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.

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."

Kentucky Power Company and Wheeling Power Company continue to review their alternatives regarding the Mitchell Generating Station pending action by the West Virginia Commission on the petition. Kentucky Power Company will work to bring the Commission a recommendation on how to handle the Mitchell operating agreement either in Case No. 2021-00370 or in a separate docket.

Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

October 13, 2021 Update

On October 12, 2021 the Public Service Commission of West Virginia issued its Order regarding Wheeling Power Company and Appalachian Power Company's September 20, 2021 "Petition to Reopen Case and to Take Further Action" affirming the earlier order that the Companies proceed with ELG at all three plants.

Please see KPCO_SR_KPSC_RH_1_1_Attachment4 which provides a copy of the October 12, 2021 Order and all other documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN since October 2, 2021[1] through October 12, 2021.

Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

Witness: Deryle B. Mattison

[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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October 12, 2021

Via Electronic Filing
Connie Graley, Executive Secretary
Public Service Commission
of West Virginia
201 Brooks Street
Charleston, WV 25301

Re: Case No. 20-1040-E-CN
Appalachian Power Company and
Wheeling Power Company

Dear Ms. Graley:

Please find attached on behalf of Appalachian Power Company ("APCo") and Wheeling Power Company ("WPCo") (collectively the "Companies"), an Order issued by the Kentucky Public Service Commission ("KPSC") on October 8, 2021 in Case No. 2021-00370. The Order was issued in response to an application filed by Kentucky Power Company on September 29, 2021, seeking a declaratory order that WPCo is not required to obtain a Certificate of Public Convenience and Necessity ("CPCN") from KPSC in order to install equipment at the Mitchell Generating Station to comply with EPA's Steam Electric Effluent Guidelines ("ELG") Rule.

The Companies provide this information to the Commission and the parties in the above-referenced case for informational purposes. Please file with the Commission as appropriate. Thank you for your assistance in this matter.

Very truly yours,

Anne C. Blankenship
(W.Va. State Bar #9044)

Counsel for
Appalachian Power Company and
Wheeling Power Company

ACB
Enclosures
cc: Service List

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF THE SERVICE, RATES AND FACILITIES OF KENTUCKY POWER COMPANY	)))	CASE NO. 2021-00370

ORDER

On September 29, 2021, Kentucky Power Company (Kentucky Power), pursuant to 807 KAR 5:001, Section 19, filed an application seeking, *inter alia*, a declaratory order from the Commission that Wheeling Power Company (Wheeling) is not required to obtain a Certificate of Public Convenience and Necessity (CPCN) from the Commission in order to install equipment at the Mitchell Generating Station (Mitchell) to comply with the United States Environmental Protection Agency's (EPA) Steam Electric Effluent Guidelines (ELG) Rule. Kentucky Power also requested deviation from the scheduling provisions of 807 KAR 5:001, Section 19, and that the Commission issue an Order on or before October 8, 2021.

BACKGROUND

Kentucky Power and Wheeling are both wholly owned subsidiaries of American Electric Power Company, Inc. (AEP). Kentucky Power is incorporated in Kentucky, is a utility as defined in KRS 278.010(3)(a), and provides, *inter alia*, electric retail service to approximately 165,000 customers in twenty counties in Kentucky. Wheeling is incorporated in West Virginia, provides retail electric service in West Virginia, and, on

information and belief, does not provide in Kentucky any of the services listed in KRS 278.010(3).

Mitchell is a 1,570 MW coal-fired, steam-generating plant in Moundsville, West Virginia. Kentucky Power and Wheeling each own an undivided 50 percent interest in Mitchell and both operate Mitchell under an operating agreement approved by the Federal Electric Regulatory Commission (FERC).

Kentucky Power, in Case No. 2021-00004, applied to the Commission requesting, *inter alia*, a CPCN to construct equipment at Mitchell in order for Mitchell to comply with the EPA's ELG Rule and the EPA's Coal Combustion Residual (CCR) Rule.[1] In the alternative, Kentucky Power requested a CPCN to construct equipment necessary to comply with the CCR Rule. The Commission approved the CCR Rule option and denied the CPCN to construct equipment necessary to comply with the ELG Rule.[2]

Wheeling, similar to Kentucky Power, sought approval from the West Virginia Public Service Commission (WV PSC) to construct at Mitchell the construction necessary to comply with the ELG and CCR rules.[3] The WV PSC, on August 4, 2021, approved

[1] Case No. 2021-00004, *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* (filed Feb. 8, 2021).

[2] Case No. 2021-00004, *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* (Ky. PSC July 15, 2021).

[3] West Virginia Public Service Commission Case No. 20-1040-E-N, *Application for the Issuance of a Certificate of Public Convenience and Necessity for Internal Modifications at Coal Fired Generating Plants Necessary to Comply with Federal Environmental Regulations* (filed Dec. 23, 2020). The Commission notes that the application was not only for construction at Mitchell, but also for plants that Wheeling owns with Appalachian Power Company in West Virginia. For the purposes of this Order, the Commission is only discussing the application to construct at Mitchell.

Wheeling's request to construct equipment at Mitchell in order to comply with the ELG and CCR rules, granting Wheeling CPCNs for both projects.[4]

Wheeling and Appalachian Power Company petitioned the WV PSC to reopen the proceeding in order to address certain issues. With regard to Mitchell, according to Kentucky Power, Wheeling sought clarification on issues such as (1) a ruling that Wheeling was to proceed with the ELG project at Mitchell; and (2) an acknowledgement that additional investments at Mitchell would be necessary prior to 2028, and would be the responsibility of West Virginia Customers if Mitchell operates past 2028.[5] Wheeling and Appalachian Power Company also stated that the ELG Rules required them to notify the West Virginia Department of Environmental Protection, by October 13, 2021, if the companies' decide not to make the modifications necessary to comply with the ELG Rules, necessitating the eventual retirement of those plants.

The WV PSC, on September 24, 2021, held a hearing on Wheeling's and Appalachian Power Company's petition. According to counsel for Kentucky Power, at that hearing, staff for the WV PSC sought clarification regarding whether Wheeling was required to obtain a CPCN from this Commission to proceed with the ELG project at Mitchell.

