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**

RESPONSE BRIEF OF ATTORNEY GENERAL AND KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

The Attorney General, through his Office of Rate Invention ("AG"), and Kentucky Industrial Utility Customers, Inc. ("KIUC") submit this Response Brief in support of their recommendations to the Kentucky Public Service Commission ("Commission" or "KPSC") in the above-captioned proceeding. AG-KIUC request the Commission to adopt the Case 2 scenario presented by Kentucky Power Company ("Kentucky Power" or "Company") in this proceeding, under which the Company is authorized to comply with the Coal Combustion Residuals ("CCR") Rule, but not the Steam Electric Effluent Limitation Guidelines ("ELG") Rule, and the Mitchell power plant located in Moundsville, West Virginia is retired in 2028.

INTRODUCTION

On February 8, 2021, Kentucky Power filed an Application in the above-captioned proceeding requesting Commission approval of a Certificate of Public Convenience and Necessity ("CPCN") authorizing certain construction and environmental projects at the Mitchell Generating Station necessary to comply with both the CCR and ELG Rules ("Project 22"), approval of the Company's 2021 Environmental Compliance Plan, approval of Tariff E.S. amendments to reflect implementation of its request, and all other required approvals and relief.

The Application presents two potential environmental compliance scenarios for the Mitchell plant: Case 1, under which Kentucky Power complies with both the CCR and ELG Rules and the Mitchell plant retires in 2040; and Case 2, under which Kentucky Power complies only with the CCR Rule and the Mitchell plant retires in 2028. The Company's initial economic analysis indicated that the continued operation of the Mitchell Plant through 2040 would result in net present value savings of $27 million compared to retiring the Mitchell plant in 2028 without carbon regulation.[1] That analysis indicated that with assumed carbon regulation (currently there is no legally mandated cost of CO2 emissions), continued operation of the Mitchell Plant through 2040 would result in a net present value cost of $6 million compared to retiring the Mitchell plant in 2028.[2]

The Commission should approve a CPCN for the projects included in Kentucky Power's request necessary to comply with the CCR Rule, but should deny a CPCN for the projects necessary to comply with the ELG Rule since the Company has not sufficiently demonstrated a need to pursue the ELG scenario consistent with KRS 278.020(1).[3] Indeed, the Company's Net Present Value ("NPV") analysis demonstrates no material savings from continuing operation of the Mitchell Plant beyond 2028 in the absence of carbon regulation and a potential for increased costs associated with that approach should carbon regulation be implemented prior to 2040.[4]

Moreover, as discussed in detail below, the Company's analysis contains numerous quantitative errors that, when corrected, project substantially more savings to customers under the CCR-only approach than the CCR/ELG approach, particularly when the remaining Mitchell net book value and decommissioning costs are securitized. Like the Company's assumption

[1] Direct Testimony of Mark A. Becker ("Becker Direct") at 4:5-5:9.
[2] Becker Direct at 4:5-5:9.
[3] *Kentucky Utilities Co. v. Public Serv. Comm'n*, 252 S.W.2d 885, 890 (Ky. 1952).
[4] Direct Testimony of Lane Kollen ("Kollen Testimony") at 5:9-12; Initial Brief of Kentucky Power ("Kentucky Power Brief") at 9.

about potential future CO2 regulation, there is currently no securitization legislation in Kentucky. But considering probable future events in a CPCN case is appropriate. Several qualitative factors weigh heavily in favor of the Case 2 approach. Including the increased flexibility to craft a new resource capacity mix for Kentucky Power of fossil and renewable generation that promotes the Commonwealth's economic interests rather than providing substantial economic development benefits to West Virginia.

Given that Kentucky Power has not met its burden of proof to demonstrate a need to adopt the Case 1 approach, the Commission should approve a CPCN only for the Case 2 approach.

ARGUMENT

I. The Commission Should Approve a CPCN For The Case 2 Approach Outlined By Kentucky Power Rather Than The Case 1 Approach.

A. The Company's NPV Analysis Includes Several Quantitative Errors That, When Corrected, Reflect Greater Customer Savings Under Case 2 Than Under Case 1.

As the Companies' NPV analysis reflects, the quantitative results of approving Case 1 versus Case 2 are very close. The Company notes the differences are relatively immaterial compared to its total revenue requirement.[5] However, when the quantitative errors in the NPV studies are corrected, the economics of Case 2 improve significantly compared to Case 1.

