COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

MOTION OF KENTUCKY POWER COMPANY FOR REHEARING

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Introduction

Pursuant to KRS 278.400 and other applicable law, Kentucky Power Company ("Kentucky Power" or the "Company") respectfully submits this motion for rehearing of the Public Service Commission of Kentucky's ("Commission") July 15, 2021 Order (the "Order"). As set forth below, the Order leaves unaddressed three issues : 1) the Company's proposed 20% annual depreciation rate for the CCR investments at the Mitchell Plant; 2) the Company's request for a finding that the approximately $1.903 million Kentucky jurisdictional Mitchell Plant ELG costs incurred prior to the Commission's July 15, 2021 Order were prudently incurred on behalf of customers; and 3) the Company's request for authority to defer and accumulate for review and recovery in the Company's next base rate proceeding the $1.903 million Kentucky jurisdictional Mitchell Plant ELG costs incurred prior to the Commission's July 15, 2021 Order.[1]

The Commission should grant rehearing to address each of these issues.

Law and Argument

A. Standard for Rehearing.

KRS 278.400 authorizes "any party to the proceedings" to apply for rehearing of a Commission order within 20 days of service of the order. The Commission interprets the statute as "provid[ing] closure to Commission proceedings by limiting rehearing to new evidence not readily discoverable at the time of the original hearings."[2] The statute requires and the Commission expects "the parties to Commission proceedings to use reasonable diligence in the

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[1] The Company also requested that the Commission authorize a carrying charge, equal to Kentucky Power's authorized pre-tax weighted average cost of capital ("WACC") of 7.62%, to be applied to the regulatory asset until it is fully recovered,

[2] Order, *In the Matter of: Application Of Kentucky-American Water Company For A Certificate Of Public Convenience And Necessity Authorizing Construction Of The Northern Division Connection*, Case No. 2012-00096 at 4 (Ky. P.S.C. January 23, 2014).

preparation and presentation of their cases and serves to prevent piecemeal litigation of issues."[3] However, the Commission nevertheless enjoys the discretion to grant rehearing when required to address any errors or omissions in the Commission's orders.[4]

Kentucky Power appreciates the Commission's weighing of the evidence in this case. Although Kentucky Power is of the opinion that the record supports making the proposed ELG investment at Mitchell, it further understands the underlying central decision on whether to move forward with a certificate for ELG work was a difficult decision for the Commission and that the Commission made its decision based on its view of the facts presented and its vision of the future. However, there are three items beyond that central ELG decision that remain unaddressed in the Commission's Order. It is those matters the Company respectfully requests that the Commission address on rehearing.

Kentucky Power's Motion for Rehearing

A. The Commission's Order Does Not Address The Annual Depreciation Rate For The CCR Investments At The Mitchell Plant, Or The Company's Requests For A Finding That Kentucky Jurisdictional ELG Costs Were Prudently Incurred On Behalf Of Customers And For Approval To Create A Regulatory Asset In The Event The Commission Approved Case 2.

1. Kentucky Power's Proposal and Requests.

The Company proposed a 20% annual depreciation rate for the CCR only investments at Mitchell based on an in-service date of November 2023 and closure of the plant in December

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[3] *Id.*

[4] Order, *In the Matter of: Application of Jessamine-South Elkhorn Water District For A Certificate Of Public Convenience And Necessity To Construct And Finance A Waterworks Improvement Project Pursuant To KRS 278.020 And 278.300*, Case No. 2012-00470 at 11 (Ky. P.S.C. Jan. 3, 2014); Order, *In the Matter of: DPI Teleconnect, L.L.C. V. Bellsouth Telecommunications, Inc. D/B/A AT&T Kentucky Dispute Over Interpretation Of The Parties' Interconnection Agreement Regarding AT&T Kentucky's Failure To Extend Cash-Back Promotions To DPI*, Case No. 2009-00127, at 3 (Ky. P.S.C. Mar. 2, 2012).

2028 (remaining life of 5 years).[5] The Company's existing depreciation rates for the Mitchell Plant were last updated as a result of the settlement approved by the Commission in Case No. 2017-00179, and are based on plant in-service balances at December 31, 2013 and an expected estimated retirement date of 2040.[6]

Further, in the event the Commission approved Case 2 (CCR-only), the Company requested that the Commission:

• Find that any incurred Kentucky jurisdictional Mitchell Plant ELG costs were prudently incurred on behalf of customers; and

• Include specific provisions in the final order in this proceeding authorizing the creation of a corresponding regulatory asset subject to carrying charges based on an authorized pre-tax weighted average cost of capital ("WACC") of 7.62% until the regulatory asset is fully recovered.[7]

Finally, the Company stated that it would then request amortization of deferred Mitchell Plant ELG costs regulatory asset in a future base rate filing.[8]

2. Intervenor Arguments.

AG/KIUC recommended, without any evidentiary support, that Kentucky Power use the currently-authorized depreciation rates for CCR investments—the rates authorized by the Commission in Case No. 2017-00179, which are based on plant in-service balances at December 31, 2013 and an expected estimated retirement date of 2040.[9] The Company fully addressed and

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[5] Initial Brief of Kentucky Power at 18; Whitney Direct Test. at 6.