[4] WV PSC Case No. 20-1040-E-CN, *Application for the Issuance of a Certificate of Public Convenience and Necessity for Internal Modifications at Coal Fired Generating Plants Necessary to Comply with Federal Environmental Regulations*, (WV PSC Aug. 4, 2021).

[5] Application for a Declaratory Order at 8.

Kentucky Power states that if Wheeling's ELG project is approved, then "Kentucky Power will not be responsible for, and its customers will not pay for, any costs beyond those amounts authorized by the Commission for CCR-only."[6]

Application for Declaratory Order

Kentucky Power states that, as the owner of a 50 percent undivided interest in Mitchell, it has standing to request a declaratory order from the Commission, because it is a person that will be substantially affected by application of KRS 278.020 to Wheeling and whether Wheeling must acquire a CPCN from the Commission in order to construct equipment necessary to comply with the ELG Rules.[7]

As grounds for its argument that Wheeling is not required to receive a CPCN from the Commission, Kentucky Power asserts that no applicable statutes require Wheeling to receive a CPCN from the Commission, specifically noting that KRS 278.040(2) extends the Commission's jurisdiction to all utilities "in this state."[8] Kentucky Power asserts that the Commission lacks subject matter jurisdiction over Wheeling because Wheeling is not a utility "in this state."

Kentucky Power argues that because Wheeling does not provide service in Kentucky, and has no physical presence in Kentucky, it is not a utility as defined in KRS 278.010(3)(a) and, therefore, the Commission's subject matter jurisdiction does not extend to Wheeling and the Commission cannot require Wheeling to acquire a certificate.[9]

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[6] Application for a Declaratory Order at 9.

[7] *Id.* at 10.

[8] *Id.* at 11.

[9] *Id.*

Kentucky Power also argues that KRS 278.020(1), the statute governing CPCNs, must be read in conjunction with KRS 278.040(2), which, according to Kentucky Power, "establishes the outer limits of the Commission's authority to act pursuant to the other provisions of Chapter 278."[10]

Kentucky Power states that it, its customers, and the Commission's authority to ensure that Kentucky Power's rates are fair, just and reasonable, will not be affected by Wheeling's lack of a requirement to obtain a CPCN from this Commission to construct the equipment necessary to comply with the ELG Rules. Kentucky Power states that if Wheeling constructs the equipment at Mitchell, then "Kentucky Power will not be responsible for, and its customers will not pay for, any project costs beyond those costs required to complete the CCR . . . work" authorized by the Commission in Case No. 2021-00004.[11]

Kentucky Power asserts that the Commission's jurisdiction over rates and services would be unaffected, but because Wheeling does not provide service in Kentucky, it, and the ELG compliance work it wishes to perform, are not subject to the CPCN requirements in KRS 278.020(1). Kentucky Power also notes that asserting jurisdiction over Wheeling pursuant to KRS 278.020(1) would deviate from Commission precedent.[12]

Kentucky Power next argues that the Commission would violate the dormant commerce clause of the United States Constitution if it required Wheeling to obtain a CPCN to construct equipment necessary to comply with the ELG rules.

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[10] *Application for a Declaratory Order* at 13.

[11] *Id.* at 16.

[12] *Id.* at 16–17.

Last, Kentucky Power argues that Kentucky law recognizes the presumption against extraterritorial operation of its statutes and that KRS 278.020(1) lacks clear and unambiguous language that the General Assembly intended to overcome this presumption.[13] Kentucky Power asserts that, in light of the language in KRS 278.040(2) limiting the Commission's jurisdiction to utilities in Kentucky and the lack of any language in KRS 278.020(1) rebutting the presumption against the extraterritorial application of Kentucky's statutes, the CPCN requirements of KRS 278.020(1) cannot apply to Wheeling.[14]

Kentucky Power requests a deviation from the scheduling requirements in 807 KAR 5:001, Section 19(4) and (5), permitting responses and replies to an application for declaratory order. Kentucky Power, as grounds for its request, states that it has a requested a declaratory order on or before October 8, 2012, because it will allow Kentucky Power time to make a "final and informed decision" on how to address the October 13, 2021 deadline to notify the West Virginia Department of Environmental Protection (WV DEP) if the ELG modification will not be made.[15] Kentucky Power states that if it does not provide notice to the WV DEP by October 13, 2021, and a subsequent decision is made to not make the ELG upgrades and instead retire Mitchell, Mitchell must permanently cease all coal combustion no later than December 31, 2025.[16] According to Kentucky Power, this is the latest compliance date for ELG specified in Mitchell's National Pollutant

[13] Application for a Declaratory Order at 21.

[14] *Id.* at 23.

[15] *Id.* at 24.

[16] *Id.* at 25.

Discharge Elimination System (NPDES) permit, but that the date could be as early as June 30, 2023, based upon Mitchell's draft NPDES permit, unless AEP files with the EPA by October 13, 2021, that Mitchell will be retired.[17] Kentucky Power asserts that because of these deadlines, Kentucky Power requires a declaratory order from the Commission by October 8, 2021, so that the WV PSC may be informed of the issue and the WV PSC can make an informed decision by October 13, 2021, and allowing for responses and replies to the application would unnecessarily delay the Commission's entry of a declaratory order.[18]

Response of the Sierra Club

On October 4, 2021, the Sierra Club filed a response to Kentucky Power's application for declaratory order.[19] Sierra Club does not oppose Kentucky Power's contention that Wheeling is not required to obtain a CPCN.[20] Sierra Club, however, ultimately opposes the application, arguing that the issue is neither urgent nor ripe for a decision.[21]

The October 5, 2021 Hearing

The Commission conducted a previously scheduled formal evidentiary hearing in this case on October 5, 2021. At the hearing, the Commission questioned Kentucky Power and its counsel regarding the reasons for its application for a declaratory order,

[17] Application for a Declaratory Order at 25.

[18] *Id.*

[19] Sierra Club's Response to Kentucky Power Company's Application for Declaratory Order, Request for Expedited Disposition, and Motion for Deviation from Scheduling Requirements Regarding October 5, 2021, Hearing (filed Oct. 4, 2021).

