers, employees, agents, accountants, attorneys, investment bankers, consultants or other authorized representatives, nor any failure by an Owner to exercise any of its rights under this Agreement shall operate as a waiver thereof or affect in any way the right of such Owner at a later time to enforce the performance of such provision. No waiver by any Owner of any condition, or any breach of any term or covenant contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term or covenant. The rights of the Owners under this Agreement shall be

cumulative, and the exercise or partial exercise of any such right shall not preclude the exercise of any other right.

13.10 This Agreement shall be binding upon and inure to the benefit of the Owners and their respective successors and permitted assigns.

13.11 No Owner will issue, or permit any of its Affiliates, its or its Affiliate's directors, officers, employees, consultants, agents or other representatives to issue, any press releases or otherwise make, or cause any of its Affiliates, its or its Affiliate's directors, officers, employees, consultants, agents or other representatives to make, any public statements or other public disclosures with respect to this Agreement, or the transactions contemplated hereby without the prior written consent of the other Owner; provided, however, that the foregoing requirement to obtain prior written consent shall not apply where such release, statement or disclosure is deemed in good faith by the releasing or disclosing Owner to be required by Applicable Law or under the rules and regulations of a recognized stock exchange on which shares of such Owner (or any of its Affiliates) are listed, so long as prior to making any such release, statement or disclosure and to the extent legally permitted, the releasing or disclosing Owner shall provide prompt notice to the other Owner, consult the other Owner as to the form, contents and timing of such release or disclosure and, when available, provide a copy of such release, statement or disclosure containing such information to the other Owner.

13.12 If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Owners shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Owners as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

13.13 Each Owner acknowledges that it shall be inadequate or impossible, or both, to measure in money the damage to the Members if any of them or any transferee or any legal representative of any Owner fails to comply with any of the restrictions or obligations imposed by Article Nine that every such restriction and obligation is material, and that in the event of any such failure, the Owners shall not have an adequate remedy at law or in damages. Therefore, each Owner consents to the issuance of an injunction or the enforcement of other equitable remedies against such Owner at the suit of an aggrieved party without the posting of any bond or other security, to compel specific performance of all of the terms of Article Nine and to prevent any Disposition in contravention of any terms of Article Nine, and waives any defenses thereto, including the defenses of: (i) failure of consideration, (ii) breach of any other provision of this Agreement and (iii) availability of relief in monetary damages.

ARTICLE FOURTEEN DEFINITIONS

For all purposes of this Agreement (including the preceding sections and recitals), unless otherwise required by the context in which any defined term appears or otherwise defined in the body of this Agreement, capitalized terms have the meanings specified in this Article Fourteen. In this Agreement, unless expressly stated otherwise: (a) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as has been, or may be, amended, supplemented or otherwise modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (b) reference to any Applicable Law means such Applicable Law as has been, or may be, amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations, promulgated thereunder; (c) the singular includes the plural, as the context requires; (d) the terms "includes" and "including" mean "including, but not limited to"; (e) "Day" (regardless of capitalization) shall mean a calendar day, unless specifically designated as a Business Day or business day; (f) "Month" (regardless of capitalization) shall mean a calendar month; (vii) references to articles, sections and appendices mean the articles and sections of, and appendices to, this Agreement.

"AEPSC" shall have the meaning given to such term in the Preamble.

"Agreement" shall have the meaning given to such term in the Preamble.

"Applicable Law" shall mean all laws (including common law), statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, permits, directives, and requirements of all Governmental Authorities (including with respect to the environment) having jurisdiction over an Owner, any other person or entity (as to that person or entity), this Agreement, any Project Asset or the Mitchell Plant, as applicable.

"Assigned Capacity" shall have the meaning given to such term in Section 2.3.

"Buyout Transaction" shall mean a transaction consummated on or prior to December 31, 2028, pursuant to which KPCo sells, transfers and assigns to WPCo, and WPCo purchases and assumes from KPCo, all of KPCo's Ownership Interest (including KPCO's interest in the underlying land, common facilities, barge unloading and gypsum conveyor facilities, and inventory and spare parts with respect to the Mitchell Plant).

"Capital Budget" shall have the meaning given to such term in Section 1.7.

"CertainTeed Contract" shall mean that certain Supply Agreement dated March 11, 2005, by and between CertainTeed Gypsum West Virginia, Inc. (formerly BPB West Virginia Inc.) and KPCo (as assignee of Ohio Power Company), as amended by Amendment No. 2010-1 dated August 2, 2010, as further amended by Amendment No. 2012-1 dated February 20, 2012 and as further amended by Amendment No. 2013-1 dated June 5, 2013, as may be amended, amended and restated, supplemented or modified from time to time, and as may be assigned to Operator or an Affiliate of Operator.

“CCR Capital Expenditures” shall mean all capital expenditures associated with implementation of the CCR Upgrades.

“CCR Rule” means the Coal Combustion Residuals Rule, 40 CFR Part 257 (April 17, 2015, as amended), and any regulations thereunder promulgated by the USEPA or the State of West Virginia.

“CCR Upgrades” shall mean any improvements or upgrades to the Mitchell Plant to enable KPCo and WPCo to comply with the CCR Rule.

“Control” shall have the meaning given to such term in Section 7.10.

“Credit Rating” means with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancements) by S&P or Moody’s. If no rating is assigned to such entity’s unsecured, senior long-term debt or deposit obligations by S&P or Moody’s, then “Credit Rating” means the general corporate credit rating or long-term issuer rating assigned to such entity by S&P or Moody’s. If an entity is rated by both S&P and Moody’s and the ratings are at different levels, then “Credit Rating” means the lowest such rating.

“Decommission” or “Decommissioning” shall mean the retirement, dismantlement and permanent removal of the Units and other property, plant, and equipment comprising the Mitchell Plant, including any common facilities associated with each Unit that are to be permanently removed from service, the restoration of the Mitchell Plant site and the removal or remediation of any hazardous materials or other contaminated equipment, materials, coal ash or wastes associated therewith, in a manner that meets the requirements of Applicable Law.

“Decommissioning Costs” shall mean all costs and obligations expended or incurred in the performance of all work reasonably necessary or undertaken to Decommission the Mitchell Plant, including work associated with the preparation and implementation of Decommissioning plans and the preparation, submittal and prosecution of all necessary applications with Governmental Authorities as required to Decommission the Mitchell Plant in accordance with Applicable Law.

“Defaulting Owner” shall have the meaning given to such term in Section 10.1.

“Depreciable Life” means, with respect to a capital item, the shorter of (a) the reasonably expected depreciable life (in months) of such capital item and (b) the number of months between the anticipated in-service date of such capital item and December 31, 2040 (or such earlier anticipated date of the permanent cessation of operations of the Units filed with the WVPSC).

“Dispose” or “Disposition” shall have the meaning given to such term in Section 9.1.

“Effective Date” shall have the meaning given to such term in the Preamble.

“ELG Capital Expenditures” shall mean all capital expenditures associated with implementation of the ELG Upgrades.

“ELG Rule” shall mean the Steam Electric Reconsideration Rule, 85 Fed. Reg. 64,650 (Oct. 13, 2020), and any regulations thereunder promulgated by the USEPA or the State of West Virginia.

“ELG Upgrades” shall mean any improvements or upgrades to the Mitchell Plant to enable WPCo to comply with the ELG Rule.

“Emission Allowances” shall have the meaning given to such term in Section 7.7.

“Encumbrance” shall mean with respect to any property or asset (a) any mortgage, deed of trust, charge, lien, pledge, hypothecation, title retention arrangement or other security interest, as or in effect as security for the payment of a monetary obligation or the observance of any other obligation; (b) any easement, servitude, restrictive covenant, equity or interest in the nature of an encumbrance, garnishee order, writ of execution, right of set-off, lease, license to use or occupy, assignment of income or monetary claim, whether or not filed, recorded or otherwise perfected under Applicable Law; and (c) any agreement to create any of the foregoing or allow any of the foregoing to exist.

“Event of Default” shall have the meaning given to such term in Section 10.1.

“FERC” shall have the meaning given to such term in Section 5.1.

“FERC Accounting Requirements” means the accounting requirements of FERC, including with respect to the Uniform System of Accounts, established by FERC under the FPA.

“FPA” means the Federal Power Act.

“Governmental Authority” means any federal, national, regional, state, municipal or local government authority, tribunal, court, agency, body, board or instrumentality, or any regulatory, administrative or other department, commission, bureau or agency, taxing authority or power, or any political or other subdivision, department or branch of the foregoing, including any independent system operator, regional transmission organization or electric reliability organization.

“KPCo” shall have the meaning given to such term in the Preamble.

“KPSC” shall mean the Kentucky Public Service Commission.

“Mitchell Plant” shall mean the Mitchell Power Generation Facility, which consists of the Units and associated plant, equipment, real estate and other related facilities, located in Moundsville, West Virginia, but excluding the real property and operation known as the Conner Run Fly Ash Impoundment and Dam.

“Moody's” shall have the meaning given to such term in Section 4.3.

“Non-Defaulting Owner” shall have the meaning given to such term in Section 10.1.

“Non-Offering Owner” shall have the meaning given to such term in Section 9.1.

- “O&M Agreement” shall have the meaning given to such term in the Recitals.
- “Offering Owner” shall have the meaning given to such term in Section 9.1.
- “Operating Committee” shall have the meaning given to such term in Section 7.1.
- “Operating Representative” shall have the meaning given to such term in Section 7.1.
- “Operator” shall have the meaning given to such term in the Recitals.
- “Original Operating Agreement” shall have the meaning given to such term in the Recitals.
- “Owner” or “Owners” shall have the meaning given to such term in the Preamble.
- “Ownership Interest” shall have the meaning given to such term in the Recitals.
- “Paid Amount” shall have the meaning given to such term in Section 10.2.
- “Payment Default” shall have the meaning given to such term in Section 10.1(a).
- “Project Assets” shall have the meaning given to such term in Section 1.1.
- “Proposed Purchaser” shall have the meaning given to such term in Section 9.1.
- “Ratings Requirement” shall mean a Credit Rating for such Owner (or if such Owner has provided a guaranty issued by an Affiliate to satisfy its obligations under this Section 4.3, such Owner’s Affiliate guarantor) of at least “BBB-” by S&P or at least Baa3 by Moody’s, and if such Credit Rating is “BBB-” by S&P or “Baa3” by Moody’s then such Credit Rating must not be on negative credit watch by S&P or Moody’s.
- “S&P” shall have the meaning given to such term in Section 4.3.
- “Tax Code” shall have the meaning given to such term in Section 6.6.
- “Technical Dispute” shall mean any dispute which this Agreement expressly provides shall be a Technical Dispute.
- “Technical Expert” shall mean any individual selected in accordance with the procedure specified in Section 12.3 and who (a) has significant professional qualifications and practical experience in the subject matter of the Technical Dispute, (b) has no interest, financial or otherwise, or duty which conflicts or may conflict with such individual’s functions as a Technical Expert (such individual being required to fully disclose any such interest or duty prior to any appointment) and (c) is not currently and has not been (i) during the five (5) years prior to the date of appointment, an employee of any of the Owners or any of their Affiliates and (ii) during the three (3) years prior to the date of appointment, a contractor or consultant of either of the Owners or any of their Affiliates, unless otherwise mutually agreed by the Owners.
- “Term” shall have the meaning given to such term in Section 8.2.

“Total Net Capability” shall have the meaning given to such term in Section 2.1.

“Total Net Generation” shall have the meaning given to such term in Section 2.2.

“Unit” shall have the meaning given to such term in the Recitals.

“Unit Interest Swap Dispute” shall have the meaning given to such term in Section 9.6(b).

“Unit Interest Swap Transaction” shall mean a transaction, to be consummated on or prior to December 31, 2028, pursuant to which (a) KPCo sells, transfers and assigns to WPCo, and WPCo purchases and assumes from KPCo, all of KPCo’s undivided ownership interest in one of the Units (to be mutually selected by the Owners through the Operating Committee, subject to Section 12.4), (b) WPCo sells, transfers and assigns to KPCo, and KPCo purchases and assumes from WPCo, all of WPCo’s undivided ownership interest in the other Unit (to be mutually selected by the Owners through the Operating Committee, subject to Section 12.4), and (c) addresses the matters for negotiation and includes the definitive documentation (including amendments or replacements of each of this Agreement and the O&M Agreement) described in Exhibit C hereto, with the ultimate result that each Owner owns all of the interests in one of the two Units. Unless mutually agreed by the Owners (subject to Section 12.4), a Unit Interest Swap Transaction shall not include a sale, transfer or assignment of any property, plant or equipment, or improvements thereto, owned solely by one Owner in accordance with Section 1.8 due to such Owner funding or bearing 100% of the capital expenditures or ELG Capital Expenditures for such item.

“USEPA” shall have the meaning given to such term in Section 7.7.

“WACC” shall mean, as of any date, WPCo’s then-applicable WVPSC-authorized weighted average cost of capital, compounded semiannually (consistent with the compounding of Allowance for Funds Used During Construction (AFUDC)).

“WPCo” shall have the meaning given to such term in the Preamble.

“WVPSC” shall mean the Public Service Commission of West Virginia.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their officers thereunto duly authorized as of the date first above written.

KENTUCKY POWER COMPANY

By: _____

Title:

WHEELING POWER COMPANY

By: _____

Title:

Solely with respect to Section 13.4:

AMERICAN ELECTRIC POWER SERVICE CORPORATION

By: _____

Title:

Exhibit A

Capital Budget, Initial Budgets and Forecast

[To Be Attached as of the Effective Date.]

Exhibit B

Form of Monthly Sample Report

[To Be Attached as of the Effective Date.]

Exhibit C

Unit Interest Swap Transaction Implementation

Not later than January 15, 2025 (or such other date as determined by the Operating Committee), unless a Buyout Transaction is otherwise entered into by the Owners, the Operating Committee shall commence good faith discussions to negotiate the Unit Interest Swap Transaction, which negotiations shall include the following considerations:

- the particular Unit to be owned by each Owner,
- any economic equalization payments between the Owners to account for differences in the characteristics of, and the value attributed to, each Unit (including without limitation based on performance history and anticipated capability), and any unequal ownership interest percentages in property, plant or equipment, or improvements thereto, due to an Owner funding or bearing greater than 50% of the capital expenditures for such item,
- the ratable disposition of coal, consumables, fuel, spare parts and other inventory assets,
- arrangements for the purchase or continuing usage, as applicable, of any common facilities (i.e. "Unit 0") used in the operations of both Units, including the barge loading facilities, gypsum conveyor system, substation, interconnection facilities and all other equipment or other property required to produce, deliver or transmit energy to the grid, in each case, at the Mitchell Plant, in the event the Units are not retired at the same time,
- preparation of a Unit for safe standing pending retirement of the other Unit in the event the Units will not be retired at the same time,
- the allocation of Decommissioning Costs for common facilities after retirement of the Units in the event the Units are not retired at the same time,
- cooperation in connection with any Disposition of a Unit (including to any third party),
- operational and costs responsibilities of each Owner in relation to the separate ownership, dispatch, operation, maintenance, capital expenditures and Decommissioning of each Unit, and
- such other matters as the Operating Committee determines are appropriate to implement the Unit Interest Swap Transaction.

The Operating Committee shall determine the need for any real estate, engineering or other professionals or consultants to establish appropriate property divisions between the Units and the other property and assets that would be owned separately by each Owner.

In connection with entering into and consummating definitive transaction documents for a Unit Interest Swap Transaction, the Owners shall negotiate and enter into amendments or replacements (or termination) of each of this Agreement and the O&M Agreement to reflect the

Unit Interest Swap Transaction and the separate ownership, dispatch, operation, maintenance, capital expenditures and Decommissioning of each Unit with a common operator of the Mitchell Plant (including the unilateral ability of each Owner to determine whether or not to operate, Dispose of or retire its applicable Unit), subject to applicable state and other regulatory approvals.