[6] Initial Brief of Kentucky Power at 17; Whitney Direct Test. at 6.

[7] Initial Brief of Kentucky Power at 18; Whitney Direct Test. at 7.

[8] *Id.*

[9] AG/KIUC Brief at 8; Kollen Test. at 27

rebutted AG/KIUC's flawed and unsupported argument in its Initial Brief and Reply Brief.[10] Sierra Club never opposed Kentucky Power's proposed depreciation rates. Both AG/KIUC's and Sierra Club's briefs were silent as to the Company's request for a finding that Kentucky jurisdictional ELG costs were prudently incurred on behalf of customers, and its request for authorization to create a regulatory asset in the event the Commission approved Case 2.

3. The Commission's Order.

The Commission's Order is silent as to the Company's 20% depreciation rate proposal, instead addressing (but making no findings as to) AG/KIUC's suggestion that the remaining net book value of the Mitchell Plant be recovered through the Decommissioning Rider,[11] and stating only that "Kentucky Power claimed that it plans to seek recovery of the remaining net book value of Mitchell in a future regulatory proceeding, where it plans to file a depreciation study, updates to depreciation rates, and other evidence in support of the request."[12]

The Commission's Order leaves unaddressed the Company's request 1) that the Commission conclude that any incurred Kentucky jurisdictional Mitchell Plant ELG costs are prudently incurred on behalf of customers, and 2) that the Commission include specific provisions in the final order in this proceeding authorizing the creation of a corresponding regulatory asset subject to carrying charges based on an authorized pre-tax WACC of 7.62% until the regulatory asset is fully recovered.

B. The Commission Should Grant Rehearing To Address The Unresolved Issues.

Kentucky Power's currently-authorized rates were approved as part of the settlement in Case No. 2017-00179 and reflect an expected estimated retirement date of 2040. Since the

[10] Initial Brief of Kentucky Power at 36-38; Reply Brief of Kentucky Power at 2.
[11] Order at 16-17.
[12] *Id.* at 17.

Commission has now approved Case 2, CCR-Only, the Mitchell Plant must be closed as to Kentucky Power in 2028. The Commission's silence as to depreciation rates in the Order has the effect of maintaining the status quo by continuing to depreciate CCR investments as if the Mitchell Plant would continue to operate through 2040 despite the requirement that it cease operations 2028. This mismatch is inconsistent with GAAP, the FERC Code of Federal Regulations, and Accounting Standards Codification 360-10-35-3.[13]

Rather, each requires that the CCR environmental compliance investments should be depreciated through 2028 (expected plant retirement date as to Kentucky Power) at a rate of 20% (based on a 5-year remaining useful life), until total Mitchell Plant depreciation rates are updated in a future base rate case.[14] Moreover, because Mitchell is now required to retire in 2028, Accounting Standards Codification 360-10-35-3 requires the Company to change the GAAP per books depreciation estimated retirement date for Mitchell from 2040 to 2028.[15] It is appropriate and reasonable that the CCR investment depreciation rates be updated now, as this case definitively shortens Mitchell's operating life as to Kentucky Power. Not addressing the matter now creates uncertainty and potentially larger rate impacts to customers in a future case. Simply put, the Commission's Order includes some likely unintended inconsistencies with well-accepted accounting standards and federal law, and granting rehearing will allow the Commission to address the issue and complete the Order as to all issues raised in this case.

Next, the Commission should grant rehearing to address the Company's unopposed requests: 1) that the Commission conclude that any incurred Kentucky jurisdictional Mitchell

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[13] Initial Brief of Kentucky Power at 36-38; Reply Brief of Kentucky Power at 2.

[14] Initial Brief of Kentucky Power at 37; Whitney Rebuttal Test. at R3.

[15] Initial Brief of Kentucky Power at 37 n. 213; Whitney Rebuttal Test. at R5. The accounting treatment that would be required to reflect that change is summarized in Ms. Whitney's Rebuttal Testimony. *Id.* at R5-R6.

Plant ELG costs are prudently incurred on behalf of customers, and 2) that the Commission include specific provisions in the final order in this proceeding authorizing the creation of a corresponding regulatory asset subject to carrying charges based on an authorized pre-tax WACC of 7.62% until the regulatory asset is fully recovered.[16] Again, no intervenor addressed or opposed these requests, and they are essential to the Company's proper accounting treatment as a result of the Commission's approval of Case 2.

Conclusion

For the foregoing reasons, Kentucky Power Company respectfully submits that the Commission should grant rehearing to address the issues identified above.

Respectfully submitted,

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[16] The deferred expenditures represent extraordinary, nonrecurring expenses that could not have been anticipated or included in Kentucky Power's planning, as well as expenses resulting from statutory and administrative directives, and thus are eligible for approval as regulatory assets. *See In the Matter of: Application of Kentucky Power Company For An Order Approving Accounting Practices To Establish Regulatory Assets And Liabilities Incurred By Kentucky Power Company In Connection With Two 2015 Major Storm Events*, Case No. 2016-00180 at 5 (Ky. P.S.C. November 3, 2016).