[20] *Id.* at 2.

[21] *Id.* at 3.

noting that the transcript of the WV PSC proceeding did not show that WV PSC staff requested any clarification regarding whether Wheeling needed a CPCN from this Commission. Counsel for Kentucky Power stated that Kentucky Power's understanding of the WV PSC staff's concern was based upon notes from Wheeling's counsel and that Kentucky Power did not receive the transcript until after filing the application for declaratory order. Kentucky Power, however, stated that language from the September 15, 2021 Order establishing this proceeding required clarification whether Wheeling required a CPCN from the Commission or if Kentucky Power required a CPCN if Wheeling proceeded with the ELG project at Mitchell.

DISCUSSION

Administrative Regulation 807 KAR 5:001, Section 19(1), which governs applications for declaratory orders, provides in pertinent part that:

> The commission **may**, upon application by a person substantially affected, issue a declaratory order with respect to the jurisdiction of the commission, the applicability to a person, property, or state of facts of an order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.

(Emphasis added.)

Notably, the issuance of a declaratory Order is permissive—the Commission will issue a declaratory order at its discretion. The Commission, in its exercise of this discretion, will not issue the requested declaratory order.

Nevertheless, the Commission notes that based upon a cursory review of the application as well as a similarly cursory review of the law, particularly given the limited time afforded to its review, the Commission is unaware of any legal requirement that

Wheeling seek a CPCN from the Commission to construct equipment necessary to comply with the ELG Rules. Furthermore, based upon the same cursory review, the Commission is unable to determine what recourse, if any, the Commission would have against Wheeling should Wheeling perform the ELG project, and Commission approval for the project was later determined to be necessary. Frankly, Wheeling is not a utility under KRS 278.010(3).

The Commission expects Kentucky Power and Wheeling to promptly seek modifications to the Mitchell operating agreement should Wheeling move forward with the ELG project, in particular the provisions designating Kentucky Power the operator of Mitchell and assigning it certain responsibilities in that role. The Commission further expects Kentucky Power and Wheeling to promptly seek modifications of environmental permits related to ELG currently held in Kentucky Power's name. These modifications will be necessary to ensure Kentucky Power's representations that neither it nor its customers will bear any of the costs of Wheeling's ELG project.

Based upon the foregoing, the Commission finds that because the issuance of a declaratory order is at the discretion of the Commission, (1) Kentucky Power's application for declaratory order should be denied; and (2) all other motions made by Kentucky Power should be denied as moot.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's application for declaratory order is denied; and

2. All outstanding motions in the application for declaratory order are denied as moot.

By the Commission

ENTERED
OCT 08 2021 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

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Executive Director

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PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

CASE NO. 20-1040-E-CN

APPALACHIAN POWER COMPANY and
WHEELING POWER COMPANY,
public utilities.

Application for the issuance of a Certificate of Public Convenience and Necessity for internal modifications at coal fired generating plants necessary to comply with federal environmental regulations.

CERTIFICATE OF SERVICE

I, Anne C. Blankenship, counsel for Appalachian Power Company and Wheeling Power Company, hereby certify that true copies of the foregoing filing were provided electronically on this 12th day of October 2021, addressed to the following:

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Lucas Head, Esquire
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Charleston, West Virginia 25301
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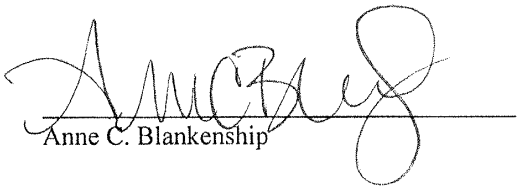

Anne C. Blankenship

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 12th day of October 2021.

CASE NO. 20-1040-E-CN

APPALACHIAN POWER COMPANY
and WHEELING POWER COMPANY,
public utilities.

Application for a certificate of public convenience and necessity for the internal modifications at coal fired generating plants necessary to comply with federal environmental regulations and surcharge.

COMMISSION ORDER

The Commission, on a petition to reopen, affirms its earlier order granting a certificate of convenience and necessity for modifications at coal-fired generating plants necessary to comply with federal environmental regulations, directs Appalachian Power Company and Wheeling Power Company to take steps necessary to alert the Environmental Protection Agency (EPA) and West Virginia Department of Environmental Protection (WVDEP) that it will proceed with environmental compliance work to assure that the plants may remain operational until at least 2040, and approves cost recovery of environmental compliance work at three power plants. Additionally, the Commission corrects errors in the order entered on August 4, 2021.

BACKGROUND

On December 23, 2020, Appalachian Power Company (APCo) and Wheeling Power Company (WPCo) (collectively Companies) filed an application for a certificate of convenience and necessity to obtain authorization to make internal modifications necessary to comply with federal environmental regulations at the Amos, Mountaineer, and Mitchell coal-fired generating plants (Plants). The Companies presented two alternative modification programs: (Alternative 1) keeping all three Plants operating through at least 2040; and (Alternative 2) keeping Amos and Mountaineer operating through at least 2040 but closing Mitchell by 2028.

On March 10, 2021, the Commission granted intervention to the Consumer Advocate Division (CAD), West Virginia Energy Users Group (WVEUG), The Sierra Club, West Virginia Citizens Action Group, Solar United Neighbors, and Energy

Efficient West Virginia (CAG/SUN/EEWV), and the West Virginia Coal Association (WVCA). The Commission also scheduled the Evidentiary Hearing in this case for June 3 and 4, 2021. Additionally, the Commission granted the Attorney General of West Virginia (WVAG) intervenor status.

The Commission issued a final Order on August 4, 2021, granting the requested Certificates of Convenience and Necessity for Coal Combustion Residue (CCR) control projects and Effluent Limitation Guideline (ELG) control projects for all three Plants and authorizing a phase-in cost recovery mechanism and initial rate.

On August 16, 2021, CAG/SUN/EEWV filed an Application for Modification of the Commission's August 4, 2021 Order. CAG/SUN/EEWV requested that the Commission correct certain clerical errors in the Commission Order including: (i) the intervenor's position on ELG retrofits at the Companies' Plants; (ii) misidentification of intervenor's witness; and (iii) alleged inaccurate description of positions taken by intervenor's witness.