Company Exhibit CTB-S2
Page 1 of 40

Exhibit B [~~Final Form~~Unit Interest Swap Transaction]
Draft – March 15, 2022

[RATE SCHEDULE NO. 303]

MITCHELL PLANT OWNERSHIP AGREEMENT

KENTUCKY POWER COMPANY

and

WHEELING POWER COMPANY

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THIS MITCHELL PLANT OWNERSHIP AGREEMENT (this "Agreement"), with an effective date of [] (the "Effective Date"), is by and among Kentucky Power Company, a Kentucky corporation qualified as a foreign corporation in West Virginia ("KPCo"); Wheeling Power Company, a West Virginia corporation ("WPCo") (such parties hereinafter sometimes referred to as an "Owner" and together the "Owners"); and, solely with respect to Section 13.4, American Electric Power Service Corporation, a New York corporation ("AEPSC").

WITNESSETH:

WHEREAS, KPCo and WPCo, as of the date hereof, each own a fifty percent (50%) undivided ownership interest in the Mitchell Power Generation Facility (each such percentage interest, an Owner's "Ownership Interest"), which consists of two coal-fired generating units (each, a "Unit"), with each Unit having a nominal nameplate capacity of 800 MW, located in Moundsville, West Virginia (as further defined herein, the "Mitchell Plant");

WHEREAS, KPCo, WPCo and AEPSC are parties to that certain Mitchell Plant Operating Agreement, dated as of December 31, 2014 (the "Original Operating Agreement");

WHEREAS, the Original Operating Agreement sets forth certain rights and obligations of the Owners and AEPSC with respect to the Mitchell Plant and the Owners' ownership thereof;

WHEREAS, pursuant to the Original Operating Agreement, KPCo is responsible for the day-to-day operations and maintenance of the Mitchell Plant;

WHEREAS, the Owners and AEPSC desire to replace the Original Operating Agreement to set forth the rights and obligations of the Owners with respect to the Mitchell Plant and their ownership thereof and to remove AEPSC as a party thereto;

WHEREAS, in connection with the execution of this Agreement, the Owners desire to execute a separate operations and management agreement to provide for the day-to-day operation and maintenance responsibilities in respect of the Mitchell Plant (as may be amended from time to time the "O&M Agreement"); and

WHEREAS, the Owners have agreed that, subject to the terms and conditions of the O&M Agreement, on and after the Effective Date WPCo shall replace KPCo as the operator of the Mitchell Plant (the "Operator"); and

~~WHEREAS, on and subject to the terms and conditions of this Agreement, the Owners have committed to undertake a Buyout Transaction (as hereinafter defined), pursuant to which WPCo shall purchase KPCo's Ownership Interest on or prior to December 31, 2028, unless an Early Retirement Event (as hereinafter defined) occurs.~~

NOW THEREFORE, in consideration of the premises and for the purposes hereinabove recited, and in consideration of the mutual covenants hereinafter contained, the signatories hereto agree as follows:

ARTICLE ONE
OWNERSHIP AND OPERATIONS

1.1 To the greatest extent permitted by Applicable Law, the Mitchell Plant and all assets (tangible and intangible) and property (real and personal) owned, leased, held, developed, constructed or acquired solely for or in connection with the Mitchell Plant or the operation, maintenance or Decommissioning of the Mitchell Plant by or on behalf of an Owner or the Owners (together, the “Project Assets”) shall be owned and held and deemed to be owned and held by the Owners as tenants in common in proportion to their respective Ownership Interests (except for any capital items owned in a different proportion in accordance with Section 1.8) or, in the event any Project Asset cannot be held directly by both of the Owners due to, inter alia, any pre-existing legal or contractual restrictions that cannot be altered or satisfied or where effectuating such ownership structure would result in unreasonable additional expense to the Owners, by the Operator as trustee for the Owners as tenants in common in proportion to their respective Ownership Interest. If the ownership of any Project Asset is registered or recorded in the name of one of the Owners, and notwithstanding the Owners’ efforts such Project Asset cannot be held directly by both Owners as contemplated above, then such Owner in whose name ownership is registered or recorded shall hold such Project Asset in trust for itself and the other Owner in proportion to their respective Ownership Interests and, to the extent necessary or requested by the Operator or other Owner, make such Project Assets (or the benefits thereof) available for the use and benefit of the Owners (in proportion with their respective Ownership Interests), including, to the extent consistent with the foregoing, by such Owner subcontracting, sublicensing, subleasing, delegating or granting a limited power of attorney or similar appointment as agent to Operator to administer such Project Assets.

1.2 At the request of either Owner, and in accordance with Section 1.1, each Owner and the Operator shall execute all documents and do all things necessary or appropriate to register or record the Project Assets in the names of the Owners in proportion to their respective Ownership Interests (or such different proportion as any capital item may be owned in accordance with Section 1.8).

1.3 All assets (tangible and intangible) and property (real and personal) held, developed, constructed or acquired by or on behalf of the Operator for or on behalf of the Owners jointly, or any of them, shall constitute “Project Assets” subject to the ownership of both Owners as set forth in Sections 1.1 and 1.2. Except as otherwise agreed by the Owners, the Operator shall not have any right, title or interest in or to any such assets, or in or to any money paid to, collected or received by the Operator for or on behalf of either Owner, except as the agent or representative of, or for the use and benefit of, such Owners as set forth in this Agreement and in proportion to each Owner’s respective Ownership Interest.

1.4 Each Owner hereby waives any rights it may have at law or equity to bring an action for partition or division of the Mitchell Plant or any Project Asset or any contracts related thereto, and agrees that it shall not (a) seek partition or division of the Mitchell Plant or any Project Asset or any contracts related thereto, or (b) take any action, whether by way of any court order or otherwise, for physical partition or judicial sale in lieu of partition of the Mitchell Plant or any Project Asset or any contracts related thereto. Nothing in this Section 1.4 shall affect the

right of either Owner to dispatch its respective share of the Total Net Capability under Article Two or to Dispose of its Ownership Interest in accordance with Article Nine.

1.5 On and after the Effective Date, WPCo shall be the Operator responsible for the day-to-day operations and maintenance of the Mitchell Plant and shall operate, maintain and Decommission the Mitchell Plant for the sole benefit (and on behalf) of the Owners and in accordance with the terms and conditions of this Agreement and the O&M Agreement. KPCo agrees to take all actions reasonably necessary to facilitate WPCo's operation, maintenance and Decommissioning of the Mitchell Plant pursuant to the terms of the O&M Agreement, including providing or permitting reasonable access to the Mitchell Plant to third party contractors and other contract counterparties of each Owner or the Operator with respect to the administration, implementation and satisfaction of such contracts or agreements executed or assumed by the Operator on behalf of either Owner relating to the Mitchell Plant, including all Facility Agreements (as defined in the O&M Agreement).

1.6 The Owners shall establish and maintain such bank accounts as may from time to time be required or appropriate for paying the costs and expenses, including capital expenditures, in respect of the ownership, operation, maintenance and Decommissioning of the Mitchell Plant. The Owners shall designate only the Operator, and its representatives as reasonably requested by the Operator, as authorized signatories to such bank accounts. All withdrawals made by the Operator (or its representatives) from such bank accounts shall be made only in connection with the performance of the Operator's obligations set forth in this Agreement and the O&M Agreement.

1.7 The initial capital budget for the period from the Effective Date through December 31, 2028 (including agreed allocations of costs for capital projects between the Owners) (the "Capital Budget"), the initial annual operating budget and the initial forecast of operating and capital costs to be incurred for the period from the Effective Date through December 31, 2028 are attached hereto as Exhibit A.

1.8 Notwithstanding the provisions of this Article One, to the extent that either Owner funds or bears an amount greater than 50% of any capital expenditures or ELG Capital Expenditures as contemplated in the Capital Budget or this Agreement, the directly resulting portion of any property, plant and equipment, or improvements thereto shall be owned by the Owners in proportion to their respective amounts funded and shall be included only in such proportion in each Owner's ownership accounts for regulatory, accounting, tax and other purposes.

ARTICLE TWO APPORTIONMENT OF CAPACITY AND ENERGY

2.1 The total net capability of the Mitchell Plant at low-voltage busses of the Units, after taking into account auxiliary load demand, is 1,560,000 kilowatts (the "Total Net Capability") as of the Effective Date. The Owners may from time to time modify the Total Net Capability of the Mitchell Plant as they may mutually agree.

2.2 The total net generation of the Mitchell Plant during a given period, as determined by the requirements of each Owner, shall mean the electrical output of the Mitchell Plant generators during such period, measured in kilowatt hours by suitable instruments, reduced by the energy used by auxiliaries for each Unit during such period (the "Total Net Generation").

2.3 Each Owner shall be entitled to receive 50% of the Total Net Capability and the Total Net Generation (with respect to each Owner, such Owner's "Assigned Capacity"), and all associated energy, capacity, ancillary services and other energy products, in accordance with this Agreement.

2.4 Except as may be determined by the Operating Committee in accordance with Section 7.6, in any hour, each Owner shall share 50% of the minimum load responsibility of each Unit.

2.5 In any hour during which any Unit is out of service, the Owners shall bear equally the cost of energy used by the out-of-service Unit's auxiliaries during such hour, which may be provided by the applicable local utility Affiliate of an Owner. Alternatively, the Owners may mutually agree in writing to each provide 50% of such energy.

ARTICLE THREE REPLACEMENTS, ADDITIONS, AND RETIREMENTS

3.1 The Owners shall take all actions within their respective control to cause the Operator, pursuant to the O&M Agreement, from time to time to make or cause to be made any necessary or appropriate additions to, replacements of, and retirements of, capitalizable facilities associated with the Mitchell Plant in accordance with the Capital Budget and the O&M Agreement or as may otherwise be mutually agreed upon by the Owners.

~~3.2 In the event that, prior to execution and delivery of the Mitchell Interest Purchase Agreement, an Early Retirement Event occurs, each Owner shall (a) cause each Unit to permanently cease operations on December 31, 2028, or such other date permitted by Applicable Law as the Operating Committee may determine, (b) be responsible for, and shall timely pay, 50% of all Decommissioning Costs of the Plant (or any individual Unit), (c) cooperate in good faith and take all actions reasonably necessary to facilitate the relevant Decommissioning Work thereof, including negotiating in good faith any contracts or agreements (including liability transfer arrangements) on behalf of either Owner or Operator, including transfers, conveyances or assignments of Facility Equipment (as defined in the O&M Agreement), as reasonably requested by either Owner or Operator to facilitate such Decommissioning and (d) take, and/or instruct the Operator pursuant to the O&M Agreement to take, such actions, at the sole cost and expense of WPCo, to continue operating and maintaining the barge loading facilities and gypsum conveyor system at the Mitchell Plant and providing use of such facilities and system to the applicable contract counterparty and its representatives in accordance with, and until the expiration or earlier termination of, the CertainTeed Contract.~~

ARTICLE FOUR WORKING CAPITAL REQUIREMENTS

4.1 The Owners shall periodically mutually determine the amount, timing and invoicing processes for funds required for use as working capital, for operating, capital and other expenses incurred in the operation, maintenance and Decommissioning (including the Decommissioning Costs) of the Mitchell Plant, and in buying equipment, materials, parts, fuel and other supplies and services necessary to operate, maintain and Decommission the Mitchell Plant and to make the timely payments of any expenses required under the O&M Agreement.

4.2 Each Owner shall, in accordance with the timing set forth in a determination made pursuant to Section 4.1, promptly provide 50% of any such amount required by the Owners pursuant to Section 4.1, except as otherwise provided for in Section 6.7.

4.3 Each Owner agrees that if such Owner fails at any time during the Term to satisfy the Ratings Requirement, it will, within thirty (30) days of such failure, provide in favor of the other Owner and maintain credit support in the form of (a) a cash deposit, (b) a guaranty issued by an Affiliate of such Owner that satisfies the Ratings Requirement in form and substance reasonably acceptable to the other Owner or (c) a letter of credit in form and substance reasonably acceptable to other Owner, issued by a commercial bank or other financial institution with a Credit Rating of at least "A-" by S&P Global Ratings, or any successor thereto ("S&P") or at least "A3" by Moody's Investors Service, Inc., or any successor thereto ("Moody's"), and in an amount equal to (i) one-half (1/2) of the then-applicable annual operating budget for the Mitchell Plant established pursuant to Section 7.2 from time to time, plus (ii) the sum of such Owner's allocated amount of capital expenditures for such year contained in the then-applicable Capital Budget, plus (iii) an amount equal to the latest estimate of Decommissioning Costs prepared by the Operator, determined on a net present value basis using a discount rate equal to the WACC as of the date of determination. Such credit support posted in favor of an Owner shall be promptly returned within thirty (30) days of the other Owner furnishing written evidence demonstrating that it satisfies the Ratings Requirement.

4.4 The Operator shall provide such credit support, including guarantees, cash deposits, letters of credit or other forms of credit support, to third parties (including contractual counterparties and Governmental Authorities) as required for the Owners' ownership, operation, maintenance and Decommissioning of the Mitchell Plant. To the extent that the Operator is required to provide such credit support to a third party in connection with any activity performed in respect of the Mitchell Plant under this Agreement (including the procurement of fuel as described in Section 5.1), the Owners shall share the reasonable and documented out-of-pocket cost of the third-party credit support incurred by the Operator (including of any credit support furnished by an Affiliate of the Operator) in accordance with their respective Ownership Interests.

ARTICLE FIVE INVESTMENT IN FUEL

5.1 The Operator shall procure, establish and maintain reserves of coal in common stock piles for the Mitchell Plant of such quality and in such quantities as the Operating Committee shall determine to be required to provide adequate fuel reserves against interruptions of normal fuel supply and as is necessary to maintain the number of tons in such coal stock piles, after taking into account the coal consumption from such coal stock piles by each Unit during

each month. For purposes of this Agreement, "consumables" shall be as defined in account 502 of the Uniform System of Accounts administered by the Federal Energy Regulatory Commission ("FERC").

5.2 The quality of any coal or consumable product provided by the Operator must be reasonably acceptable to both Owners. Any coal being utilized shall be deemed to be acceptable to the Owners if it meets the following requirements: (a) coal previously utilized at the Mitchell Plant with satisfactory operating performance shall be considered acceptable for use in the Mitchell Plant, unless deemed unacceptable due to a required change of the engineering specifications making the coal no longer viable; (b) coal from any new seam or source shall be acceptable if such supply is shown to perform satisfactorily in the Mitchell Plant and is mutually acceptable to each Owner; or (c) as otherwise mutually agreed to by each Owner. Consumables from any new seam or source shall be acceptable if such supply is shown to perform satisfactorily to both Owners in the Mitchell Plant and conform to the then current engineering specifications for the Mitchell Plant or as otherwise mutually agreed by each Owner.

5.3 Each Owner shall be responsible for, and own, 50% of the investment in the common coal stock piles.

5.4 Fuel oil and consumables charged to operation for the Mitchell Plant shall be owned and accounted for between the Owners in the same manner as coal.

ARTICLE SIX APPORTIONMENT OF STATION COSTS

6.1 The allocation to the Owners of fuel expense associated with each Unit shall be determined by the Operating Committee as follows:

(a) In any calendar month, the average unit cost of coal available for consumption from the Mitchell Plant common coal stock piles shall be determined based on the prior month's ending inventory dollar and ton balances plus current month receipts delivered to the Mitchell Plant common coal stock piles. Each Owner's average unit-cost will be the same, and receipts and inventory available for consumption amounts will be allocated to each Owner based on monthly usage.

(b) The number of tons of coal consumed by the Mitchell Plant in each calendar month from the Mitchell Plant common coal stock piles shall be determined and shall be converted into a dollar amount equal to the product of (i) the average cost per ton of coal associated with the Mitchell Plant in the Mitchell Plant common coal stock pile at the close of such month, and (ii) the number of tons of coal consumed by the Mitchell Plant from the Mitchell Plant common coal stock piles during such month. Such dollar amount shall be credited to the Mitchell Plant fuel in the stock pile and charged to the Mitchell Plant fuel consumed.