In response to the quantitative errors in the NPV analysis discovered by AG-KIUC, Kentucky Power provided a nominal dollar analysis of the savings associated with the Case 1 approach.[6] But the use of a nominal dollar analysis for purposes of assessing the proper environmental compliance plan for the Mitchell plant over decades is improper given such an

[5] Initial Brief of Kentucky Power ("Kentucky Power Brief") at 9 (*"[t]he result of Company witness Becker's NPV economic analysis for each compliance alternative was similar, resulting in a less than 1% difference in the total NPV between the two cases.").*

[6] Rebuttal Testimony of Mark A. Becker ("Becker Rebuttal") at 12:3-13:10.

analysis fails to recognize the time value of money (i.e. the worth of a dollar to customers today versus twenty to thirty years in the future). Doing so runs counter to the Commission's well-established practice of relying upon NPV analyses, not nominal dollar analyses, when considering utility CPCN requests made pursuant to KRS 278.020.[7] AG-KIUC are not aware of any Commission decision approving a CPCN for a long-lived asset on the basis of a nominal dollar analysis. Accordingly, the only lawful basis upon which to base a decision in this proceeding is the NPV analysis.

1. Kentucky Power Grossly Overstates The Cost Of Solar Resources.

The assumptions used in Kentucky Power's NPV analysis with respect to solar resources is flawed and improperly skews the results. The Company's NPV assumptions result in a levelized cost for energy and capacity of approximately $55/MWh each year for self-owned solar resources during the Case 1 and Case 2 study period.[8] Kentucky Power's modeling did not consider solar PPAs at all.[9] Because of this excessive solar pricing assumption, Kentucky Power's analysis reflects only self-owned solar resource additions of approximately 40 MW in any one year, with cumulative additions of 122 MW in both cases.[10]

Actual pricing for solar PPAs today is approximately half the $55/MWh cost assumed by Kentucky Power. For example, Big Rivers recently entered into several twenty-year energy and

---

[7] *See e.g. In the Matter of Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity to Construct and Acquire a 345 kV Transmission Line in Hancock, County, Kentucky*, Case No. 2018-00004, Order (July 12, 2018); *In the Matter of Application of East Kentucky Power Cooperative, Inc. for Approval to Amend Its Environmental Compliance Plan and Recover Costs Pursuant to Its Environmental Surcharge, Settlement of Certain Asset Retirement Obligations and Issuance of a Certificate of Public Convenience and Necessity and Other Relief*, Case No. 2017-00376, Order (May 18, 2018); *In the Matter of Electronic Application of Duke Energy Kentucky, Inc. for a Certificate of Public Convenience and Necessity for Dry Bottom Ash Conversion of the East Bend Generating Station*, Case No. 2016-00268, Order (February 23, 2017); *In the Matter of Application of East Kentucky Power Cooperative, Inc. for Approval of the Acquisition of Existing Combustion Turbine Facilities from Bluegrass Generation Company, LLC at the Bluegrass Generating Station in Lagrange, Oldham County, Kentucky and for Approval of the Assumption of Certain Evidences of Indebtedness*, Case No. 2015-00267, Order (December 1, 2015); *In the Matter of Applicaton of Owen Electric Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a Two Megawatt Distributed Generation Facility in Owen County, Kentucky*, Case No. 2015-00213, Order (October 30, 2015).

[8] Ex. LK-11 (Response to SC 1-17, Attachment 1).

[9] Kollen Testimony at 14:17-18.

[10] Kollen Testimony at 16:1-2.

capacity solar PPAs with levelized costs ranging from $27.30 to $29.60/MWh.[11] And KU/LG&E recently entered into a twenty-year solar PPA with levelized energy and capacity costs of $27.82/MWh.[12]

If the self-owned solar in Kentucky Power's analysis is priced on a levelized basis comparable to the solar PPAs, then the Case 1 savings (with carbon) is overstated by $8 million on a NPV basis as compared to Case 2.[13] In other words, the present value savings in Case 2 (with carbon) increases from $6 million in the Company's calculations to $14 million compared to Case 1 with this one change.[14] And the savings would be greater if Kentucky Power's Plexos model selected solar economically based on current market pricing.[15]

In response to AG-KIUC's criticism of its excessive solar pricing assumption, Kentucky Power argues that comparing twenty-year PPAs to thirty-year self-owned resources is inappropriate.[16] But given current solar pricing costs, even under a thirty-year approach, it is highly unlikely that the pricing of a new ten-year solar PPA after the initial twenty-year solar PPA terminates would increase so dramatically as to equate to the $55/MWh assumption contained in the NPV analysis. Accordingly, even accepting Kentucky Power's criticism of a twenty-year versus thirty-year comparison, current market conditions do not support Kentucky Power's $55/MWh solar pricing assumption.

2. Kentucky Power Fails To Recognize The Tax Benefits Associated With Retiring Mitchell In 2028 Rather Than 2040.

Contrary to Kentucky Power's analytical assumptions, the "*sunk cost*" associated with

[11] Ex. LK-12 (Response to AG 1-43 in Case No. 2020-00183).
[12] Ex. LK-13 (Rebuttal Testimony of Robert Conroy, Case Nos. 2020-00349 and 2020-00350, Rebuttal Ex. RMC-1 at 20, stating that "'*Solar Energy Payment Rate*' *means $27.82/MWh.*").
[13] Kollen Testimony at 16:2-5.
[14] Kollen Testimony at 16:5-7.
[15] Kollen Testimony at 16:7-9.
[16] Kentucky Power Brief at 23-24.

retiring Mitchell in 2028 rather than 2040 is not identical.[17] In fact, the income tax effects, based on the timing of Mitchell's retirement differ signicantly. If the Mitchell units retire in 2028 rather than 2040, then the remaining tax basis is deductible as an "*abandonment loss*" for income tax purposes in 2028 rather than 2040, thus effectively accelerating the tax benefits reflected in accumulated deferred income taxes ("ADIT"). This tax benefit increases the NPV savings of retiring Mitchell in 2028 compared to 2040.