The Companies filed a Petition to Reopen and Take Further Action (Petition) in the case. With the Petition, the Companies filed the supplemental direct testimonies of Randall R. Short and Gary O. Spitznogle. Petition, September 8, 2021.

The Commission reopened the case on September 9, 2021, and set a procedural schedule including an evidentiary hearing date of September 24, 2021. The Commission ordered the Companies to publish notice of the new hearing. On September 15, 2021, CAG/SUN/EEWV requested a public comment hearing. The Commission scheduled the public comment hearing for the same day as the evidentiary hearing. Commission Order, September 17, 2021.

On September 16, 2021, CAD, CAG/SUN/EEWV, WVEUG, Sierra Club, and WVCA filed responses to the Petition. The Companies filed a response in support of their Petition. Companies' Response, September 20, 2021. WVEUG filed a reply to the WVCA response. WVEUG Response, September 20, 2021. The WVAG did not participate in the arguments surrounding the Petition.

Approximately 294 public officials and commenters filed letters and online comments in support of the Companies' proposal. Of those letters and online comments of support, at thirty-eight were filed after the Petition was filed. Approximately 788 letters and online comments in opposition were received including at least 432 filed after the Companies filed their Petition. In addition to written public comment, the Commission held a public comment hearing during which three people spoke in favor of the project and ten spoke against the project.

DISCUSSION

I. Petition to Reopen and Take Further Action Filed by the Companies.

A. Granting a Certificate of Convenience and Necessity.

On August 4, 2021, the Commission granted a certificate of convenience and necessity authorizing CCR and ELG projects at the Plants. The Commission directed that if there are changes in ownership or cost allocations that are required by decisions in other states, the Companies should bring such changes to the attention of the Commission in a future case.[1]

On July 15, 2021, the Kentucky Public Service Commission (KPSC) approved compliance work to meet the CCR Rule requirements at Mitchell, in which Kentucky Power Company (Kentucky Power) owns a fifty percent undivided interest. KPSC determined that Kentucky Power failed to provide sufficient evidence that the ELG project at Mitchell is necessary or the most reasonable, least cost-effective way to enable Kentucky Power to comply with the ELG rules. On August 19, 2021, KPSC issued an order on rehearing holding that the actual closing date of the Mitchell Plant, not the end of Kentucky Power's involvement with Mitchell, should be used for the depreciation rates to avoid Kentucky Power customers subsidizing future use of the CCR projects.

On August 23, 2021, the Virginia State Corporation Commission (VSCC) issued an Order approving recovery of the Virginia jurisdictional CCR investment costs at Amos and Mountaineer, but denying recovery of any ELG investment costs at those plants subject to refiling for such cost recovery at a later date.

Because VSCC did not approve cost recovery for the ELG compliance work at Amos and Mountaineer, and the KPSC did not approve ELG compliance work or cost recovery at Mitchell, the Companies are seeking from this Commission the recovery of the costs of the ELG compliance work at Amos and Mountaineer, and the costs of the ELG compliance work at Mitchell without allocating those costs to either Virginia or Kentucky jurisdictional loads.[2] The Companies stated that they would address any specific ownership and/or cost allocation changes at a later date.

[1] We note that ownership status of the Conner Run dam, impoundment, and impoundment contents near the Mitchell plant site, the costs related thereto, and the indemnification agreement related thereto, all as described in Case No. 14-0546-E-PC are not at issue and are not changed by our orders in this case.

[2] In addition to West Virginia and Virginia jurisdictional load APCo serves some wholesale, FERC jurisdictional, loads. Historically, jurisdictional allocations of APCo costs have included allocations to West Virginia jurisdictional, Virginia jurisdictional, and FERC jurisdictional loads. Some of the testimony in this case seemed to indicate that without an allocation to the Virginia jurisdictional load or to Kentucky Power the ELG costs and other costs necessary to operate the plants beyond 2028 ("continuing operations costs") would be paid 100 percent by

The Companies requested a ruling from this Commission to proceed with the ELG projects at all three Plants, including Kentucky Power's undivided fifty percent interest in the Mitchell plant, notwithstanding new cost estimates and the decisions of Kentucky and Virginia to deny recovery of any ELG or other "continuing operations costs."

For the Plants to be allowed to operate to 2028, the Companies must advise the EPA and the WVDEP by October 13, 2021, if they decide not to proceed with ELG compliance work. Otherwise, if they later decide to not proceed with ELG compliance work, they will be required to cease coal operations at those units by each unit's ELG non-compliance deadline. Those deadlines for Mitchell, Amos, and Mountaineer are June 30, 2023, December 31, 2022, and June 1, 2022, respectively. Once they have committed to the EPA and WVDEP that they will construct the ELG improvements, the Companies must construct those improvements so that the Plants may stay open after the date when non-compliance with ELG would require the Plants to close (ELG non-compliance closing date).[3]

The changes in estimated costs and the decisions by VSCC and KPSC to (i) forego ELG compliance (ii) forego use of the Plants which could not run after 2028 pursuant to their decisions, and (iii) not pay "continuing operations costs" of the Plants after 2028 do not change the threshold issue for this Commission in this case. That threshold issue being, "Should APCo and WPCo make the investments necessary to allow the Plants to remain open and operate beyond 2028, or should they retire the Plants on or before 2028 and acquire the needed replacement capacity and energy from new power supply resources?" Our initial decision was that the Companies should make the investments to allow all three Plants to remain open and operate beyond 2028. The updated information filed by the Companies, including the decisions of the KPSC and the VSCC does not lead to a conclusion by this Commission that shutting down the Plants in 2028 would be in the public interest. Neither do we find the suggestion by some intervenors that the Companies should file a Notice of Planned Participation (NOPP) that they will not proceed with ELG compliance and to later seek waivers to allow them to stay open beyond their ELG non-compliance dates would be in the public interest.

West Virginia jurisdictional customers. Such an assumption is inaccurate because a portion of the continuing operation costs would still be allocated to the FERC jurisdictional loads to the extent they continued to receive capacity and energy service from APCo or WPCo.