(c) In each calendar month, each Owner's respective shares of the Mitchell Plant fuel consumed expense as determined by the provisions of Section 6.1(b) shall be proportionate to each Owner's dispatch of the Mitchell Plant in such month.

(d) Fuel oil reserves will be owned and accounted for in the same manner as coal stock piles, and fuel oil consumed will be allocated to the Owners in the same manner as coal consumed.

6.2 For each calendar month, the Operator will, to the extent practicable and in accordance with the O&M Agreement, determine all of the Mitchell Plant's operations expenses and associated overheads, as accounted for under the FERC Uniform System of Accounts.

6.3 For each calendar month, the Operator will, to the extent practicable and in accordance with the O&M Agreement, determine all the Mitchell Plant's maintenance expenses and associated overheads, as accounted for under the FERC Uniform System of Accounts.

6.4 In each calendar month, each Owner's respective shares of operations and maintenance expenses associated with the Mitchell Plant, as determined in accordance with this Article Six, shall be allocated as follows:

(a) Each Owner's respective share of the Mitchell Plant steam expenses as recorded in FERC Account 502, and emission tons, with allowance expenses as recorded in FERC Account 509, shall be proportionate to each Owner's dispatch of the Mitchell Plant in such month.

(b) In each calendar month, the maintenance of boiler plant expenses as recorded in FERC Account 512, and maintenance of electric plant expenses as recorded in FERC Account 513, shall be directly assigned to each Unit or designated as a common expense attributable to both Units. In each calendar month, each Owner's respective share of these expenses shall be proportionate to each Owner's dispatch of the applicable Unit, or both Units in the case of common expenses, over the previous sixty (60) calendar months.

(c) In each calendar month, each Owner shall be responsible for 50% of all other Steam Power Generation Expenses (FERC Accounts 500 - 515) not addressed in Section 6.4(a) and Section 6.4(b). Administrative and General Expenses (FERC Accounts 920 - 935) shall be assigned to the Mitchell Plant through an annual wages and salaries allocator applied to monthly Administrative & General Expenses. Each Owner shall be responsible for 50% of this monthly amount; provided, however, that, for the avoidance of doubt, each Owner shall be individually responsible for any fees, costs or other charges, including but not limited to those imposed by PJM Interconnection, L.L.C. ("PJM") or any regional transmission operator or any other Governmental Authority in respect of, or which are attributable to, the sale or transmission of the capacity or energy associated with its Ownership Interest, as the case may be.

(d) Notwithstanding the foregoing clauses (a) through (c) or anything else in this Agreement or the O&M Agreement to the contrary, in each calendar month, any operations and maintenance or other expenses to the extent attributable to any ELG Upgrade (regardless of the FERC Account to which it is charged) shall be allocated exclusively to and paid by WPCo.

(e) In each calendar month, each Owner's respective share of Construction Work In Progress charged to FERC Account 107 shall be allocated on the same basis as capital expenditures, as set forth in Section 6.7.

(f) In each calendar month, the net change in Mitchell Plant storeroom inventory (inventory purchases less issuances of inventory) charged to FERC Account 154 shall be allocated 50% to each Owner.

(g) Each Owner shall be charged 50% of Operating Costs, as defined in and in accordance with Section 7.2 of the O&M Agreement, except to the extent a different allocation for specific FERC Accounts or otherwise is specified in this Article Six.

6.5 All taxes, duties or assessments levied against or with respect to each Owner's Ownership Interest, or an Owner's purchase, use, ownership or beneficial interest in, or income from, the Mitchell Plant shall be the sole responsibility of, and shall be paid by, the Owner upon whose purchase, use, ownership interest or beneficial interest or income said taxes or assessments are levied. Without limiting the foregoing, in each calendar month, each Owner's respective share of Employee Payroll Taxes charged to FERC Account 408 shall be 50%.

6.6 Notwithstanding any other provision of this Agreement or any other agreement to the contrary, each Owner hereby acknowledges and agrees that (a) each Owner prior to the Effective Date has treated, and subsequent to such date shall continue to treat, the co-ownership and operation of the Mitchell Plant as excluded from Subchapter K of the Internal Revenue Code of 1986, as amended (the "Tax Code"), pursuant to Section 761(a) thereof, for all federal, state and local income tax purposes, (b) each Owner prior to the Effective Date affirmatively elected not to apply any of the provisions of Subchapter K of the Tax Code to such Owner's interest in the Mitchell Plant, with such election having been formally filed in connection with the Owners' applicable income tax returns for the taxable year ending on December 31, 2020 and each Owner has taken all actions necessary to implement such election and (c) each Owner prior to the Effective Date has reported, and subsequent to such date shall report, its share of all income, gains, deductions, losses, credits, etc. from its Ownership Interest on its tax returns consistent with such exclusion from the provisions of Subchapter K of the Tax Code.

6.7 Subject to clauses (b) and (c) below the cost of any replacement, addition, improvement or upgrade of each Unit or any portion of the Mitchell Plant, and any restoration or remediation required in connection therewith, shall be allocated between the Owners in accordance with the allocations for such capital items contained in the Capital Budget. With respect to any such capital item not contained in the Capital Budget, the costs of such capital item shall be allocated as follows, unless the Operating Committee agrees upon a different allocation:

(a) Capital expenditures (other than ELG Capital Expenditures) that the Operating Committee determines have been or will be incurred exclusively for one Owner shall be allocated exclusively to, and paid for by, that Owner.

(b) Notwithstanding anything to the contrary herein, ELG Capital Expenditures shall be allocated exclusively to, and paid for exclusively by, WPCo (~~subject to adjustment of the Buyout Price in accordance with Section 9.6~~) and CCR Capital Expenditures shall be allocated 50% to (and paid for by) each Owner; provided, that, the Operating Committee shall engage or retain a Technical Expert to make recommendations with respect to determining

which capital expenditures are ELG Capital Expenditures and which capital expenditures are CCR Capital Expenditures.

(c) Notwithstanding anything to the contrary herein, if the in-service date of a capital item is reasonably anticipated by the Operating Committee to be after December 31, 2028, then the capital expenditures for such capital item shall be allocated exclusively to, and paid for by, WPCo.

(d) If the Operating Committee determines, including based on Depreciable Lives of similar assets previously approved by applicable Governmental Authorities, that a capital item (other than an ELG Upgrade) has a Depreciable Life that extends beyond December 31, 2028, then (i) KPCo shall be responsible for and shall pay 50% of the expenditures for such capital item, multiplied by (A) the number of months (not to exceed the Depreciable Life of such capital item) between the reasonably anticipated in-service date of such capital item and December 31, 2028, divided by (B) the Depreciable Life of such capital item and (ii) WPCo shall be responsible for the remaining amount of such capital expenditure not allocated to KPCo pursuant to the foregoing clause (i).

(e) Any other capital expenditures shall be allocated 50% to (and paid for by) each Owner, subject to the written approval of the Operating Committee for budget overruns to the extent required pursuant to Section 5.3.2 of the O&M Agreement.

6.8 ~~In the event of an Early Retirement Event, each~~Each Owner shall be responsible for 50% of all Decommissioning Costs, unless a different allocation is expressly specified for such item in the Capital Budget (as agreed by the Owners) or the Owners mutually agree to allocate such costs in another manner; ~~provided that nothing in this Section 6.8 shall affect the inclusion of Decommissioning Costs in the calculation of the Buyout Price pursuant to Section 9.6 (including in connection with any Unit Interest Swap Transaction).~~

6.9 Notwithstanding anything contained in this Agreement, an Owner's obligation to pay its obligations under this Agreement shall not in any way be conditioned upon or affected by any regulatory order or other determination disallowing, limiting or deferring rate recovery of the costs and expenses paid or payable by an Owner in respect of its Ownership Interest.

ARTICLE SEVEN OPERATING COMMITTEE AND OPERATIONS

7.1 By written notice to each other, each Owner shall name one representative (the "Operating Representative") and one alternate to act for it in matters pertaining to operating arrangements under this Agreement and the O&M Agreement. An Owner may change its Operating Representative or alternate at any time by written notice to the other Owner. The Operating Representatives for the respective Owners, or their alternates, shall comprise the "Operating Committee". All decisions, directives, or other actions by the Operating Committee must be by unanimous agreement of the Operating Representatives of the Owners. If the Operating Representatives are unable to agree on any matter, such matter will be resolved through the dispute resolution procedures set forth in Article Twelve.

7.2 The Operating Committee shall have the following responsibilities, which decisions are reserved exclusively for the Operating Committee and may not be made individually by the Operator or any Owner:

(a) Review and approval of any amendments to the Capital Budget, and adoption of an annual operating budget, annual operating plan and a six-year forecast of operating and capital expenses, each as delivered to the Operating Committee by the Operator pursuant to Section 7.8, including determination of the emission allowances required to be acquired by each Owner with respect to their Ownership Interests; provided, that an Owner's Operating Representative shall have the right to amend the Capital Budget solely to include any capital expenditures for which such Owner shall be allocated greater than 75% of the costs pursuant to Section 6.7, up to an aggregate amount of such capital expenditures that does not exceed \$3 million per year allocated to the other Owner. Allocations of new capital expenditures added to the Capital Budget shall be consistent with Section 6.7; provided, that if the Operating Committee cannot agree upon the Depreciable Life of a capital item or the allocation of a capital expenditure between the Owners (including determining which capital expenditures are ELG Capital Expenditures and which capital expenditures are CCR Capital Expenditures), the matter shall be resolved in accordance with the Technical Dispute resolution procedures set forth in Section 12.1 and Section 12.3 and the Owners shall implement any resolution of the Technical Dispute through adjustments or true-up payments, as appropriate. If the Operating Committee fails to adopt an annual operating budget, the approved annual operating budget from the previous year (other than one-time or other non-recurring or inapplicable items) shall apply until such time as the new annual operating budget is approved.

(b) Establishment, modification and review of procedures, guidelines and systems for scheduling and dispatch, notification of dispatch, and Unit commitment under this Agreement, including any Unit-commitment pursuant to Section 7.5 or Section 7.6.

(c) Establishment and monitoring of procedures for communication and coordination with respect to the Mitchell Plant capacity availability, fuel-firing options, and scheduling of outages for maintenance, repairs, equipment replacements, scheduled inspections, and other foreseeable cause of outages at the Mitchell Plant, as well as the return the Mitchell Plant to availability following an unplanned outage. The Operating Committee shall use commercially reasonable efforts, consistent with Prudent Operation and Maintenance Practices (as defined in the O&M Agreement), to schedule the implementation of ELG Upgrades during planned maintenance and repair outages so as to eliminate or minimize incremental outages.

(d) To the extent not included in the Capital Budget, decisions on capital projects, including Unit upgrades and re-powering, except that an Owner's Operating Representative shall have the right to approve any such capital projects for which such Owner shall be allocated greater than 75% of the costs pursuant to Section 6.7 and Section 7.2(a).

(e) Determinations as to allocations between the Owners of expenses pursuant to Section 6.1.

(f) Determinations as to changes in the Unit capability.

(g) Establishment and modification of billing procedures under this Agreement or under the O&M Agreement.

(h) Approval of material contracts for fuel supply or transportation.

(i) Establishment and modification of specifications of fuels; oversight of fuel procurement, inspection and certification arrangements, policies and procedures; and management of fuel inventories for the Mitchell Plant.

(j) Establishment of, termination of, and approval of any change or amendment to the operating arrangements (including the O&M Agreement) between the Owners and the Operator (or any successor Operator or replacement third-party Operator) and selection of any replacement Operator, except as otherwise permitted by Section 7.9.

(k) Review and approval of plans and procedures designed to ensure compliance at the Mitchell Plant with all Applicable Law, including procedures for allocating and using emission allowances or for any programs that permit averaging at more than one Unit for compliance.

(l) Amendment, termination, extension or modification of the O&M Agreement, and supervision of the performance of, and provision of direction as needed to, the Operator.

(m) Decisions regarding the retirement, permanent removal from service or Decommissioning of a Unit or any material portion of the Mitchell Plant and any restoration or remediation required in connection therewith.

(n) Establishment of an insurance program to provide property and general liability insurance on behalf of each Owner, to be procured by the Operator pursuant to the O&M Agreement.

(o) Decisions not reserved hereunder to the individual Owners regarding any Buyout Transaction or Unit Interest Swap Transaction (including in each case the implementation thereof), to the extent not otherwise mutually agreed by the Owners.

(p) ~~(o)~~ Other duties as assigned by agreement of the Owners.

7.3 The Operating Committee shall meet at least quarterly, or at such other frequency as determined by the Operating Committee, and at such other times as an Owner may reasonably request. The Operator shall provide operations reports to the Operating Committee each month (presented on a monthly basis) and each quarter (presented on a quarterly basis) substantially in the form of Exhibit B hereto.

7.4 The Owners and the Operator shall cooperate in providing to the Operating Committee the information it reasonably needs to carry out its duties, and to supplement or correct such information on a timely basis.

7.5 Subject to Section 7.6, each Unit shall be scheduled and dispatched on a joint and equal basis by the Owners, including bidding the Mitchell Plant or any Unit as a single bid, consistent with procedures and guidelines established by the Operating Committee. The Owners shall make an initial Unit-commitment one business day ahead of real-time dispatch, or on such other timetable as the Operating Committee may determine. In each calendar month, each Owner's respective shares of the Emissions Allowances consumed as determined in accordance with the provisions of Section 7.7 shall be proportionate to each Owner's dispatch of the Mitchell Plant in such month.

7.6 In the event an Owner desires to separately schedule and dispatch any Unit, subject to the receipt of any necessary regulatory approvals or waivers, the Operating Committee shall establish and implement procedures and systems for separate scheduling and dispatch by each Owner, consistent with all of the requirements of any Person or regional transmission organization, such as PJM, supervising the collective transmission or generation facilities of the power region in which the Mitchell Plant is located that is charged with coordination of market transactions, system-wide transmission planning and network reliability and shall allocate costs and responsibilities in respect of any such separate dispatch (including with respect to Emission Allowances) consistent with such separate dispatch.

7.7 Emission Allowances. Prior to the earlier of any Buyout Transaction or December 31, 2028 (or earlier retirement of the Facility), to the extent that emission allowances issued by the U.S. Environmental Protection Agency ("USEPA") pursuant to Title IV of the Clean Air Act Amendments of 1990 and any regulations thereunder, and any other emission allowance trading program created under the Clean Air Act and administered by USEPA or the State of West Virginia, including but not limited to the Cross-State Air Pollution Rule 40 C.F.R. Part 97, and any amendments thereto (the "Emission Allowances"), are required for operation of the Mitchell Plant, each Owner will be entitled to receive for its own benefit 50% of any Emissions Allowances allocated to the Mitchell Plant. Each Owner will be responsible for acquiring any additional Emission Allowances needed to satisfy the Emission Allowances required because of such Owner's dispatch of energy from the Mitchell Plant. Additionally, prior to such time, each Owner will be responsible for acquiring the Emission Allowances required, to the extent necessary in addition to its share of the Emissions Allowances allocated to the Mitchell Plant, to satisfy 50% of the Emission Allowance surrender obligations attributable to the Mitchell Plant imposed under the Consent Decree entered in *United States, et al. v. American Electric Power Service Corp., et al.*, Civil Action Nos. C2-99-1182 and C2-99-1250 and *United States, et al. v. American Electric Power Service Corp., et al.*, Civil Action No. C2-05-360 and *Ohio Citizen Action, et al. v. American Electric Power Service Corp.*, Civil Action No. C2-04-1098 dated December 10, 2007 as subsequently modified or amended, it being understood that the Owners may be subject to additional rights and obligations under any applicable agreement among the Owners (and/or their Affiliates) and American Electric Power Company, Inc. (and/or its Affiliates) pertaining to the allocation of emission limitations associated with the Mitchell Plant. As early as possible, but no later than three business days after the deadline for submitting final electronic data to the EPA for compliance purposes, the Operator shall notify each Owner of the number of annual or seasonal Emission Allowances that are needed to offset each Owner's share of emissions for the previous year or season. Each Owner shall supply its respective share of allowances, with a reasonable compliance margin as determined by the Operating Committee, by transferring the applicable allowances to the

Mitchell Plant's Allowance Facility Account on or before 15 days prior to the remittance date. In the event that an Owner fails to surrender the required number of Emission Allowances in accordance with the prior paragraph, the other Owner shall have the option to purchase the required number of Emission Allowances, and the Owner that failed to surrender the required number of Emission Allowances shall reimburse the other Owner for any amounts it shall have incurred to make such purchases, with interest at the "Federal Funds Rate" (as published by the Board of Governors of the Federal Reserve System as from time to time in effect) running from the date of such purchases to the date of payment. The Operating Committee will develop procedures to be implemented after the end of each calendar year to account for each Owner's share of the Emission Allowances required by the use of the Mitchell Plant and to correct any imbalance between the Emission Allowances supplied and the Emission Allowances used through the end of the preceding year by settlement or payment.

