

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

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

**KENTUCKY POWER COMPANY’S REPLY IN SUPPORT
OF MOTION FOR REHEARING**

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A. GAAP and FERC accounting rules require that the CCR environmental compliance investments be depreciated through 2028.

AG/KIUC's argument that the Company's proposed depreciation of the CCR investments would pose an "undue hardship" on customers for an asset "whose lifespan likely extends beyond the end of the proposed depreciation schedule."¹ suffers multiple deficiencies. First, AG/KIUC's contention that the Mitchell Plant's lifespan "likely extends beyond the end of the proposed depreciation schedule" is based on nothing more than AG/KIUC's speculation. Based on the Commission's Order in this case, Mitchell Plant's service life end date as to Kentucky Power is December 31, 2028. What may happen in the future is unknown and unknowable at this juncture, and the record is devoid of any evidence to support an accounting treatment different than that proposed by Kentucky Power. If circumstances change in the future, then those changed circumstances and their effect on issues like the depreciation rate should be decided in a future proceeding. The Commission must base its decisions in this case on known facts. One important such fact is that, as to Kentucky Power, Mitchell Plant's service life does not extend beyond 2028. As Company Witness Whitney explained on rebuttal, GAAP and FERC accounting rules require that the CCR environmental compliance investment's depreciation rate match that service life end date.²

Moreover, the annual 20% depreciation rate that Kentucky Power proposes is not an "accelerated" depreciation schedule, and AG/KIUC's characterization to the contrary³ does not change this fact. The Commission's July 15, 2021 Order granted a CPCN for the CCR investments, but denied a CPCN for the proposed ELG investments. The effect of the

¹ AG/KIUC Response to Kentucky Power's Motion for Rehearing at 3.

² Whitney Rebuttal Testimony at R2-R3.

³ AG/KIUC Response to Kentucky Power's Motion for Rehearing at 3.

Commission's Order as it applies to Kentucky Power's interest in the Mitchell Plant is to end the service life of the plant as to Kentucky Power on December 31, 2028. The Company's proposal simply aligns, in accordance with Generally Accepted Accounting Principles and cost of service ratemaking, the depreciation rate with the Order's practical effect on the useful life of the Company's interest in the plant.

Finally, by arguing that the 20% annual depreciation rate would pose an "undue hardship" on customers,⁴ AG/KIUC impermissibly seek to have their cake and eat it, too. AG/KIUC opposed the Company's application for a CPCN for necessary ELG investments to permit the Mitchell Plant to operate past 2028. Inherent in that opposition was the understanding that if the Commission approved CCR only, the Mitchell Plant would no longer be available to provide service to Kentucky Power's customers beyond 2028. AG/KIUC cannot now argue that the direct effect of the course of action they championed results in an undue hardship on customers. To the contrary, extending the depreciation of the CCR investments beyond the period during which Mitchell Plant is expected to be used and useful in providing service to Kentucky Power's customers, as AG/KIUC advocate, violates fundamental cost-of-service ratemaking principles and would improperly shift the cost of the CCR investments to customers who will not benefit from those investments.⁵ Indeed, under AG/KIUC's proposal, approximately 85% of the total expected net book value of the CCR investments would remain as of December 2028 for future recovery from customers.⁶

⁴ *Id.*

⁵ Whitney Rebuttal Testimony at R2.

⁶ *Id.* at R4.

For all of these reasons, and as set forth in the Company's Motion for Rehearing, the Commission should grant rehearing and authorize the Company to depreciate the CCR investments through 2028 at a rate of 20%.

B. Despite Sierra Club's late arguments to the contrary, the Company's ELG expenditures were prudent and necessary for the Company to meet environmental deadlines and make its application to the Commission.

Sierra Club's arguments that Kentucky Power and its shareholders should bear the cost of prudent Mitchell Plant ELG costs incurred prior to the Commission's July 15, 2021 Order, and that the Company otherwise failed to meet its burden to show that these costs were prudently incurred and necessary for presenting the Company's ELG proposal in this case,⁷ are both without merit and refuted by the record.

As an initial matter, Sierra Club previously failed to challenge the Company's requests 1) for a finding that the \$1.903 million in Kentucky jurisdictional ELG costs were prudently incurred and 2) to accumulate and defer those costs for review and recovery in a future proceeding. For this reason alone, the Commission should disregard and give no weight to Sierra Club's late arguments now.⁸

Moreover, contrary to Sierra Club's improper and untimely assertion otherwise, the already-incurred ELG costs were required to enable the Company to meet environmental deadlines if the ELG project were approved.⁹ Equally important, these same types of activities were required to permit the Company to file its application for approval of the ELG project and

⁷ Response of Sierra Club to Kentucky Power Company's Motion for Rehearing at 3.

⁸ See Order, *In the Matter of: Electronic Application of Kentucky-American Water Company for an Adjustment of Rates*, Case No. 2018-00358, at 5-6 (Ky. P.S.C. June 27, 2019 1:15 p.m.) (holding that LFUCG acted too late in raising an argument for the first time in its post-hearing brief because LFUCG had ample opportunity to develop the issue during the course of the proceeding).

⁹ See Sherrick Direct Testimony at 12-13; Spitznogle Direct Testimony at 8.

thus are the sort of expenses that are properly recoverable. Without incurring the costs, the Company could not have even presented the ELG option to the Commission.¹⁰

The Company's evidence proves that these costs also were prudently incurred on behalf of customers. Company Witness Sherrick's Direct Testimony details the actions taken by the Company in order to comply with the ELG Rule and present the Company's application to the Commission. Those activities included (at that point): project initiation, technology feasibility studies, evaluation of risk balanced technical options, conceptual engineering, permitting, and site investigations (surveying, verifying as-built conditions, and geotechnical investigations).¹¹ As Company Witness Sherrick testified, "[t]hese costs were unavoidable prior to regulatory approval as they were necessary to establish the scope, schedule, and budget for the projects and to meet environmental compliance deadlines."¹² Not only did Sierra Club (and AG/KIUC) fail to present any evidence to the contrary, it failed to address or oppose this issue entirely. The Company's evidence is sufficient to establish that the already-incurred Kentucky jurisdictional ELG compliance costs were prudently incurred on behalf of customers.

The Commission should disregard Sierra Club's 13th hour arguments that the ELG costs should be borne by the utility and its shareholders or that the Company failed to meet its burden to show they were prudently incurred. The Commission should grant Kentucky Power'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.

¹⁰ Sherrick Direct Testimony at 12-13.

¹¹ *Id.* at 12.

¹² *Id.* at 12-13.

Conclusion

For the foregoing reasons, Kentucky Power Company respectfully submits that the Commission should grant rehearing to grant the relief requested in Kentucky Power's August 2, 2021 Motion for Rehearing.

Respectfully submitted,



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