[3] There was some discussion in the record that the ELG non-compliance closing date may be prior to 2028 under some circumstances. The latest ELG non-compliance closing date under the best of circumstances is 2028. As used in this order, references to 2028 as the date that the plants must close under the terms of the Virginia and Kentucky orders mean the latest possible ELG non-compliance closing date with the understanding that date may be sooner under some non-compliance circumstances.

The Companies initially presented estimates of $383.5 million total cost for CCR and ELG control projects for all three Plants. In the reopened proceeding, Mr. Short testified that the updated total CCR and ELG compliance cost estimates were now $448.3 million. A portion of the costs are for CCR which will still be allocated to Virginia and Kentucky retail ratepayers. Only the ELG portion of the combined cost will be allocated to West Virginia retail customers and FERC jurisdictional wholesale sales. The additional compliance costs, including the ELG compliance costs allocable to West Virginia because of the Virginia and Kentucky decisions that would require the retirement of the Plants no later than 2028 are small when compared to the costs of replacement capacity that would be required if the Plants are prematurely retired.

The Companies presented evidence that, if Amos and Mountaineer are retired by 2028, the Companies will require replacement capacity of between 3,406 and 3,818 Megawatts. Table 4 in Mr. Martin's original direct testimony assumes that the new capacity will be made up of 2,856 to 2,618 MW of Combustion Turbines, 150 to 600 MW of Solar Capacity, 0 to 200 MW of Wind Capacity, and a 400 MW capacity-only Purchased Power Agreement. Cos. Exh. JFM-D at 22. The projected costs of these forms of capacity are: combustion turbines, $900 per kW; solar, $700 to $1,000 per kW; and wind, $1,200 per kW. Using these cost levels, applied to the required MWs of replacement capacity and averaging the range of costs for solar capacity, APCo would have to pay from $3.1 to $3.5 billion for Amos and Mountaineer replacement capacity, of which $1.3 to $1.4 billion would be allocated to West Virginia customers at the present forty-one percent West Virginia jurisdictional allocation factor. WPCo would have to pay from $600 million to $900 million for replacement of just its 50 percent of the Mitchell capacity, of which 100 percent would be allocated to West Virginia customers. The total replacement costs for West Virginia customers under the premature retirement option is between $1.9 and $2.3 billion. (See calculations in Table, below.)[4]

[4] We do not price out a capacity-only Purchased Power Agreement because we do not consider a capacity resource with zero energy possibilities as a reasonable fit for APCo's needs. This concern about a zero-energy resource is supported by the testimony of Mr. Martin who said: "Less than 400 MW available was selected in 5 of the 9 APCo cases, indicating that resources which also provide energy are preferable in those scenarios, given the capacity price forecast." Cos. Exh. JFM-D at 24. We price out that 400 MW capacity only PPA for Amos and Mountaineer and the 200 MW capacity only PPA for Mitchell at the cost of combustion turbines, which provide the highest relative UCAP to meet APCo's PJM capacity requirements.

Total Amos and Mountaineer Replacement											
	Combustian Turbines			Solar			Solar			Total Amos and Mtr Replacement Cost	WV Share @ 41%
Scenario	MW	Cost per Kw	Projected Cost	MW	Cost per Kw	Projected Cost	MW	Cost per Kw	Projected Cost		
Base With Carbon	3,018	900	2,716,200,000	600	850	510,000,000	200	1,200	240,000,000	3,466,200,000	1,421,142,000
Base No Carbon	3,256	900	2,930,400,000	150	850	127,500,000			-	3,057,900,000	1,253,739,000
Low No Carbon	3,256	900	2,930,400,000	150	850	127,500,000			-	3,057,900,000	1,253,739,000

Wheeling 50% Mitchell Replacement											
	Combustian Turbines			Solar			Solar				WV Share
Scenario	MW	Cost per Kw	Projected Cost	MW	Cost per Kw	Projected Cost	MW	Cost per Kw	Projected Cost	50% Mitchell Replacement Cost	Amos, Mtr, and Mitchell
Base With Carbon	680	900	612,000,000			-	200	1,200	240,000,000	852,000,000	2,273,142,000
Base No Carbon	680	900	612,000,000			-			-	612,000,000	1,865,739,000
Low No Carbon	680	900	612,000,000			-			-	612,000,000	1,865,739,000

Thus, our choices are: (i) to direct APCo to proceed with the investments necessary to allow all three Plants to remain open beyond 2028 and to agree to share CCR costs with Kentucky, Virginia, and FERC jurisdictional customers and to share ELG compliance costs with FERC jurisdictional customers only with those total costs before allocation being approximately $448.3 million, or (ii) to follow the Virginia and Kentucky approach which will require premature retirement of the Plants and burden West Virginia customers with replacement capacity costs of $1.9 to $2.3 billion. Said another way, even if the total cost of compliance was allocated to West Virginia customers (which is not the case) the additional rate base cost would be only $448.3 million compared to West Virginia customers paying between $1.9 and $2.3 billion for replacement capacity costs.

Moreover, it is important to note that the net undepreciated value of the Plants will continue to be paid by ratepayers if the Plants are prematurely retired. These costs are referred to as sunk costs because they represent dollars that have already been spent (sunk) on plants needed to serve ratepayers but which have not yet been recovered by the utility. When a utility is forced to prematurely retire or sell a plant (or any other undepreciated asset) the unrecovered sunk costs have been referred to as "stranded costs." Mr. Martin testified that these costs will be recovered from customers in all scenarios, including the premature retirement and replacement scenarios.

> The current capital investment in the three plants is a sunk cost which is assumed to be recovered from customers equally in all scenarios, and thus was excluded from the analysis. The recovery period for that sunk cost is a separate matter to be determined in other proceedings.

The CAD witness Medine expressed concerns that the full impact of premature retirement was not reflected in the capacity replacement net present value analyses. In her direct testimony, she said:

> In the scenarios where the capacity is retired early, customers will be paying in rates for both the undepreciated capital for the plants that are retired prematurely - and the replacement capacity.
>
> While the Companies state its assumption that sunk costs "are recovered from customers equally in all scenarios," the Companies effectively acknowledge that "the recovery period for that sunk costs in a separate matter." If stranded cost recovery receives accelerated treatment (as would no doubt be the request), it is unreasonable to assume there would be no difference in recovery of the outstanding capital costs and there would be no "incremental impact" on customer rates.