7.8 At least ninety (90) days before the start of each operating year, the Operator shall submit to the Operating Committee any proposed amendments to the Capital Budget and an annual operating budget for such operating year with respect to the Mitchell Plant, a proposed annual operating plan with respect to the Mitchell Plant for such operating year, and a forecast of operating and capital costs to be incurred during the next six-year period. The annual operating budget and amendments to the Capital Budget shall be presented on a month-by-month basis, and shall include an operating budget, a capital budget, and an estimate of the cost of any major repairs or improvements that are anticipated to occur during the relevant period with respect to the Mitchell Plant, and an itemized estimate of all projected fixed and variable operating expenses relating to the operation of the Mitchell Plant during that operating year. The members of the Operating Committee will meet and work in good faith to agree upon the final annual operating budget, final annual operating plan and any amendments to the Capital Budget. Once approved, the annual operating budget and annual operating plan shall remain in effect throughout the applicable operating year, subject to such changes, revisions, amendments, and updating as the Operating Committee may determine. If an ~~Early Retirement Event~~ occurs, the Operating Committee determines to retire the Mitchell Plant prior to December 31, 2028, the members of the Operating Committee will meet and work in good faith to amend the Capital Budget to remove any future ELG Capital Expenditures and any other future capital expenditures no longer required, to the extent practicable and consistent with Applicable Law. The Capital Budget shall remain in effect throughout the Term, subject to such amendments as the Operating Committee may determine.

7.9 Notwithstanding anything in this Agreement to the contrary, (i) in the case of the O&M Agreement or any other agreement relating to the Mitchell Plant that is entered into jointly by or on behalf of the Owners, on one hand, with an Affiliate of an Owner (or with an Owner itself, as in the case of the O&M Agreement) on the other hand, the non-Affiliate Owner shall have the sole and exclusive right to exercise any and all affirmative or elective rights of the Owners, including remedies (including delivering notices of and pursuing or settling disputes or delivering notices of default or making and pursuing claims for indemnification) and any termination rights (including rights of termination for convenience, if any) thereunder (for the avoidance of doubt, without first obtaining the consent of the other Owner or the Operating Committee) and (ii) in the case the O&M Agreement is terminated pursuant to Section 8.2 thereof, KPCo shall have the sole and exclusive right to select and designate any successor "Operator" or replacement third-party Operator, in each case so long as such successor

replacement is a "Qualified Replacement Operator" (as defined in the O&M Agreement); provided, however, that notice of any such action described in this Section 7.9 shall be sent to the other Owner at the time such action is taken if such other Owner is not the Operator. For purposes of this Agreement, "Affiliate" shall mean, with respect to any person or entity, any other person or entity that directly or indirectly, controls, is controlled by, or is under common control with such person or entity. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

ARTICLE EIGHT EFFECTIVE DATE AND TERM

8.1 This Agreement shall be effective as of the Effective Date.

8.2 Subject to FERC approval or acceptance of any termination, if necessary, this Agreement shall remain in force until the earlier of (a) the date on which this Agreement is terminated by mutual agreement of the Owners (including in connection with any Unit Swap Transaction) or (b) the consummation of ~~thea~~ Buyout Transaction ~~contemplated by Section 9.6~~ (the period from the Effective Date through such date, the "Term").

ARTICLE NINE TRANSFERS

9.1 Neither Owner may assign, transfer or otherwise dispose of its Ownership Interest, either in whole or part, whether by sale, lease, division, declaration or creation of a trust, by operation of law or otherwise ("Dispose" or a "Disposition") to any person or entity (the "Proposed Purchaser") without the prior written consent of the other Owner (the "Non-Offering Owner" and the Owner proposing the Disposition, the "Offering Owner"), which consent may be granted or withheld in the Non-Offering Owner's sole discretion; provided, that, the foregoing shall not restrict the Owners from pursuing or consummating the Buyout Transaction. Notwithstanding the foregoing, either Owner may Dispose of, all (but not less than all) of its Ownership Interest to a state regulated utility Affiliate, provided that (i) the Disposition shall not relieve the Offering Owner of its obligations under this Agreement, (ii) the Disposition shall be made in compliance with the Consent Decree entered in *United States, et al. v. American Electric Power Service Corp., et al.*, Civil Action Nos. C2-99-1182 and C2-99-1250 and *United States, et al. v. American Electric Power Service Corp., et al.*, Civil Action Nos. C2-04-1098 and C2-05-360, and all amendments or modifications thereto, as in effect as of the date of the Disposition, (iii) the Proposed Purchaser shall agree to and assume, in respect of the Ownership Interest subject to the Disposition, the rights and obligations of the Offering Owner and its Affiliates under any applicable agreement with American Electric Power Company, Inc. (and/or its Affiliates) pertaining to the allocation of emission limitations associated with the Mitchell Plant, and (iv) in the event the Offering Owner (or any Affiliate thereof) shall be the Operator, the Proposed Purchaser shall also have been assigned, and agreed to have assumed, the rights and obligations of the Operator under this Agreement and the O&M Agreement as of the effective date of such Disposition; provided, that in the case of this clause (iv), a written consent

from the Non-Offering Owner (which consent shall not be unreasonably withheld, conditioned or delayed) shall be obtained prior to such Disposition to the extent such Disposition results in the change of the Operator.

9.2 No Disposition shall be made unless all requisite regulatory and other approvals, consents and authorizations from all Governmental Authorities that are required to be obtained in connection with such Disposition have been obtained and as to which all conditions to the consummation of Disposition thereunder have been satisfied.

9.3 ~~Subject to Section 9.6, all~~ All costs associated with any Disposition of an Ownership Interest by an Owner shall be borne solely by the Offering Owner, provided that the foregoing shall not limit the Offering Owner's right to seek reimbursement of any costs from the Proposed Purchaser in connection with any such Disposition.

9.4 Each Owner shall have the right to seek financing for all or a portion of such Owner's Ownership Interest and to provide general security for such financing of its Ownership Interest, including through the creation of any Encumbrance thereon (and the right of the beneficiary thereof to enforce thereon, but not to foreclose upon or transfer such Owner's Ownership Interest without the prior written consent of the other Owner), without the prior consent of the other Owner; provided that neither Owner may enter into any financing agreement or create any Encumbrance that would be reasonably likely to prohibit or otherwise restrict or condition the Buyout Transaction ~~contemplated by Section 9.6~~. Each Owner further agrees to cooperate reasonably and in good faith, and to cause its Affiliates to so cooperate, with an Owner seeking financing in connection with such modifications and other rights and consents customary in transactions of such type, and not unreasonably to withhold its consent to such modifications as may be reasonably necessary or appropriate to allow such Owner to obtain such financing upon reasonably competitive terms, including obtaining consents to the assignment of such Owner's Ownership Interest in any of the Project Assets reasonably requested by such Owner's lender; provided that none of such proposed modifications shall (a) relieve the financing Owner of any of its obligations under this Agreement, the O&M Agreement or any other agreement related to the Mitchell Plant or any Project Asset, (b) decrease the economic benefits, or increase the costs, of the ownership and operation of the Mitchell Plant to the other Owner, (c) create any increased economic or legal risk to the other Owner in connection with the ownership and operation of the Mitchell Plant, (d) permit or allow any Encumbrances relating to any such financing to be placed upon any portion of or interest in the Project Assets other than the financing Owner's Ownership Interest, (e) permit partition of the Project Assets or any of them, including any partition upon a default by the financing Owner under any of the relevant financing documents or (f) prohibit or otherwise restrict or condition the Buyout Transaction ~~as contemplated by Section 9.6~~.

9.5 Notwithstanding anything else herein to the contrary, no Disposition shall constitute a release of the Offering Owner from any liabilities to the Non-Offering Owner or the Operator arising from events occurring prior to or in connection with the Disposition, except as may be set forth expressly in ~~the Mitchell Interest Purchase Agreement~~ a definitive transaction agreement for a Buyout Transaction.

~~9.6 Buyout Transaction. Unless an Early Retirement Event occurs, the Owners shall enter into the Mitchell Interest Purchase Agreement pursuant to which KPCo shall sell, transfer and assign to WPCo, and WPCo shall purchase and assume from KPCo, all of KPCo's Ownership Interest (the "KPCo Interest") (including its interest in the underlying land, common facilities, barge unloading and gypsum conveyor facilities, and inventory and spare parts with respect to the Mitchell Plant), with the closing of such transaction to occur on December 31, 2028 (or such earlier date as may be mutually agreed by the Owners), subject to and in accordance with the provisions of this Section 9.6. The transactions contemplated by this Section 9.6 shall be referred to herein collectively as the "Buyout Transaction."~~

9.6 Negotiation of a Buyout Transaction; Unit Interest Swap Transaction.

(a) ~~Buyout Price. The purchase price for the KPCo Interest shall be (i) an amount mutually agreed by the Owners and approved by each of the WVPSC and the KPSC or, (ii) if no such amount is agreed by the Owners prior to June 30, 2027, an amount equal to (A) the Adjusted Fair Market Value of the KPCo Interest as of the closing date of the consummation of the Buyout Transaction, minus (B) the Decommissioning Costs Amount, plus (C) the Coal Inventory Adjustment (such aggregate amount, the "Buyout Price"). The Coal Inventory Adjustment and the CapEx Adjustment shall be subject to a customary closing estimation and post-closing true-up mechanism to be set forth in the Mitchell Interest Purchase Agreement. At the request of either Owner, the Owners shall commence good faith discussions to negotiate a Buyout Transaction on mutually agreeable terms and conditions, subject to receipt of applicable regulatory approvals. Following any such request, the Owners shall cooperate in good faith to negotiate and execute definitive transaction documents for a mutually agreed Buyout Transaction not later than December 31, 2024, so as to allow the Owners to receive the applicable regulatory approvals not later than May 1, 2025 (or such other date as determined by the Operating Committee), and the transaction be consummated on or prior to December 31, 2028. Subject to Section 9.6(b) and Article Twelve with respect to a Unit Interest Swap Transaction in the absence of a Buyout Transaction, nothing in this Agreement is intended to be, and shall not be deemed to be, a binding commitment or obligation on the part of either Owner to enter into or consummate any Buyout Transaction.~~

(b) ~~Determination of Fair Market Value. Not later than June 30, 2026, the Owners shall commence discussions to determine mutually agreed amounts for the Fair Market Value for the KPCo Interest and the Decommissioning Costs Amount. Unless prior to June 30, 2027, (i) the Fair Market Value for the KPCo Interest (or other alternative Buyout Price) has been mutually agreed by the Owners pursuant to this Section 9.6 or (ii) an Early Retirement Event has occurred, then not later than July 31, 2027, each Owner shall deliver a written notice to the other Owner appointing a nationally or regionally recognized appraisal firm, which is not an Affiliate of either Owner, with experience valuing coal-fired electric generating facilities that are comparable in size and scope to the Mitchell Plant ("Appraiser"), the costs and expenses of which shall be borne by the Owner appointing such Appraiser. Each of the Appraisers selected by WPCo and KPCo, respectively, shall work together to select a third Appraiser within fifteen (15) days of selection of the first two Appraisers or, if such first two Appraisers fail to agree upon the appointment of a third Appraiser, such appointment shall be made by the American Arbitration Association, or any successor organization thereto. The costs and expenses of the third Appraiser shall be borne equally by the Owners. Each Owner shall cooperate with each~~

~~Appraiser and timely provide information and access to the Mitchell Plant facilities (including, subject to any confidentiality restrictions, contracts and financial information) and personnel as may be reasonably needed to complete its appraisal. The Fair Market Value of the KPCo Interest shall be calculated by the Appraisers as of December 31, 2028 (or such earlier date of the anticipated closing of the Buyout Transaction), assuming that the Units would permanently cease operations as of December 31, 2040 (or such earlier anticipated date as may have been filed by WPCo with the WVPSC) but without taking into account any Decommissioning Costs or the value of the common coal pile. Each Appraiser shall prepare a detailed written appraisal of the Fair Market Value of the KPCo Interest within sixty (60) days after the selection of such third Appraiser and provide its valuation reports to each of the Owners. If the Fair Market Value determined by one of the three Appraisers deviates from the Fair Market Value determination of the middle Appraiser by more than twice the amount by which the Fair Market Value determination of the other Appraiser deviates from the Fair Market Value determination of the middle Appraiser, then the Fair Market Value determination of such Appraiser shall be excluded, the remaining two Fair Market Value determinations shall be averaged, and such average shall be the Fair Market Value, which shall be binding and conclusive on the Owners; otherwise the average of all three Fair Market Value determinations shall be the Fair Market Value, which shall be binding and conclusive on the Owners. Except as otherwise expressly agreed in writing by the Owners, in the event mutually agreed definitive transaction documents for a Buyout Transaction are not entered into by December 31, 2024, a Buyout Transaction does not receive requisite regulatory approvals on or prior to May 1, 2025, or the signed definitive transaction documents therefor are otherwise terminated prior to consummation thereof, then the Owners shall enter into definitive transaction documents for a Unit Interest Swap Transaction on mutually agreeable terms and conditions (subject to Section 12.4) to be consummated on or prior to December 31, 2028, after receipt of applicable regulatory approvals. The terms and conditions of the Unit Interest Swap will be negotiated in good faith by the Operating Committee giving due consideration to and addressing, without limitation, the matters set forth in Exhibit C hereto. In the event the Owners do not mutually agree upon any element of definitive transactions documents for a Unit Interest Swap Transaction (a "Unit Interest Swap Dispute"), then any Unit Interest Swap Dispute shall be resolved in accordance with ARTICLE Twelve.~~

~~(c) — Determination of Decommissioning Costs Amount. Unless prior to June 30, 2027, (i) the Decommissioning Costs Amount (or other alternative Buyout Price) has been mutually agreed by the Owners pursuant to this Section 9.6 or (ii) an Early Retirement Event has occurred, then not later than July 15, 2027, each Owner shall deliver a written notice to the other Owner appointing a nationally or regionally recognized engineering or consulting firm, which is not an Affiliate of either Owner, with experience decommissioning (or arranging decommissioning liability transfer arrangements for) coal fired electric generating facilities that are comparable in size and scope to the Mitchell Plant ("Qualified Firm"), the costs and expenses of which shall be borne by the Owner appointing such Qualified Firm. Each of the Qualified Firms selected by WPCo and KPCo, respectively, shall work together to select a third Qualified Firm within fifteen (15) days of selection of the first two Qualified Firms or, if such first two Qualified Firms fail to agree upon the appointment of a third Qualified Firm, such appointment shall be made by the American Arbitration Association, or any successor organization thereto. The costs and expenses of the third Qualified Firm shall be borne equally by the Owners. Each Owner shall cooperate with each Qualified Firm and timely provide information and access to the Mitchell Plant facilities (including, subject to any confidentiality~~