CAD Exh. ESM-D at 21.

Prematurely retiring the Plants at least twelve years prior to the current estimated retirement year of 2040, continuing to require ratepayers to pay for the capital costs on the stranded investment created by prematurely retiring the Plants and, adding to that the capital costs between $1.9 and $2.3 billion in capacity costs to replace the plants that could have continued to operate is not a decision that is supported by the evidence. Such action by the Companies would be contrary to the public interest for a host of reasons beyond the impact of the costs on ratepayers.

If we follow the Kentucky and Virginia approach (option (ii) above), the replacement capacity that the Companies have proposed would include mostly combustion turbines which are not economical to run as base load units and intermittent wind and solar resources. That decision would obligate West Virginia customers with $1.9 to $2.3 billion in capacity investments that have limited capability to serve base load. With such investment, we would be dependent on acquiring replacement energy from market sources.

By confirming our decision to proceed with the CCR and ELG compliance, after 2028 West Virginia customers will receive the full capacity and energy capabilities of three West Virginia coal plants capable of operating to at least 2040. The Plants could then provide West Virginia's PJM demand capacity requirements and produce excess capacity that could be sold through some combination of bi-lateral PPAs, RTO capacity bids, and affiliated agreements. The Plants could also provide base load energy for West Virginia needs and excess energy that could likewise be sold. To the extent excess capacity and energy are sold, the revenue received would be credited for ratemaking purposes to the benefit of West Virginia customers.

Some intervenors expressed concerns that it is unfair, or unreasonable, or even illegal for the Companies to seek from this Commission approval of other costs incurred between now and the final plant retirement dates to keep the Plants open beyond 2028

without allocating a portion of those costs to Kentucky and Virginia. We disagree. Virginia and Kentucky have effectively ordered that the Companies retire the Plants by 2028. Thus, but for a West Virginia order directing that the Plants remain open, capital and continuing operations costs necessary to keep the Plants in working order after 2028 would not be incurred. Under those circumstances it would be unfair and unreasonable for West Virginia to expect Virginia or Kentucky customers to pay a share of those costs. From the perspective of Virginia and Kentucky, the Plants would be prematurely retired by 2028 because of the KPSC and VSCC orders on the ELG compliance requests. Given those decisions, Virginia and Kentucky jurisdictional customers should receive no capacity or energy from the Plants after 2028. Nor should they receive incremental capacity and energy that is available solely because of pre-2028 costs funded by only West Virginia and FERC jurisdictional customers. Therefore, they should not pay for the costs that are incurred solely because of the West Virginia decision to require the Plants to remain open.

Some intervenors expressed concerns that Virginia and Kentucky may simply forget or disregard their earlier orders to effectively retire the Plants prematurely long before the end of their useful lives and attempt to take credit for the capacity and energy from the Plants beyond 2028 without sharing in the ELG compliance costs or continuing operations costs that are necessary to allow the Plants to operate beyond 2028 or to operate at maximum capacity and energy output levels prior to 2028. We do not believe that Kentucky or Virginia would attempt to claim capacity or energy from West Virginia power plants without paying for new capital, and continuing operations costs or to prevent downgrades prior to 2028. That would certainly be unfair, unreasonable, and duplicitous.

Companies' witness Mr. Short reinforced our belief that Kentucky and Virginia could not expect to benefit from a West Virginia decision to require the Plants to remain open and to require West Virginia and any FERC jurisdictional customers to pay for reasonable and prudent ongoing capital and operation and maintenance costs:

> After 2028, we believe the West Virginia customers will benefit. And with respect to Virginia customers, if they rely on that capacity, they will pay for it.
>
> I think at this time the Virginia Commission has processed that information and they have not approved the ELG, but it's possible before then they will decide that this is the best prudent option for their customers and will pay a good portion of it.
>
> But [if] West Virginia pays a hundred percent of the cost to keep the plant operating through --- after 2028, I think at that point a hundred percent of the capacity should go to West Virginia ratepayers.

> Q. You indicated that if West Virginia ratepayers paid for 100 percent of the costs to operate Amos and Mountaineer, that West Virginia ratepayers --- that 100 percent of the capacity should go to the benefit of West Virginia ratepayers. Is that roughly correct?
>
> A. That's correct.

Transcript of Evidentiary Hearing on Petition to Reopen, September 24, 2021 (Tr.) at 156, 159, 187, and 202 respectively.

Our analysis of the difference between the cost of keeping the Plants open and premature retirement and incurring billions in replacement costs supports our original decision to direct the Companies to proceed with the necessary ELG compliance to assure that the Plants are not retired prematurely. The Companies proposed replacement energy consists primarily of combustion turbines that are not economical to run as base load units and wind or solar resources that have intermittent output. While the net present value of the benefits may be less with the new estimates of the costs of compliance and the VSCC and KPSC decisions to forego ELG compliance which will require premature abandonment of the Plants, and thereby requiring West Virginia customers to pay more of the ELG compliance and continuing operations costs, we believe that it is in the best interest of West Virginia customers and the economy of the State to continue down the compliance path to keep the Plants open.[5] We find it fair and reasonable to expect West Virginia customers, and FERC jurisdictional customers benefitting from the Plants, to pay the ELG control and continuing operations costs incurred solely to keep the Plants open and to assign all capacity and energy from the Plants after 2028 either for the needs of those West Virginia and FERC jurisdictional customers or to be sold to third parties with the benefits of those sales being credited to West Virginia and FERC jurisdictional revenue requirements.

We have not repeated in this Order the benefits of operating the Plants to the economy of the State, but they are considerable. Direct employment at the Plants, use of West Virginia coal, state, county and local taxes related to operating generation plants and related employment in businesses supporting the Plants and the coal industry cannot be discounted or overlooked. Even a close call on the cost benefits to West Virginia customers becomes a clear decision to keep the Plants open when the Commission

[5] Even though they have increased their cost estimates for the CCR and ELG projects and the PPSC and VSCC decisions will require a change in the allocation of costs between Virginia, Kentucky, and West Virginia, the Companies are not seeking additional rates at this time. Mr. Short testified that "we're not asking for a change in rates. . . . Each year we'll file cost information on what we have spent, and a record will be made at that time and it will be reviewed by the parties and the Commission." Tr. at 122.

considers the benefits of the reliability of fuel secure base load generation capacity and other economic benefits to customers and the state and local economy.

B. Operation and Maintenance Costs and Additional Investments.

The Companies also requested that the Commission acknowledge that the Companies will need to make prudent additional investments and to incur O&M expenses at the Plants prior to 2028 which will be the responsibility of West Virginia customers if the Plants are to operate beyond 2028. Mr. Short clarified in his testimony that O&M expenses beyond those necessary to keep the plant open until 2028, even if those expenses came before 2028, would be the responsibility of West Virginia ratepayers. Tr. at 115. The Companies did not provide cost estimates for these expenses. Tr. at 116.

As discussed above, to recover the costs that are only incurred because of the decision of this Commission to direct the Companies to keep the Plants operating is a fair and reasonable cost recovery treatment. Furthermore, as discussed in this Order, the costs that would not have been incurred under the decisions of VSCC and KPSC should not be the responsibility of Virginia or Kentucky as long as those states receive no credit for capacity or energy produced at the Plants after the date they would have been retired but for the decisions of this Commission. The Companies agreed that the Commission should not guarantee recovery of expenses that the Commission determines to be imprudent. This Order does not cede our jurisdiction to review future capital, operating, and maintenance expenses and to disallow recovery of expenses that we determine are excessive, unreasonable or imprudent.

II. Application for Modification of the Commission's August 4, 2021 Order.

A. CAG/SUN/EEWV Position Regarding Retrofits at the Plants.

On page nine of the August 4, 2021 Commission Order, the Commission mistakenly stated: "The Sierra Club and CAG/SUN/EEWV advocate approval of the CCR Control investments at Amos, Mountaineer and Mitchell, but deny the ELG Control investments at all three Plants." Commission Order, August 4, 2021, at 9 (third full paragraph). The Commission erred in saying that CAG/SUN/EEWV advocated for approval of CCR Control investments and denial of ELG Control investments at all three Plants. CAG/SUN/EEWV did not take a position on the Amos and Mountaineer plants, but argued that the Commission should not approve the request for ELG Control investments at Mitchell. Additionally, the Commission should not have quoted WVCA when its lawyers referred to Earthjustice and the Sierra Club as the only dissenting parties. Earthjustice, is not a party but represents CAG/SUN/EEWV in the case.

B. CAG/SUN/EEWV Witness Identification.

In the first and second full paragraphs of page thirteen of the Order, the Commission erred in stating that witness Sean O'Leary testified on behalf of the Sierra Club. Mr. O'Leary testified on behalf of CAG/SUN/EEWV and his pre-filed direct testimony was entered into the record as an exhibit of CAG/SUN/EEWV, not a Sierra Club exhibit.

C. CAG/SUN/EEWV Position on Economics and Coal-Fired Plants.

CAG/SUN/EEWV took exception to the Commission's interpretation of the pre-filed direct and rebuttal testimony of Mr. O'Leary and requested a modification of the first full paragraph on page fifteen of the Order. In that paragraph, the Commission stated:

> Mr. O'Leary supports discouraging the operation of coal-fired power plants at maximum reasonable output for the duration of the life of the plants. He does so with the hope that industries will be attracted to the State that will provide greater economic benefits than those provided by power plants and the coal industry. . . . Mr. O'Leary suggested that losing those jobs related to Mitchell, and even more jobs related to Mountaineer and Amos should be viewed as a benefit for the West Virginia economy because the losses will create an opportunity to dedicate our state economic development resources to bringing in industries that will offer even greater benefits per dollar of direct economic output.

CAG/SUN/EEWV stated that Mr. O'Leary never testified as described by the Commission. As CAG/SUN/EEWV point out, Mr. O'Leary testified that the Companies' own analysis projects that even if the ELG retrofits are carried out, there will be a significant decline in operation and coal burn at the Mitchell plant starting in 2031.

We may have described Mr. O'Leary's testimony as suggesting that there may be benefits from job losses at power plants, but we understood that he testified that according to AEP's own analysis the Mitchell Plant would serve "primarily as a capacity resource, and the amount of coal that AEP would purchase from Marshall County would drop precipitously, and the jobs at the plant would also decline, even if the plant continues operating until 2040. CAG/SUN/EEWV Exh. SO-D at 4-5. Our original decision was not dependent on the description of Mr. O'Leary's testimony, and we would have, as we do now, made the same decision regardless of how we described the testimony. We determine that our original decision regarding the benefits of power plant and related jobs from keeping the Mitchell plant open was correct. Retaining those jobs and related economic benefits will not prevent planning for a transition when the plant is eventually retired. We do not agree that closing the plant prematurely to jump-

start whatever transition that Mr. O'Leary would support is preferable to taking steps necessary to allow the plant to operate beyond 2028.

FINDINGS OF FACT

1. The KPSC approved compliance work to meet the CCR Rule requirements at Mitchell but did not approve cost recovery for the ELG compliance. In re: Electronic Application of Kentucky Power Co., Case No. 2021-00004, Kentucky Public Serv. Comm'n, Order entered July 15, 2021 (Rehearing granted August 19, 2021).

2. The KPSC determined that the actual closing date of Mitchell, and not the end of Kentucky Power's involvement with Mitchell, should be used for the depreciation rates to avoid Kentucky Power customers subsidizing future use of the CCR projects. In re: Electronic Application of Kentucky Power Co., Case No. 2021-00004, Kentucky Public Serv. Comm'n, Order entered August 19, 2021 at 6.

3. VSCC approved recovery of the Virginia jurisdictional CCR investment costs at Amos and Mountaineer but did not approve cost recovery for the ELG compliance work at either plant. Appalachian Power Co., Case No. PUR-2020-00258, Virginia State Corp. Comm'n, Order entered August 23, 2021.

4. The Companies did not provide cost estimates for continuing operations costs necessary to keep the Plants operating beyond 2028 that would be the responsibility of West Virginia ratepayers.