~~restrictions, contracts and financial information) and personnel as may be reasonably needed to complete its determination. The Decommissioning Costs Amount shall be calculated by the Qualified Firms as of December 31, 2028 (or such earlier date of the anticipated closing of the Buyout Transaction), assuming for purposes of such determination (A) the Units would permanently cease operations, and Decommissioning of the Mitchell Plant would commence, as of such date, (B) the Mitchell Plant facilities would be dismantled and removed from the Mitchell Plant site, (C) the Mitchell Plant site would be remediated to a legally permissible industrial use standard, (D) all legal obligations and commitments to Governmental Authorities in connection with the Decommissioning of the Mitchell Plant would be appropriately addressed and satisfied, and (E) such additional or alternative assumptions as the Operating Committee may determine. Each Qualified Firm shall prepare a detailed written determination of the Decommissioning Costs Amount within ninety (90) days after the selection of such third Qualified Firm and provide its determination reports to each of the Owners. If the Decommissioning Costs Amount determined by one of the three Qualified Firms deviates from the Decommissioning Costs Amount determination of the middle Qualified Firm by more than twice the amount by which the Decommissioning Costs Amount determination of the other Qualified Firm deviates from the Decommissioning Costs Amount determination of the middle Qualified Firm, then the determination of such Qualified Firm shall be excluded, the remaining two Decommissioning Costs Amount determinations shall be averaged, and such average shall be the Decommissioning Costs Amount, which shall be binding and conclusive on the Owners; otherwise the average of all three Decommissioning Costs Amount determinations shall be the Decommissioning Costs Amount, which shall be binding and conclusive on the Owners.~~

~~(d) Buyout Procedures. Unless an Early Retirement Event has occurred, the Owners shall cooperate in good faith to negotiate and execute the Mitchell Interest Purchase Agreement not later than December 31, 2027, including completing any applicable disclosure schedules and exhibits, consistent with the terms and conditions described in this Section 9.6, so that any applicable regulatory or other approvals shall be timely obtained so as to allow the Buyout Transaction to be consummated on or prior to December 31, 2028.~~

ARTICLE TEN DEFAULTS AND REMEDIES

10.1 An Owner shall be deemed to be in default hereunder upon the occurrence of any of the following events with respect to such Owner (each of the following events to be referred to as an "Event of Default," the Owner in default to be referred to as the "Defaulting Owner" and the Owner not in default to be referred to as the "Non-Defaulting Owner");

(a) an Owner fails to make any payment required by it as and when due and payable in accordance with the terms of this Agreement, the O&M Agreement or any other agreement related to the Mitchell Plant or any Project Asset and such failure is not remedied within ten (10) days after receipt of written notice thereof by such Owner from the other Owner; provided, that any such notice shall include a statement of the amount the Defaulting Owner has failed to pay (a "Payment Default"); or

(b) an Owner fails to perform any material obligation (other than as described in Section 10.1(a)) imposed upon such Owner under this Agreement and such failure is not

remedied within thirty (30) days after such Owner receives written notice thereof from the other; provided that, if such thirty (30) day period is not sufficient to enable the remedy or cure of such failure in performance, and such Owner shall have upon receipt of the initial notice promptly commenced and diligently continues thereafter to remedy such failure, then such Owner shall have a reasonable additional period of time (but in no event longer than an additional ninety (90) days from the end of the initial thirty (30) day cure period) to remedy or cure such failure; provided, however, that an Owner shall not be in default of its obligations hereunder to the extent such failure is caused by or is otherwise attributable to a breach by the other Owner of its obligations under this Agreement.

10.2 Without limiting the rights and remedies available to the Non-Defaulting Owner under Applicable Law, in the case of an Event of Default, the Non-Defaulting Owner shall have the right (but not the obligation) to (x) pay all or a portion of the amounts that were the subject of the Payment Default on behalf of the Defaulting Owner and (y) perform the obligation(s) which the Defaulting Owner has failed to perform on behalf of and at the expense of the Defaulting Owner (in any such case subject to all limits on liability benefiting the Defaulting Owner as set forth in this Agreement); and, if such payment is made (the portion as so paid or expended in connection with such performance, the "Paid Amount"), to:

(a) charge the Defaulting Owner interest with respect to the Paid Amount, from the day the payment was made by the Non-Defaulting Owner until it is paid in full by the Defaulting Owner to the Non-Defaulting Owner, at the rate equal to the prime rate as published from time to time in *The Wall Street Journal* (or any successor publication) plus five (5) percentage points per annum, calculated daily, regardless of whether the Non-Defaulting Owner has notified the Defaulting Owner in advance of its intention to charge interest with respect to such Paid Amount;

(b) set off against the Paid Amount any sums due or accruing to the Defaulting Owner by the Non-Defaulting Owner in accordance with this Agreement;

(c) maintain an action or actions for the Paid Amount and interest thereon on a continuing basis as the Paid Amount becomes payable but is not paid by the Defaulting Owner, as if the obligation to pay those amounts and the interest thereon was a liquidated demand due and payable on the date the amounts were due to be paid, without any right or resort of the Defaulting Owner to set-off or counter-claim against the Non-Defaulting Owner; and any obligation to pay interest under this Section 10.2 shall apply until the Payment Default is rectified or remedied; and

(d) at the Non-Defaulting Owner's option, (i) draw on any letter of credit posted by the Defaulting Owner pursuant to Section 4.3 in an amount equal to the Paid Amount, including all interest accrued thereon or (ii) receive one hundred percent (100%) of any revenues arising from or attributable to the sale of capacity, energy, ancillary services or other energy products from the Mitchell Plant that the Defaulting Owner would otherwise be entitled to receive in respect of its Assigned Capacity until the Non-Defaulting Owner receives an amount equal to the Paid Amount, including all interest accrued thereon, *plus* all costs of collection incurred in connection therewith, and the Owners shall cooperate with each other, the Operator, applicable Governmental Authorities (including in respect of securing any regulatory approvals)

or other third parties (including lenders) as may be reasonably necessary to facilitate the Non-Defaulting Owner's right to be paid and receive the revenues attributable to the Defaulting Owner's Assigned Capacity until the applicable Paid Amount, including all interest accrued thereon and all costs of collection incurred in connection therewith has been paid to the Non-Defaulting Owner in full, including facilitating any appropriate changes in the applicable settlement accounts with respect to which market revenues are credited or paid by PJM or other applicable regional transmission organizations and executing any documents required to assign over such market revenues to the Non-Defaulting Owner.

ARTICLE ELEVEN LIMITATION OF LIABILITY

11.1 Without limiting any other provision of this Agreement, each Owner's liability under this Agreement shall be limited to direct actual damages only. Such direct actual damages shall be the sole and exclusive remedy with respect to all claims arising under this Agreement and all other remedies or damages at law or in equity with respect to claims arising under this Agreement are waived, and unless expressly provided herein, no Owner shall be liable for consequential, punitive, incidental, exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort or in contract, under any indemnity provision or otherwise, with respect to claims arising under this Agreement. It is the intent of the Owners that the limitations herein imposed on remedies and the measure of damages be without regard to the cause or causes related thereto, including the negligence of any Owner, whether such negligence be sole, joint or concurrent, or active or passive. Notwithstanding anything herein to the contrary, the limitations set forth in this Section 11.1 shall not (a) limit or preclude any indemnification obligations of an Owner pursuant to Article Ten of the O&M Agreement, including with respect to indemnification for third-party claims or (b) apply to, limit or preclude recovery of Covered Losses under Section 12.4.

ARTICLE TWELVE DISPUTE RESOLUTION

12.1 If either Owner believes that a dispute (including a Technical Dispute or Unit Interest Swap Dispute) has arisen as to the meaning or application of this Agreement, it shall submit a written description of the disputed matter to the Operating Committee, and shall provide a copy of that submission to the other Owner.

12.2 If the Operating Committee ~~is unable to~~ does not reach agreement on the resolution of a dispute not constituting a Technical Dispute or Unit Interest Swap Dispute submitted to the Operating Committee pursuant to Section 12.1 within thirty (30) days after the dispute is presented to it, the matter shall be referred to senior executive officers with the authority to resolve such dispute of each of the Owners for resolution in the manner that such individuals shall agree is appropriate; provided, however, that either Owner may exercise any and all rights at law or equity at any time after the end of the thirty (30) day period provided for the Operating Committee to reach agreement if the Operating Committee has not reached agreement.

12.3 If the Operating Committee ~~is unable to~~ does not reach agreement on the resolution of a Technical Dispute submitted to the Operating Committee within ten (10) business days after such Technical Dispute is presented to it, then either Owner may refer such Technical Dispute to a Technical Expert. Within ten (10) business days following receipt of an Owner's notice referring a Technical Dispute to a Technical Expert, the Operating Representatives shall confer to agree upon a Technical Expert to hear the Technical Dispute. If the Owners are unable to agree upon the appointment of a Technical Expert, then at the end of such ten (10) business day period each Owner shall, within five (5) business days, notify the other Owner in writing of its designation of a proposed Technical Expert. The two proposed Technical Experts shall, within five (5) business days, select a Technical Expert (who may be one of the two Technical Experts designated by the Owners or another Technical Expert) and such Technical Expert shall hear the Technical Dispute. Each Owner shall be required to put forth and endorse one proposal, budget or solution, as the case may be, as its proposed resolution to the Technical Dispute, based on an agreed statement of the nature of the Technical Dispute and agreed facts surrounding such Technical Dispute. Each Owner's proposal, budget or solution shall be delivered to the Technical Expert and the other Owner no later than twenty (20) business days after the date of the notice of the Owner submitting the Technical Dispute to the Technical Expert. The Technical Expert shall be guided by consideration of (a) this Agreement, (b) all other agreements between the Owners relating to the Mitchell Plant, including the O&M Agreement and (c) Prudent Operation and Maintenance Practices (as defined in the O&M Agreement), and be required to select one of the proposals, budgets or solutions, as the case may be, and shall not be able to select any other proposal, budget or solution, except to the extent mutually agreed by the Owners. The Technical Expert shall render a decision resolving the matter within forty-five (45) days of the date of the notice of the Owner submitting such matter. The Technical Expert shall not award to either Owner any relief greater than that initially sought by such Owner. The decision of the Technical Expert shall be final and binding upon the Owners and not subject to appeal or review. The Owners shall bear equally all costs and expenses of the Technical Expert procedure and the Technical Expert shall not have the authority to award costs or attorneys' fees to either Owner. The Technical Expert shall act as an expert and not as an arbitrator and the provisions of the Federal Arbitration Act and the laws relating to arbitration shall not apply to the Technical Expert or the Technical Expert's determination or the procedure by which a determination is reached. Except as provided in Section 7.2(a), the Technical Expert's decision shall not in any event result in deviations from the agreed allocations of costs between the Owners as set forth in this Agreement.

12.4 Unit Interest Swap Dispute.

(a) If the Operating Committee does not reach agreement by May 1, 2025 (or such other date as determined by the Operating Committee) with respect to the resolution of any Unit Interest Swap Dispute, then, at the request of either Owner, the Owners shall promptly (and in any event within ten (10) business days of such request) refer any controversy or claim arising out of or relating to such Unit Interest Swap Dispute to binding arbitration administered by the American Arbitration Association for resolution on an expedited basis in accordance with its Commercial Arbitration Rules (unless the American Arbitration Association does not accept (or otherwise indicates that it is not prepared to accept) the Unit Interest Swap Dispute for arbitration of such referral, in which case the Owners shall proceed with binding arbitration by the Arbitrator as set forth in Section 12.4(b) without the administration by the American

Arbitration Association), and judgment on the award rendered by such arbitration shall be final and binding upon the Owners and not subject to appeal or review, and such judgment may be entered in any court having jurisdiction thereof.

(b) If any Unit Interest Swap Dispute is referred to binding arbitration administered by the American Arbitration Association in accordance with Section 12.4(a) and the American Arbitration Association does not accept (or otherwise indicates that it is not prepared to accept) such Unit Interest Swap Dispute for binding arbitration, then upon election of either Owner the Owners shall submit such Unit Interest Swap Dispute to binding arbitration before a single arbitrator, who shall be an independent expert in the electric utility industry who is mutually acceptable to both Owners (subject to the following proviso, the "Arbitrator"); provided, that if the Owners do not select a mutually acceptable Arbitrator within ten (10) business days following any such election by an Owner, each Owner shall select an independent expert in the electric utility industry within ten (10) business days, and the two independent experts shall be instructed by the Owners to then, within a further twenty (20) business days, mutually select an independent expert in the electric utility industry, who shall serve as the "Arbitrator". If an Owner fails to appoint an independent expert to select the Arbitrator within the timeframe allowed for such appointment then any independent expert in the electric utility industry appointed within such timeframe by the other Owner to select the Arbitrator shall be the Arbitrator (if such expert is willing to serve as such), and if an Arbitrator is in any event not duly appointed in accordance with the foregoing for any reason within thirty (30) Business Days following a request for binding arbitration before the Arbitrator in accordance with the above, then at the election of either Owner the Arbitrator shall be appointed by the American Arbitration Association acting as appointing authority. No later than the thirtieth (30th) business day following the engagement of the Arbitrator, each Owner shall be required to submit to the Arbitrator one proposal or solution, as the case may be, as its proposed resolution to such Unit Interest Swap Dispute (such Owner's "Proposal"). The Arbitrator may in its discretion require that related Unit Interest Swap Disputes be grouped together so that each Owner proposes a single package of Proposals to resolve such related Unit Interest Swap Disputes to promote internal consistency in resolving such related Unit Interest Swap Disputes. The Owners shall instruct the Arbitrator to resolve such Unit Interest Swap Dispute as soon as practicable following the engagement of the Arbitrator, and in resolving such Unit Interest Swap Dispute, the Arbitrator shall (i) allow for each Owner to receive an allocation of property and rights that the Arbitrator deems to be fair and reasonable on an economic basis, after giving due consideration to any regulatory requirements applicable to each Owner, and (ii) be required to select the Proposal or package of Proposals, as the case may be, of one of the Owners and shall not be able to select any other Proposal, except to the extent mutually agreed by the Owners. The decision of the Arbitrator shall be final and binding upon the Owners and not subject to appeal or review. The Arbitrator shall have the sole power to rule on any challenge to its own jurisdiction without any need to refer such matters first to a court.

(c) The dispute resolution procedures of this Article Twelve shall be the sole and exclusive remedy of the parties hereto and their respective Affiliates for any Unit Interest Swap Dispute. Each of the parties hereto agrees, on behalf of itself and its Affiliates, to be fully bound by all arbitral awards or decisions resulting from the dispute resolution procedures of this Article Twelve. Subject to Section 12.4(d) and subject to and without limiting any other rights and remedies that may be available, the Owners shall bear equally all costs and expenses of the

binding arbitration procedure contemplated by this Section 12.4. For the avoidance of doubt, nothing in this Section 12.4 shall preclude the Owners from reaching a mutually agreed settlement of any Unit Interest Swap Dispute (or any element thereof) at any time (but without limiting an Owner's right to elect binding arbitration hereunder).

(d) Each Owner acknowledges and agrees that the dispute resolution procedures of this Article Twelve are an integral part of the transactions contemplated by this Agreement and were a material inducement to the Owners' willingness to enter into this Agreement. It is expressly acknowledged and agreed that if any Owner or any of its Affiliates (the "Challenging Party") resists, ignores, contests or otherwise challenges the enforceability or validity of any provision of this Article Twelve or any arbitral award or decision resulting from the dispute resolution procedures of this Article Twelve (an "Enforceability Claim"), then (i) the other Owner shall be entitled to an injunction, specific performance and other equitable relief to enforce specifically the terms and provisions of this Article Twelve and such arbitral award or decision, as applicable, in each case, without proof of actual damages and without any requirement for the posting of security, and (ii) such Challenging Party shall indemnify, defend and hold harmless such other Owner and its Affiliates and any of their respective agents and representatives (collectively, the "Indemnified Parties") from and against any and all Covered Losses incurred or suffered by any of the Indemnified Parties to the extent arising out of or resulting from such Enforceability Claim. Without limiting the foregoing, each party hereto irrevocably waives, to the fullest extent permitted by applicable Law, any Enforceability Claim.