5. The current estimate of both CCR and ELG compliance costs at the Plants is $448.3 million. Cos. Exh. RRS-SD at 7.

6. If the Plants were shut down in 2028, APCo estimated that West Virginia customers' share of capacity replacement costs would be between $1.9 and $2.3 billion.

7. CAG/SUN/EEWV did not take a position on ELG control investments at the Amos and Mountaineer plants and the Commission mistakenly stated that it did in the August 4, 2021 Commission Order.

8. Witness Sean O'Leary testified on behalf of CAG/SUN/EEWV and not on behalf of Sierra Club. CAG/SUN/EEWV Exh. SO-D. The Commission mistakenly identified Mr. O'Leary as a witness for Sierra Club in the August 4, 2021 Commission Order.

9. The Companies' preferred plan for replacing the capacity of the Plants includes intermittent solar and wind resources and, mostly peaking capacity that is not economical to provide base load energy to serve customers.

10. The Companies' preferred plan for replacing the capacity of the Plants would require West Virginia customers to rely largely on market resources (purchased power) to provide base load energy and to fill-in for the variable levels of energy available for intermittent resources.

CONCLUSIONS OF LAW

1. To operate to 2028 without ELG compliance, the Companies must advise the EPA and the WVDEP by October 13, 2021, if they decide to not proceed with ELG compliance work at the three Plants. Otherwise, if they later decide to not proceed with ELG compliance work, they will be required to cease coal operations at those units by each unit's ELG non-compliance deadline. Those deadlines for Mitchell, Amos, and Mountaineer are June 30, 2023, December 31, 2022, and June 1, 2022, respectively. Tr. at 21.

2. When the Companies commit to the EPA and WVDEP that they will proceed with ELG improvements at all three Plants, the Companies must construct those ELG improvements or they will be required to either cease coal burning or retire the Plants by their ELG non-compliance deadlines in 2022 and 2023 if they cannot get a waiver of those deadlines. Cos. Exh. GOS-SD at 4.

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

4. Unless the KPSC and VSCC decide to authorize ELG improvements, West Virginia and FERC jurisdictional customers benefitting from the Plants beyond 2028 should pay the reasonable and prudent (i) ELG compliance costs and (ii) ongoing operations costs incurred solely to keep the Plants open past 2028.

5. If the Plants were shut down in 2028 at the direction of this Commission, in addition to paying for the replacement costs, West Virginia customers would be responsible for the West Virginia share of the undepreciated net book value of the

Plants, which would be considered as "stranded costs" created by the premature retirement of generation assets that had considerable remaining operational life.

6. Considering the decision of the KPSC and the VSCC, which would lead to premature retirement of the Plants by 2028, reasonable and prudent continuing operations expenses necessary to keep the Plants operating beyond 2028, even if those expenses occur before 2028, should be the responsibility of West Virginia ratepayers and FERC jurisdictional ratepayers that receive the benefit of the capacity and energy from the Plants.

7. The Commission's assessment in the August 4, 2021 Commission Order of the testimony of Mr. O'Leary did not affect our decision regarding the benefits of keeping Mitchell operating beyond 2028.

ORDER

IT IS THEREFORE ORDERED that Appalachian Power Company and Wheeling Power Company are granted a certificate of convenience and necessity to make the necessary compliance modifications, including ELG compliance modifications to the Plants under Alternative 1 that will enable all three Plants to continue coal-fired generation of electricity beyond 2028 until their retirement dates which are currently estimated to be 2040.

IT IS FURTHER ORDERED that the Companies proceed with construction and take all necessary steps to operate the Plants beyond 2028 and extend their operations to at least 2040.

IT IS FURTHER ORDERED that the Companies take whatever steps are necessary to alert the EPA and WVDEP that it will proceed with environmental compliance work to assure that the plants may remain operational after 2028 and until at least 2040.

IT IS FURTHER ORDERED that the Companies proceed with the ELG projects at all three Plants including the Mitchell plant.

IT IS FURTHER ORDERED that additional prudent investments and continuing operations costs at the Plants that would not be incurred but for this Commission's order to operate the Plants beyond 2028 should not be the responsibility of Virginia and Kentucky jurisdictional customers as long as the KYPSC and VSCC continue to prohibit their jurisdictional customers from sharing in the costs and as long as they do not share in the capacity and energy available from the Plants.

IT IS FURTHER ORDERED that due to the decisions of Virginia and Kentucky that would require the Plants to shut down after 2028, APCo and WPCo should not share capacity or energy from the Plants with customers in those states that are not paying for the ELG compliance costs or for any new capital investment and continuing operations costs incurred to allow the Companies to operate the Plants after 2028 or prevent downgrades prior to 2028.

IT IS FURTHER ORDERED that the Companies will be given the opportunity to recover, from West Virginia customers, the new capital and operating costs arising solely from our directive to operate the Plants beyond 2028 if the Commission finds that the costs are reasonably and prudently incurred.

IT IS FURTHER ORDERED that the changes in the Operating Agreement for the Mitchell plant or changes in ownership of the Mitchell plant necessary to accommodate the continued operation of the plant without the involvement of Kentucky Power Company or Kentucky jurisdictional customers shall be filed for approval by this Commission.

IT IS FURTHER ORDERED that upon entry of this Order this case shall be removed from the Commission's docket of open cases.

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

A True Copy, Teste,

Connie Graley

Connie Graley, Executive Secretary

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VERIFICATION

The undersigned, Brett Mattison, being duly sworn, deposes and says he is President and COO of Kentucky Power Company, that he has personal knowledge of the matters set forth in the foregoing responses and the information contained therein is true and correct to the best of his information, knowledge, and belief after reasonable inquiry.

Brett Mattison

Brett Mattison

Commonwealth of Kentucky)
)
County of Boyd)

Case No. 2021-00004

Subscribed and sworn before me, a Notary Public, by Brett Mattison this 13th day of October, 2021.

Scott E. Bishop
Notary Public

SCOTT E. BISHOP
Notary Public
Commonwealth of Kentucky
Commission Number KYNP32110
My Commission Expires Jun 24, 2025

My Commission Expires 6/24/2025

Notary ID Number: KYNP 32110