(e) For purposes of Section 12.4(d), "Covered Losses" shall mean any and all losses, liabilities, claims, fines, deficiencies, damages, payments, penalties, costs and/or expenses, including the fees and expenses of legal counsels and other advisors, in each case, plus interest with respect to such Covered Losses from the day such Covered Loss is paid or incurred until the applicable Indemnified Party is fully indemnified for such Covered Losses, at a rate equal to the prime rate as published from time to time in *The Wall Street Journal* (or any successor publication), plus five (5) percentage points per annum, calculated and accruing daily.

12.5 ~~12.4~~ Except as provided in this Article Twelve, the existence, contents, or results of any settlement negotiations or the results thereof under this Article Twelve may not be disclosed without the prior written consent of the Owners, provided, however, that either Owner may make disclosures as may be required to fulfill regulatory obligations to any Governmental Authority having jurisdiction, and may inform its lenders, affiliates, auditors, and insurers, as necessary, under pledge of confidentiality, and may consult with expert consultants as required in connection with any proceeding under pledge of confidentiality.

12.6 ~~12.5~~ Nothing in this Agreement shall be construed to preclude either Owner from filing a petition or complaint with FERC with respect to any claim over which FERC has jurisdiction. In such case, the other Owner may request that FERC reject the petition or complaint or otherwise decline to exercise its jurisdiction. If FERC declines to act with respect to all or part of a claim, the portion of the claim not so accepted by FERC may be resolved through an action at law or equity. To the extent that FERC asserts or accepts jurisdiction over all or part of a claim, the decisions, findings of fact, or orders of FERC shall be final and binding, subject to judicial review under the Federal Power Act, 16 U.S.C. §§ 791a et seq., as amended from time to time, and any proceedings that may have commenced prior to the

assertion or acceptance of jurisdiction by FERC shall be stayed, pending the outcome of FERC proceedings. To the extent that any decisions, findings of fact, or orders of FERC do not provide a final or complete remedy to an Owner seeking relief, such Owner may proceed at law or equity to secure such a remedy, subject to any FERC decisions, findings, or orders.

12.7 ~~12.6~~ If an Owner (the "Contesting Owner") contests in good faith any amount paid pursuant to the terms of this Agreement following receipt of the written notice of the other Owner delivered pursuant to Section 10.1(a), and any portion of such amount is determined or resolved (including pursuant to the dispute resolution procedures of this Article Twelve) to be in excess of the actual amount due pursuant to the terms of this Agreement, then the Contesting Owner may charge the other Owner interest with respect to such excess amount from the day the payment was made until it is repaid to the Contesting Owner, at the rate equal to the prime rate as published from time to time in *The Wall Street Journal* (or any successor publication) plus five (5) percentage points per annum, calculated daily, regardless of whether the Contesting Owner has notified the other Owner in advance of its intention to charge interest with respect to such excess amount, and the other Owner shall make payment in full in respect of such excess amount and interest within thirty (30) days of written demand therefor.

ARTICLE THIRTEEN GENERAL

13.1 This Agreement shall inure to the benefit of and be binding upon the signatories hereto and their respective successors and permitted assigns, but this Agreement may not be assigned by any signatory without the written consent of the other parties hereto or as permitted by Article Nine hereof.

13.2 This Agreement is subject to the regulatory authority of any State or Federal agency having jurisdiction.

13.3 The interpretation and performance of this Agreement is governed by and shall be construed in accordance with the laws of the State of New York, exclusive of the conflicts of law provisions thereof that would require the application of the laws of a different jurisdiction. Each Owner hereby agrees that any Action arising out of or relating to this Agreement brought by an Owner (or any of their respective successors or assigns) shall be brought and determined in any state or federal court sitting in the State of New York, within the Borough of Manhattan, City of New York, and the Owners hereby irrevocably submit to the exclusive jurisdiction of the aforesaid courts for themselves and with respect to their property, generally and unconditionally, with regard to any such Action arising out of or relating to this Agreement and the transactions contemplated hereby, and the appellate courts from any thereof in connection with any action arising out of or relating to this Agreement or any other agreement related to the Mitchell Plant or any Project Asset and the transactions contemplated hereby, and consents that any such action may be brought in such courts and waives any objection it may now or hereafter have to the venue of any such action in any such court or that such action was brought in an inconvenient court. EACH OWNER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE O&M

AGREEMENT, OR ANY OTHER AGREEMENT RELATED TO THE MITCHELL PLANT OR ANY PROJECT ASSET.

13.4 This Agreement supersedes all previous representations, understandings, negotiations, and agreements, either written or oral between the signatories hereto or their representatives with respect to operation of the Mitchell Plant, including the Original Operating Agreement. Notwithstanding the foregoing, the amendment and restatement of the Original Operating Agreement effected hereby shall not relieve any party thereto of any undischarged obligation or liability of such party in respect of the period prior to the Effective Date under the Original Operating Agreement. This Agreement, together with the O&M Agreement (and any replacements thereof), constitutes the entire agreement of the signatories hereto with respect to the operation of the Mitchell Plant and the ownership thereof. The signatories hereto hereby agree that this Agreement shall amend the Original Operating Agreement to irrevocably remove AEPSC as a party thereto and, on and after the Effective Date, AEPSC shall no longer be a party thereto or hereto or entitled to rights, or subject to obligations, as a party to this Agreement; provided, however, that Operator shall be permitted to delegate any of its rights, duties and obligations under this Agreement and the O&M Agreement to AEPSC without the consent of KPCo, but without relieving Operator of any of its obligations hereunder.

13.5 No amendments or modifications of this Agreement are valid unless in writing and signed by duly authorized representatives of the Owners.

13.6 Each Owner shall designate in writing a representative to receive any and all notices required under this Agreement. Notices shall be in writing and shall be given to the representative designated to receive them, either by personal delivery, certified mail, e-mail or any similar means, properly addressed to such representative at the address specified below:

KENTUCKY POWER COMPANY

[] _____
[] _____

Attn: _____

Phone: [] _____

Email: [] _____

WHEELING POWER COMPANY

[] _____
[] _____

Attn: _____

Phone: [] _____

Email: [] _____

All notices shall be deemed to have been given (a) when personally delivered, (b) when transmitted (except if not a Business Day then the next Business Day) via electronic mail (provided that no error message or other notification of non-delivery is generated with respect to the intended recipient), (c) the day following the day (except if not a Business Day then the next Business Day) on which the same has been delivered prepaid to a reputable national overnight air courier service or (d) the third Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case to the respective parties hereto at the address set forth below, or at such other address as such Owner may specify by written notice to the other Owner (or at such other address for an Owner as shall be specified in a notice given in accordance with this Section 13.6). Each Owner may, by written notice to the other Owner, change the representative or the address to which such notices are to be sent.

13.7 This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute for all purposes one agreement. Any signature hereto delivered by a party hereto by facsimile or other electronic transmission shall be deemed an original signature hereto.

13.8 Except as otherwise specifically provided, all fees, costs and expenses incurred by the parties hereto in negotiating this Agreement shall be paid by the party incurring the same, including legal and accounting fees, costs and expenses.

13.9 Any of the terms, covenants, or conditions hereof may be waived only by a written instrument executed by or on behalf of the Owners waiving compliance. No course of dealing on the part of any Owners, or its respective officers, employees, agents, accountants, attorneys, investment bankers, consultants or other authorized representatives, nor any failure by an Owner to exercise any of its rights under this Agreement shall operate as a waiver thereof or affect in any way the right of such Owner at a later time to enforce the performance of such provision. No waiver by any Owner of any condition, or any breach of any term or covenant contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term or covenant. The rights of the Owners under this Agreement shall be cumulative, and the exercise or partial exercise of any such right shall not preclude the exercise of any other right.

13.10 This Agreement shall be binding upon and inure to the benefit of the Owners and their respective successors and permitted assigns.

13.11 No Owner will issue, or permit any of its Affiliates, its or its Affiliate's directors, officers, employees, consultants, agents or other representatives to issue, any press releases or otherwise make, or cause any of its Affiliates, its or its Affiliate's directors, officers, employees, consultants, agents or other representatives to make, any public statements or other public disclosures with respect to this Agreement, or the transactions contemplated hereby without the prior written consent of the other Owner; provided, however, that the foregoing requirement to obtain prior written consent shall not apply where such release, statement or disclosure is deemed in good faith by the releasing or disclosing Owner to be required by Applicable Law or

under the rules and regulations of a recognized stock exchange on which shares of such Owner (or any of its Affiliates) are listed, so long as prior to making any such release, statement or disclosure and to the extent legally permitted, the releasing or disclosing Owner shall provide prompt notice to the other Owner, consult the other Owner as to the form, contents and timing of such release or disclosure and, when available, provide a copy of such release, statement or disclosure containing such information to the other Owner.

13.12 If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Owners shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Owners as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

13.13 Each Owner acknowledges that it shall be inadequate or impossible, or both, to measure in money the damage to the Members if any of them or any transferee or any legal representative of any Owner fails to comply with any of the restrictions or obligations imposed by Article Nine that every such restriction and obligation is material, and that in the event of any such failure, the Owners shall not have an adequate remedy at law or in damages. Therefore, each Owner consents to the issuance of an injunction or the enforcement of other equitable remedies against such Owner at the suit of an aggrieved party without the posting of any bond or other security, to compel specific performance of all of the terms of Article Nine and to prevent any Disposition in contravention of any terms of Article Nine, and waives any defenses thereto, including the defenses of: (i) failure of consideration, (ii) breach of any other provision of this Agreement and (iii) availability of relief in monetary damages.

ARTICLE FOURTEEN DEFINITIONS

For all purposes of this Agreement (including the preceding sections and recitals), unless otherwise required by the context in which any defined term appears or otherwise defined in the body of this Agreement, capitalized terms have the meanings specified in this Article Fourteen. In this Agreement, unless expressly stated otherwise: (a) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as has been, or may be, amended, supplemented or otherwise modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (b) reference to any Applicable Law means such Applicable Law as has been, or may be, amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations, promulgated thereunder; (c) the singular includes the plural, as the context requires; (d) the terms "includes" and "including" mean "including, but not limited to"; (e) "Day" (regardless of capitalization) shall mean a calendar day, unless specifically designated as a Business Day or business day; (f) "Month" (regardless of capitalization) shall mean a calendar

month; (vii) references to articles, sections and appendices mean the articles and sections of, and appendices to, this Agreement.

~~“Adjusted Fair Market Value” means any positive amount (if any, and zero otherwise) equal to (A) the Fair Market Value, minus (B) the CapEx Adjustment.~~

“AEPSC” shall have the meaning given to such term in the Preamble.

“Agreement” shall have the meaning given to such term in the Preamble.

“Applicable Law” shall mean all laws (including common law), statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, permits, directives, and requirements of all Governmental Authorities (including with respect to the environment) having jurisdiction over an Owner, any other person or entity (as to that person or entity), this Agreement, any Project Asset or the Mitchell Plant, as applicable.

~~“Appraiser” shall have the meaning given to such term in Section 9.6(b).~~

“Assigned Capacity” shall have the meaning given to such term in Section 2.3.

~~“Buyout Price” shall have the meaning given to such term in Section 9.6(a).~~

~~“Buyout Transaction” shall have the meaning given to such term in Section 9.6~~ mean a transaction consummated on or prior to December 31, 2028, pursuant to which KPCo sells, transfers and assigns to WPCo, and WPCo purchases and assumes from KPCo, all of KPCo’s Ownership Interest (including KPCO’s interest in the underlying land, common facilities, barge unloading and gypsum conveyor facilities, and inventory and spare parts with respect to the Mitchell Plant).

~~“CapEx Adjustment” shall mean (a) 50% of any capital expenditures (or portion thereof), including ELG Capital Expenditures, to the extent funded by WPCo in an amount in excess of 50% of the total amount thereof on or prior to December 31, 2028, plus (b) an amount equal to the WACC for the amounts included in clause (a), applied to all of such amounts using the then-applicable WACC from the dates of funding through the closing date of the consummation of the Buyout Transaction.~~

“Capital Budget” shall have the meaning given to such term in Section 1.7.

“CertainTeed Contract” shall mean that certain Supply Agreement dated March 11, 2005, by and between CertainTeed Gypsum West Virginia, Inc. (formerly BPB West Virginia Inc.) and KPCo (as assignee of Ohio Power Company), as amended by Amendment No. 2010-1 dated August 2, 2010, as further amended by Amendment No. 2012-1 dated February 20, 2012 and as further amended by Amendment No. 2013-1 dated June 5, 2013, as may be amended, amended and restated, supplemented or modified from time to time, and as may be assigned to Operator or an Affiliate of Operator.

“CCR Capital Expenditures” shall mean all capital expenditures associated with implementation of the CCR Upgrades.

“CCR Rule” means the Coal Combustion Residuals Rule, 40 CFR Part 257 (April 17, 2015, as amended), and any regulations thereunder promulgated by the USEPA or the State of West Virginia.

“CCR Upgrades” shall mean any improvements or upgrades to the Mitchell Plant to enable KPCo and WPCo to comply with the CCR Rule.

“Coal Inventory Adjustment” shall mean the weighted average cost of KPCo’s investment in the common coal pile for the Mitchell Plant.

“Control” shall have the meaning given to such term in Section 7.10.

“Credit Rating” means with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancements) by S&P or Moody’s. If no rating is assigned to such entity’s unsecured, senior long-term debt or deposit obligations by S&P or Moody’s, then “Credit Rating” means the general corporate credit rating or long-term issuer rating assigned to such entity by S&P or Moody’s. If an entity is rated by both S&P and Moody’s and the ratings are at different levels, then “Credit Rating” means the lowest such rating.

“Decommission” or “Decommissioning” shall mean the retirement, dismantlement and permanent removal of the Units and other property, plant, and equipment comprising the Mitchell Plant, including any common facilities associated with each Unit that are to be permanently removed from service, the restoration of the Mitchell Plant site and the removal or remediation of any hazardous materials or other contaminated equipment, materials, coal ash or wastes associated therewith, in a manner that meets the requirements of Applicable Law.

“Decommissioning Costs” shall mean all costs and obligations expended or incurred in the performance of all work reasonably necessary or undertaken to Decommission the Mitchell Plant, including work associated with the preparation and implementation of Decommissioning plans and the preparation, submittal and prosecution of all necessary applications with Governmental Authorities as required to Decommission the Mitchell Plant in accordance with Applicable Law.

“Decommissioning Costs Amount” shall mean an amount equal to 50% of all Decommissioning Costs, as determined by and adjusted in accordance with the procedures and calculation criteria and factors set forth in the Section 9.6(e).

“Defaulting Owner” shall have the meaning given to such term in Section 10.1.

“Depreciable Life” means, with respect to a capital item, the shorter of (a) the reasonably expected depreciable life (in months) of such capital item and (b) the number of months between the anticipated in-service date of such capital item and December 31, 2040 (or such earlier anticipated date of the permanent cessation of operations of the Units filed with the WVPSC).

“Dispose” or “Disposition” shall have the meaning given to such term in Section 9.1.

~~“Early Retirement Event” shall mean the delivery of a written notice by WPCo to KPCo irrevocably committing to permanently cease operations of the Mitchell Plant effective on or with KPCo consent, prior to December 31, 2028, which notice shall be consistent with WPCo’s current filings at such time with the WVPSC in respect of the Mitchell Plant.~~

“Effective Date” shall have the meaning given to such term in the Preamble.

“ELG Capital Expenditures” shall mean all capital expenditures associated with implementation of the ELG Upgrades.

“ELG Rule” shall mean the Steam Electric Reconsideration Rule, 85 Fed. Reg. 64,650 (Oct. 13, 2020), and any regulations thereunder promulgated by the USEPA or the State of West Virginia.

“ELG Upgrades” shall mean any improvements or upgrades to the Mitchell Plant to enable WPCo to comply with the ELG Rule.

“Emission Allowances” shall have the meaning given to such term in Section 7.7.

“Encumbrance” shall mean with respect to any property or asset (a) any mortgage, deed of trust, charge, lien, pledge, hypothecation, title retention arrangement or other security interest, as or in effect as security for the payment of a monetary obligation or the observance of any other obligation; (b) any easement, servitude, restrictive covenant, equity or interest in the nature of an encumbrance, garnishee order, writ of execution, right of set-off, lease, license to use or occupy, assignment of income or monetary claim, whether or not filed, recorded or otherwise perfected under Applicable Law; and (c) any agreement to create any of the foregoing or allow any of the foregoing to exist.

“Event of Default” shall have the meaning given to such term in Section 10.1.

~~“Fair Market Value” shall mean, with respect to the KPCo Interest as of any date, an amount (which may be a positive or a negative number) equal to 50% of the cash price obtainable in an arm’s length sale of the entirety of the Mitchell Plant between an informed and willing buyer and seller, in each case under no compulsion to buy or sell, as the case may be, as determined by and adjusted in accordance with the procedures and valuation criteria and factors set forth in Section 9.6(b).~~

“FERC” shall have the meaning given to such term in Section 5.1.

“FERC Accounting Requirements” means the accounting requirements of FERC, including with respect to the Uniform System of Accounts, established by FERC under the FPA.

“FPA” means the Federal Power Act.

“Governmental Authority” means any federal, national, regional, state, municipal or local government authority, tribunal, court, agency, body, board or instrumentality, or any regulatory, administrative or other department, commission, bureau or agency, taxing authority or power, or

any political or other subdivision, department or branch of the foregoing, including any independent system operator, regional transmission organization or electric reliability organization.

~~“HSR Act” shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976.~~

“KPCo” shall have the meaning given to such term in the Preamble.

~~“KPCo Interest” shall have the meaning given to such term in Section 9.6.~~

“KPSC” shall mean the Kentucky Public Service Commission.

~~“Mitchell Interest Purchase Agreement” shall mean an asset purchase agreement between KPCo and WPCo to implement the Buyout Transaction at the Buyout Price, consistent with Section 9.6 and on a non-recourse basis to KPCo, subject to an indemnity expiring on December 31, 2050 by KPCo for the benefit of WPCo, with a cap of \$15 million, for unknown contingent liabilities with respect to items arising from KPCo’s 50% Ownership Interest prior to the date of the closing of the Buyout Transaction and not estimated or otherwise factored in the calculation of Fair Market Value or the Decommissioning Costs Amount.~~

“Mitchell Plant” shall mean the Mitchell Power Generation Facility, which consists of the Units and associated plant, equipment, real estate and other related facilities, located in Moundsville, West Virginia, but excluding the real property and operation known as the Conner Run Fly Ash Impoundment and Dam.

“Moody’s” shall have the meaning given to such term in Section 4.3.

“Non-Defaulting Owner” shall have the meaning given to such term in Section 10.1.

“Non-Offering Owner” shall have the meaning given to such term in Section 9.1.

“O&M Agreement” shall have the meaning given to such term in the Recitals.

“Offering Owner” shall have the meaning given to such term in Section 9.1.

“Operating Committee” shall have the meaning given to such term in Section 7.1.

“Operating Representative” shall have the meaning given to such term in Section 7.1.

“Operator” shall have the meaning given to such term in the Recitals.

“Original Operating Agreement” shall have the meaning given to such term in the Recitals.

“Owner” or “Owners” shall have the meaning given to such term in the Preamble.

“Ownership Interest” shall have the meaning given to such term in the Recitals.

“Paid Amount” shall have the meaning given to such term in Section 10.2.

"Payment Default" shall have the meaning given to such term in Section 10.1(a).

"Project Assets" shall have the meaning given to such term in Section 1.1.

"Proposed Purchaser" shall have the meaning given to such term in Section 9.1.

~~"Qualified Firm" shall have the meaning given to such term in Section 9.6(c).~~

"Ratings Requirement" shall mean a Credit Rating for such Owner (or if such Owner has provided a guaranty issued by an Affiliate to satisfy its obligations under this Section 4.3, such Owner's Affiliate guarantor) of at least "BBB-" by S&P or at least Baa3 by Moody's, and if such Credit Rating is "BBB-" by S&P or "Baa3" by Moody's then such Credit Rating must not be on negative credit watch by S&P or Moody's.

"S&P" shall have the meaning given to such term in Section 4.3.

"Tax Code" shall have the meaning given to such term in Section 6.6.

"Technical Dispute" shall mean any dispute which this Agreement expressly provides shall be a Technical Dispute.

"Technical Expert" shall mean any individual selected in accordance with the procedure specified in Section 12.3 and who (a) has significant professional qualifications and practical experience in the subject matter of the Technical Dispute, (b) has no interest, financial or otherwise, or duty which conflicts or may conflict with such individual's functions as a Technical Expert (such individual being required to fully disclose any such interest or duty prior to any appointment) and (c) is not currently and has not been (i) during the five (5) years prior to the date of appointment, an employee of any of the Owners or any of their Affiliates and (ii) during the three (3) years prior to the date of appointment, a contractor or consultant of either of the Owners or any of their Affiliates, unless otherwise mutually agreed by the Owners.

"Term" shall have the meaning given to such term in Section 8.2.

"Total Net Capability" shall have the meaning given to such term in Section 2.1.

"Total Net Generation" shall have the meaning given to such term in Section 2.2.

"Unit" shall have the meaning given to such term in the Recitals.

~~"Unit Interest Swap Dispute" shall have the meaning given to such term in Section 9.6(b).~~

~~"Unit Interest Swap Transaction" shall mean a transaction, to be consummated on or prior to December 31, 2028, pursuant to which (a) KPCo sells, transfers and assigns to WPCo, and WPCo purchases and assumes from KPCo, all of KPCo's undivided ownership interest in one of the Units (to be mutually selected by the Owners through the Operating Committee, subject to Section 12.4), (b) WPCo sells, transfers and assigns to KPCo, and KPCo purchases and assumes from WPCo, all of WPCo's undivided ownership interest in the other Unit (to be mutually selected by the Owners through the Operating Committee, subject to Section 12.4), and (c)~~

addresses the matters for negotiation and includes the definitive documentation (including amendments or replacements of each of this Agreement and the O&M Agreement) described in Exhibit C hereto, with the ultimate result that each Owner owns all of the interests in one of the two Units. Unless mutually agreed by the Owners (subject to Section 12.4), a Unit Interest Swap Transaction shall not include a sale, transfer or assignment of any property, plant or equipment, or improvements thereto, owned solely by one Owner in accordance with Section 1.8 due to such Owner funding or bearing 100% of the capital expenditures or ELG Capital Expenditures for such item.

“USEPA” shall have the meaning given to such term in Section 7.7.

“WACC” shall mean, as of any date, WPCo’s then-applicable WVPSC-authorized weighted average cost of capital, compounded semiannually (consistent with the compounding of Allowance for Funds Used During Construction (AFUDC)).

“WPCo” shall have the meaning given to such term in the Preamble.

“WVPSC” shall mean the Public Service Commission of West Virginia.

[Signature pages follow.]

Company Exhibit CTB-S2
Page 36 of 40

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their officers thereunto duly authorized as of the date first above written.

KENTUCKY POWER COMPANY

By: _____

Title:

WHEELING POWER COMPANY

By: _____

Title:

Solely with respect to Section 13.4:

AMERICAN ELECTRIC POWER SERVICE
CORPORATION

By: _____

Title:

[Signature page to Ownership Agreement (Mitchell Plant)]

DB1/ 124701930-15127633007.12

Exhibit A

Capital Budget, Initial Budgets and Forecast

[To Be Attached as of the Effective Date.]

Company Exhibit CTB-S2
Page 38 of 40

Exhibit B

Form of Monthly Sample Report

[To Be Attached as of the Effective Date.]

Exhibit C

Unit Interest Swap Transaction Implementation

Not later than January 15, 2025 (or such other date as determined by the Operating Committee), unless a Buyout Transaction is otherwise entered into by the Owners, the Operating Committee shall commence good faith discussions to negotiate the Unit Interest Swap Transaction, which negotiations shall include the following considerations:

- the particular Unit to be owned by each Owner,
- any economic equalization payments between the Owners to account for differences in the characteristics of, and the value attributed to, each Unit (including without limitation based on performance history and anticipated capability), and any unequal ownership interest percentages in property, plant or equipment, or improvements thereto, due to an Owner funding or bearing greater than 50% of the capital expenditures for such item,
- the ratable disposition of coal, consumables, fuel, spare parts and other inventory assets,
- arrangements for the purchase or continuing usage, as applicable, of any common facilities (i.e. "Unit 0") used in the operations of both Units, including the barge loading facilities, gypsum conveyor system, substation, interconnection facilities and all other equipment or other property required to produce, deliver or transmit energy to the grid, in each case, at the Mitchell Plant, in the event the Units are not retired at the same time,
- preparation of a Unit for safe standing pending retirement of the other Unit in the event the Units will not be retired at the same time,
- the allocation of Decommissioning Costs for common facilities after retirement of the Units in the event the Units are not retired at the same time,
- cooperation in connection with any Disposition of a Unit (including to any third party),
- operational and costs responsibilities of each Owner in relation to the separate ownership, dispatch, operation, maintenance, capital expenditures and Decommissioning of each Unit, and
- such other matters as the Operating Committee determines are appropriate to implement the Unit Interest Swap Transaction.

The Operating Committee shall determine the need for any real estate, engineering or other professionals or consultants to establish appropriate property divisions between the Units and the other property and assets that would be owned separately by each Owner.

In connection with entering into and consummating definitive transaction documents for a Unit Interest Swap Transaction, the Owners shall negotiate and enter into amendments or replacements (or termination) of each of this Agreement and the O&M Agreement to reflect the

Company Exhibit CTB-S2
Page 40 of 40

Unit Interest Swap Transaction and the separate ownership, dispatch, operation, maintenance, capital expenditures and Decommissioning of each Unit with a common operator of the Mitchell Plant (including the unilateral ability of each Owner to determine whether or not to operate, Dispose of or retire its applicable Unit), subject to applicable state and other regulatory approvals.

**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 filing was served upon the following, via electronic mail, on this 18th day of March, 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 EEVW</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 18th day of March 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, in part, a motion to amend the procedural schedule.

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 that is the subject of this case (sometimes referred to as Mitchell). 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.

The Commission granted intervenor status to the West Virginia Energy Users Group (WVEUG), the Consumer Advocate Division (CAD), the West Virginia Coal Association (WVCA) and West Virginia Citizens Action Group, Solar United Neighbors, and Energy Efficient West Virginia (CAG/SUN/EEWV). Commission Orders, January 25, 2022, and February 8, 2022.

On March 17, 2022, CAD filed a motion to amend the procedural schedule. CAD stated that, on March 15, 2022, the Companies circulated an email to the parties of record in this case including a revised Mitchell Plant Ownership Agreement. Kentucky Power Company (KPCo) filed an amended application and the same revised agreement, on the same day, in Kentucky Public Service Commission Case No. 2021-00421. CAD noted that the direct testimony of witnesses for Commission Staff and all intervenors was due on March 17, 2022. CAD requested that the entire procedural schedule be modified and

the Companies be required to file an amended Petition and supplemental direct testimony before other parties are required to file direct testimony.

Also on March 17, 2022, the Companies filed a response to the motion. The Companies reported that they plan to file an amended petition including supplemental testimony on March 18, 2022. They suggested that the Commission amend the procedural schedule to allow for a March 28, 2022 deadline for all direct testimony other than Companies and an April 4, 2022 deadline for rebuttal testimony of all parties. The Companies argued that the hearing date should remain April 7, 2022, as the KPCo sale is conditioned on the Commission approval of the Mitchell agreements. The Companies noted that the statutory deadline for the Kentucky Public Service Commission to decide the case in April 21, 2022.

DISCUSSION

After reviewing the CAD motion, the Commission contacted the parties by email and advised them that the direct testimony would not be due on March 17, 2022, and that an order would be entered in the near future. The Commission should modify the procedural schedule to allow for direct testimony of all parties other than the Companies on March 28, 2022, and all reply testimony on April 4, 2022. The Commission will not move the evidentiary hearing date at this time as its schedule in the near future is full.

ORDER

IT IS THEREFORE ORDERED that the deadline for direct testimony of all parties other than Appalachian Power Company and Wheeling Power Company is now March 28, 2022, at 4:00 p.m. and the rebuttal testimony for all parties is now April 4, 2022, at 4:00 p.m.

IT IS FURTHER ORDERED that the Acting 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,



Karen Buckley, Acting Executive Secretary

SMS/pb
210810cc



JONATHON C. STANLEY
ATTORNEY AT LAW
400 FIFTH THIRD CENTER
700 VIRGINIA STREET, EAST (25301)
P.O. BOX 1791
CHARLESTON, WV 25326
DIRECT DIAL: (304) 347-8341
E-MAIL: jcs@ramlaw.com

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March 23, 2022

VIA HAND DELIVERY

Karen Buckley, Acting Executive Secretary
Public Service Commission of West Virginia
201 Brooks St.
P.O. Box 812
Charleston, West Virginia 25323

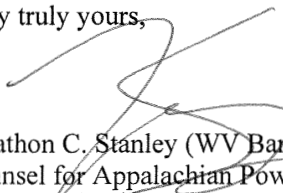
Re: *Appalachian Power Co. and Wheeling Power Co. –
Petition for consent and approval to enter into Ownership
and Operating Agreements for the Mitchell Plant
P.S.C. Case No. 21-0810-E-PC*

Dear Ms. Buckley:

Please find enclosed for filing in the above-styled case a *Motion for Protective Treatment* in the above-referenced proceeding. Included as an Exhibit to the *Motion* is an original copy of the affidavit of John J. Scalzo. On this date, copies of the same are being electronically provided to counsel of record in accordance with the enclosed *Certificate of Service*.

Thank you for your attention to this matter.

Very truly yours,



Jonathon C. Stanley (WV Bar #13470)
Counsel for Appalachian Power Company

Enclosures

cc: Service List

{R1531649.1}

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**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

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

MOTION FOR PROTECTIVE TREATMENT

COME NOW Appalachian Power Company (“APCo”) and Wheeling Power Company (“WPCo”) (together, the “Companies”) and respectfully file this Motion for Protective Treatment (this “Motion”) of the confidential information filed under seal on March 16, 2022 (the “Confidential Information”) in the above-captioned proceeding. The Confidential Information was also produced on the same day to the Staff of the Public Service Commission of West Virginia (the “Staff”), the Consumer Advocate Division (the “CAD”), and other parties that have executed a Confidentiality Agreement with the Companies in this matter.

I. BACKGROUND

1. On November 19, 2021, the Companies filed the above-captioned petition for consent and approval for WPCo to enter into new ownership and operating agreements for the Mitchell Plant (the “Petition”); if granted, these agreements would result in, *inter alia*, WPCo replacing Kentucky Power Company (“KPCo”) as the operator of the Mitchell Plant and purchasing KPCo’s ownership interest in the same on or before December 31, 2028.

2. Over the several months since the filing of the Petition, multiple parties have appeared or intervened in this matter, including the CAD. Along with other parties, the CAD submitted discovery requests to the Companies in connection with this matter.

3. Included among the CAD's discovery requests were Requests 1.4 and 1.5 (1.5 being later modified), which requested information relating to the sale of KPCo to Liberty Utilities Co. ("Liberty"). In particular, Request 1.4 and modified Request 1.5 requested the Companies produce: i) 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"; and ii) the "parties' written offers and counter offers with respect to the transfer of KPCo to Liberty."

4. The Companies filed objections to these requests, but ultimately were ordered to produce responsive information by Order of the Public Service Commission of West Virginia (the "Commission") on March 11, 2022.

5. In particular, the Commission ordered the Companies to produce this information "within five days of the date of this Order." Furthermore, the Commission ordered that "[i]f the information is deemed confidential by the Companies, then the Companies should file the information under seal and file a motion for protective treatment."

6. The Companies satisfied their obligations under the Order by submitting their responses to Request 1.4 and modified Request 1.5, including the Confidential Information, on March 16, 2022, directly to the parties who had signed protective agreements with the Companies, in accordance with typical discovery procedures. Additionally, the Companies, as ordered, filed the information under seal with Commission on the same date.

7. The documents containing Confidential Information (the “Confidential Documents”) were filed confidentially in accordance with the Commission’s Order stating the Companies “should file the information under seal” if deemed confidential by the Companies.

8. The Confidential Documents are as follows:

(1) The Confidential Information Memorandum, which document was recognized by CAD as being confidential and involving pre-sale strategy, and which was created with the intent of being treated as highly confidential and proprietary (the “Confidential Information Memorandum”); and

(2) Drafts of the Stock Purchase Agreement exchanged between the Companies (through their parent company, American Electric Power (“AEP”), and affiliate, American Electric Power Service Corporation (“AEPSC”)) and Liberty, as well as the exchanged drafts of the Mitchell Plant Ownership Agreement and Mitchell Plant Operations and Maintenance Agreement that are the subject of this proceeding (collectively, the “Confidential Negotiation Documents”).

II. ARGUMENT

9. In general, documents and information held by the Commission are subject to FOIA and are available for public inspection unless an exemption from FOIA disclosure applies. By this Motion, the Companies request that the Confidential Documents be protected from public disclosure. Specifically, the Companies request that the Commission: (1) issue an order determining that the Confidential Information is exempt from disclosure under the West Virginia Freedom of Information Act, W. Va. Code § 29B-1-1 *et seq.*, (“FOIA”); (2) issue a protective order pursuant to Rule 26(c) of the *West Virginia Rules of Civil Procedure* and protect the Confidential Information in discovery and

other stages of this proceeding; and (3) otherwise protect the Confidential Information from public disclosure.

A. The Confidential Information Is Exempt from FOIA Disclosure.

10. As set forth below, FOIA exemptions apply to the Confidential Information because the Confidential Information consists of trade secrets and protectable commercial terms.

1. Legal Standard

11. An exemption from FOIA disclosure exists for information that constitutes a “Trade Secret”:

Trade secrets, as used in this section, which may include, but are not limited to, any [1] formula, plan pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information [2] which is not patented [3] which is known only to certain individuals within a commercial concern [4] who are using it to fabricate, produce or compound an article or trade or service or to locate minerals or other substances, [5] having commercial value, and [6] which gives its users an opportunity to obtain business advantage over competitors.

W. Va. Code § 29B-1-4(a)(1) (enumeration added); *see also* Commission Order, Case No. 14-0872-W-GI (December 11, 2015) at 8 (adding enumeration to W.Va. Code § 29B-1-4(a)(1)). In *AT&T Communications of West Virginia, Inc. v. Public Service Commission of West Virginia*, 188 W.Va. 250, 423 S.E.2d 859 (1992), the West Virginia Supreme Court of Appeals addressed the circumstances under which a public utility may seek protection from public disclosure of trade secret information that it is required to provide to the Commission. To prevent trade secret information from being disclosed, the utility must make a “credible showing” that the information sought to be protected is a “trade secret” within the meaning of West Virginia Code § 29B-1-4(a)(1), FOIA’s “trade secret” exception, expansively defined. *AT&T*, 188 W.Va. at 253, 423 S.E.2d at 862; Commission Order, Case No. 14-0872-W-GI (March 28, 2016) at 29 (Conclusion of Law No. 1). To make such a credible showing, the utility must make a “particular and specific demonstration of

fact, as distinguished from stereotyped or conclusory statements,' as to how a specific document or a part thereof meets the definition of a 'trade secret.'" Commission Order, Case No. 14-0872-W-GI (March 28, 2016) at 29 (Conclusion of Law No. 2) (quoting Commission Order, Case No. 14-0872-W-GI (December 11, 2015) at 12 (Conclusion of Law No. 4)).

12. Rule 26(c) of the *West Virginia Rules of Civil Procedure* sets forth the conditions for the issuance of protective orders by West Virginia courts. Outside the context of FOIA, the Commission applies the same standards that the courts apply in determining what information should be covered by protective order. *AT&T*, 188 W. Va. at 252, 423 S.E.2d at 861. Even in the context of FOIA, the Commission regards the standards applicable to protective orders under Rule 26(c) as helpful in illuminating whether a trade secret exists. Commission Order, Case No. 14-0872-W-GI, (December 11, 2015) at 8-9; *see also* Commission Order, Case No. 09-1485-E-P (October 22, 2010). Rule 26(c) provides:

Upon motion by a party or by the person from whom discovery is sought, including a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following . . . (7) [t]hat a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way

In *State ex rel. Johnson v. Tsapis*, 187 W.Va. 337, 419 S.E.2d 1 (1992), the West Virginia Supreme Court of Appeals addressed the issuance of a protective order to prevent the disclosure of trade secret information in discovery under Rule 26(c)(7) of the *West Virginia Rules of Civil Procedure*. The Court set forth a six-prong analysis to determine whether "good cause" exists pursuant to Rule 26(c)(7) to issue a protective order. The six factors to be considered are: (1) the extent to which the information is known outside of the business of the party seeking the protective

order; (2) the extent to which it is known by employees and others involved in the party's business; (3) the extent of the measures the party has taken to guard the secrecy of the information; (4) the value of the information to the party and competitors; (5) the amount of effort or money expended by the party in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *Tsapis*, 187 W.Va. at 339, 419 S.E.2d at 3.

2. Analysis

13. The Confidential Information constitutes protected trade secret information exempt from FOIA disclosure pursuant to *W.Va. Code* § 29B-1-4(a)(1). Specifically, as set forth in the Affidavit of John J. Scalzo (attached as **Exhibit A** to this Motion):

(1) the Confidential Negotiation Documents comprise written documentation of the back-and-forth negotiations between AEP and Liberty. The entire content of these documents, and their changes from draft-to-draft, manifest not only “negotiated terms” which are typically afforded confidential and protective treatment, but the actual negotiation giving rise to these terms. This information, if disclosed, would put the Companies at a competitive business disadvantage in its efforts to procure contracts for purchase or sale in the future, which in turn would adversely affect the Companies’ customers; and

(2) the “Confidential Information Memorandum,” as it has been designated by the CAD itself, is a highly confidential strategic document, the disclosure of which would put the Companies at a competitive business disadvantage in the future.

14. Thus, each of the Confidential Documents, viewed both individually and especially collectively, are strategic in nature, and contain valuable insight into the negotiation and strategy process underlying the types of negotiated information that are typically afforded confidential and

protective treatment. Disclosure of the Confidential Documents would harm the Companies, and their utility customers, by giving this secret insight to competitors, or future parties with which the Companies may engage in business.

15. Mr. Scalzo's Affidavit further explains that the Confidential Documents: (i) consist of compilations of information; (ii) are not patented; (iii) are known only to certain individuals, who use them, or who will use them, or who have used them, in the provision of electric utility service on behalf of the Companies; (iv) have commercial value; and (v) give their possessors an opportunity to obtain a competitive business advantage. The Companies therefore submit that the Confidential Documents meet the definition of "trade secret" set forth in W.Va. Code § 29B-1-4(a)(1).

16. Further, and as described in Mr. Scalzo's Affidavit, the Confidential Documents constitute trade secret information based on an analysis of each of the six *Tsapis* factors. Specifically, as further set forth in the Affidavit: the Confidential Documents contain (i) confidential commercial information, which is not known outside of the Companies, or outside other entities and organizations which are themselves obligated, by agreement, order, rule, or law to preserve their confidentiality (the "Permitted Recipients"). The Confidential Documents have not been shared with or reviewed by anyone other than the Companies and the Permitted Recipients. The Confidential Documents are the subject of efforts to maintain their secrecy. Even the Companies' own review of the Confidential Documents has been strictly on a confidential need-to-know basis and has not extended beyond those employees with a legitimate business need to know and act upon the information contained within it. The Confidential Documents are highly valuable to the Companies. Considerable effort and resources were expended in developing the information contained in the Confidential Documents. This information could not be acquired or duplicated by others by proper means. Further, as trade secret information, its public disclosure would jeopardize the Companies'

competitive position. The Companies therefore submit that the Confidential Documents meet the definition of a “trade secret” set forth in *State ex rel. Johnson v. Tsapis*.

17. As set forth in the Commission’s Order, the Companies, having deemed the documents confidential, have submitted the Confidential Documents under seal. No redacted “public version” has been filed, because: (i) the Confidential Documents are strategic documents, which are, in their entirety, confidential trade secret information; (ii) because the Commission’s Order did not provide for public filings; (iii) because, even if certain portions of the Confidential Documents did not contain Confidential Information, which the Companies assert they do not, the time constraints of the Order made redaction impracticable; and (iv) because, in accordance with typical discovery procedure and precedent, the Confidential Documents are fully available to all parties who have entered into protective agreements with the Companies.

18. Furthermore, in satisfaction of the Commission’s Order and its Rules of Procedure, this Motion for Protective Treatment is being timely filed to assert the basis for confidential treatment of these Confidential Documents, which basis has been set forth above.

19. The Companies therefore respectfully ask the Commission to grant this Motion and issue an appropriate order determining that the Confidential Documents are exempt from FOIA disclosure and otherwise assuring the nondisclosure of the Confidential Documents, both at all stages of the instant proceeding and after the conclusion of the instant proceeding.

B. The Confidential Information Is Entitled to a Protective Order.

20. The Companies recognize that the Commission and the parties have a legitimate need to review the Confidential Information. The Companies submit, however, that it is not necessary to

permit the Confidential Documents, the public disclosure of which would risk harm to the Companies' competitive position, to be thrust into the public domain in order to satisfy the Commission's and the parties' legitimate needs.

WHEREFORE, the Companies respectfully request:

- (1) That the Commission issue an order that protects the Confidential Documents from public disclosure and duplication;
- (2) That the Commission maintain the confidentiality of the Confidential Documents and direct that they are exempt from public disclosure under FOIA;
- (3) That the Commission issue an order that permits the parties to make use of the Confidential Documents only subject to the Commission's protective order;
- (4) That the Commission issue an order requiring that, among the parties and their counsel and consultants, access to the Confidential Documents be limited to persons having a need for access to prepare and present the party's position in this case or to respond to the position of any other party;
- (5) That the Commission issue an order requiring that anyone having access to any version of the Confidential Documents be prohibited from using any Confidential Information in any manner outside of this case, and be further prohibited from disclosing, sharing, or discussing any Confidential Information with anyone except the Commission, persons falling within the ambit of paragraph (4) above, and other parties to the case when necessary for the development of and, presentation, or settlement of the case, including any appeal taken from an order of the Commission in this case;
- (6) That the Commission issue an order requiring either that any pre-filed testimony or other filings of a party not include or discuss the Confidential Information or, if the use of such

information is necessary, that the party redact all Confidential Information from any version of the pre-filed testimony or other filing that will be available to the public and include such information only in a sealed version, access to which shall be limited to the Commission and the parties;

(7) That the Commission issue an order requiring that no party's counsel or witnesses disclose any Confidential Information at hearing without first requesting that an *in camera* session of the hearing be held and then making such disclosure only *in camera*;

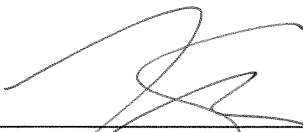
(8) That the Commission's Court Reporter be instructed to observe the protected status of the Confidential Information and ensure that such information is redacted from any version of hearing transcripts or exhibits which will be accessible to the public;

(9) That the Commission issue an order requiring that, within thirty (30) days of the conclusion of the case, including any appeals, all parties return to the Companies any copy of any confidential version of the Confidential Documents, that they received (or have in their possession) and destroy any notes, work papers, or other records created by or for them to the extent that they include any Confidential Information;

Respectfully submitted this 23rd day of March, 2022.

APPALACHIAN POWER COMPANY
WHEELING POWER COMPANY

By Counsel



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AFFIDAVIT OF JOHN J. SCALZO

John J. Scalzo, upon his oath, deposes and states:

1. I am employed by Appalachian Power Company (“APCo”) as Vice President – Regulatory Services and Finance. My duties include the supervision and direction of the Regulatory Services Department, which has responsibility for rate and regulatory matters affecting APCo’s West Virginia jurisdiction and Wheeling Power Company (“WPCo”). Both APCo and WPCo (together, the “Companies”) are operating subsidiaries of American Electric Power Company, Inc. (“AEP”). My responsibilities also include directing the Companies’ resource allocation of capital and operation and maintenance programs. I direct the development of short-term and long-term financial plans and forecasts that are used by the Companies’ management to monitor and maintain the Companies’ financial health and condition.

2. In my capacity as Vice President – Regulatory Services and Finance, I have awareness of and knowledge regarding a current petition before the Public Service Commission of West Virginia (the “Commission”) by the Companies for approval of certain agreements with another of AEP’s subsidiaries, Kentucky Power Company (“KPCo”), regarding operation and ownership of the Mitchell Power Plant (the “Petition”).

3. I understand that the Companies are seeking protective treatment of certain confidential documents that were produced to Commission Staff and other parties in this matter, pursuant to protective agreement, in response to the Consumer Advocate Division’s (“CAD’s”) discovery Request 1.4 and modified Request 1.5 in connection with the Petition. These documents comprise the various exchanged drafts of multiple agreements between AEP and Liberty Utilities Co. (“Liberty”), as well as a certain confidential information memorandum (together, the “Confidential Documents”).

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4. I have personal knowledge of the confidential, proprietary, competitively sensitive, and trade secret nature of the Confidential Documents. I have personal knowledge of efforts taken by the Companies and certain of their affiliates (these entities collectively referred to hereinafter as the "AEP Companies") to maintain the secrecy of that confidential information through direct contact with these efforts and through my review of these efforts with other employees who work directly with these procedures.

4. The AEP Companies will have occasion to negotiate future transactions, whether these relate to operation of power-generating facilities, or acquisition of assets (including corporate assets). If the Confidential Documents became publicly available, parties with which the AEP Companies may negotiate, or competitors thereof, could use this knowledge to the detriment of the Companies and their customers. Knowledge of these terms by other potential transactional parties would establish certain benchmarks in future negotiations, or disclose valuable insights into the negotiation process used by AEP and its subsidiaries, thereby potentially increasing costs incurred by such utilities and their ratepayers.

6. The information available through review of the Confidential Documents is not generally known or readily ascertainable by other parties through other means, including legitimate independent research.

7. The Confidential Documents have been the subject of efforts that are reasonable under the circumstances to maintain its secrecy. At all times, these Documents have been treated as documents created within a confidential, arms-length negotiation process, to be protected from disclosure in order to permit the participating parties to strategize and to negotiate without fear of reprisal or having certain concessions used against them in the future. In so treating these

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Documents, the AEP Companies limit public access to buildings housing the Confidential Documents by use of security guards. Persons not employed by the AEP Companies who are allowed past security guards at buildings where the Confidential Documents are kept are subject to additional security measures such as supervision and escorts. The AEP Companies' files containing the Confidential Documents are maintained separately from the AEP Companies' general records, and access to those files is restricted. Within AEP Companies, access to these Confidential Documents has been and will continue to be disclosed only to those employees, officers, and representatives of AEP Companies who have a need to know about such information due to their job and management responsibilities. Outside the AEP Companies, the Confidential Documents are only provided by the AEP Companies to certain persons and parties who have a legitimate need to review the information to participate in the Companies' regulatory proceedings and who are governed by protections conferred by the precedents and procedures of the Commission or of contractual protective agreement(s).

8. The AEP Companies have devoted considerable time and resources to negotiating the contract terms and the actual negotiation and advisory work giving rise to these negotiated terms, which the Companies are currently seeking to protect. The results of these activities warrant protection so that the Companies and their customers derive the full value from these efforts and are not disadvantaged in negotiating future transactions of this kind.

[signature and notarization on following page]

**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, Jonathon C. Stanley, counsel for Appalachian Power Company and Wheeling Power Company, hereby certify that true copies of the foregoing filing were provided electronically on this 23rd day of March, 2022, addressed to the following:

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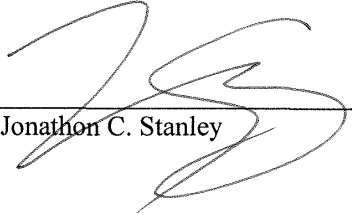
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