When the Mitchell Plant is retired, the remaining tax basis is deductible as an "*abandonment loss*" in the year of the retirement. Effectively, the retirement accelerates all future tax depreciation. After the "*abandonment loss*" deduction, the remaining tax basis for the Mitchell plant will be zero dollars ($0). Similar to accelerated tax depreciation, this is a temporary difference, resulting in a current tax deduction even though the remaining net book value is depreciated or amortized over a longer period for accounting and ratemaking purposes. There is no change in the net book value upon retirement, so the "*abandonment loss*" deduction temporary difference results in an incremental liability ADIT amount equal to the "*abandonment loss*" times the combined federal and state income tax rate.[18]

The "*abandonment loss*" results in a monetization (through a reduction in current income tax expense and income tax payable and an increase in deferred income tax expense and liability ADIT) of the remaining tax basis of the Mitchell Plant, twelve years before it otherwise would be fully monetized if it is retired in 2040. The additional ADIT is subtracted from the Mitchell Plant rate base and reduces the revenue requirement starting in 2028 and continuing through 2040 compared to the retirement in 2040, albeit on a declining basis over that time period. The additional ADIT will reverse over the twelve years from 2029 through 2040 or longer, depending on the amortization period approved by the Commission for the recovery of the remaining net

[17] Kollen Testimony at 19:8-20:6.
[18] Corrected Supplemental Testimony of Lane Kollen ("Kollen Supplemental Testimony") at 2:12-25.

book value.[19]

The savings from taking this "*abandonment loss*" by retiring the Mitchell plant in 2028 is estimated at $28.8 million on an NPV basis (2028 dollars). This estimate assumes straight line tax depreciation and no plant additions or retirements for the eight years from January 1, 2021 through December 31, 2028. Although not as precise as if the Company had performed the calculation itself using its fixed asset software, this is a reasonable estimate of the effect of the "*abandonment loss*" deduction on the economics of Case 2 compared to Case 1.[20]

The Company continues to ignore the tax benefits resulting from retiring Mitchell in 2028. Indeed, Kentucky Power's Rebuttal Testimony and Brief do not address those potential benefits at all. Neverthless, those tax savings of approximately $28.8 million NPV are significant and further bolster the case that retiring the Mitchell plant in 2028 is the economic choice.

3. Kentucky Power Fails To Recognize The Benefits Of Levelizing Recovery Of Mitchell Costs Through Its Decommissioning Rider.

Kentucky Power's analysis likewise fails to consider the NPV savings associated with levelizing recovery of Mitchell's remaining net book costs via a rider if Mitchell is retired in 2028 rather than in 2040. The Company warns that even if it is more economic on an NPV basis to retire the units in 2028,[21] large rate increases could result in 2029 associated with replacement capacity. However, the Commission could lessen these potential impacts by utilizing Kentucky Power's current Decommissioning Rider to provide for levelized recovery of the remaining net book value of the Mitchell plant, thus addressing the Company's concern.[22] Kentucky Power argues that the Commission should not utilize the Decommissioning Rider based upon the

[19] Kollen Supplemental Testimony at 3:27-4:38.
[20] Kollen Supplemental Testimony at 4:40-54.
[21] Direct Testimony of Mark Becker, Figure 1 at 7.
[22] Kollen Testimony at 24:16-25:4.

current record in this case.[23] But that does not preclude the Commission from doing so in a future proceeding prior to the Mitchell plant's retirement. An even more effective way to mitigate the rate impact of paying for the remaining net book costs of Mitchell while paying for replacement capacity at the same time is securitization. We discuss securitization *infra*.

4. Kentucky Power Acknowledges Its Errors With Respect To The Investment Tax Credits and Production Tax Credits.

AG-KIUC witness Kollen described several additional errors that, when corrected, increase the projected savings associated with pursuing Case 2 rather than Case 1, including: 1) the Company's failure to reflect current federal law regarding investment tax credits on new owned solar resources;[24] and 2) the Company's failure to reflect current federal law regarding production tax credits on new wind resources.[25] Kentucky Power acknowledges these criticisms, but states that remedying the errors discovered by witness Kollen would not materially impact the results of its analysis.[26] Regardless, the Commission should use the correct analysis for purposes of its decisionmaking in this proceeding.

5. The Commission Should Reject Kentucky Power's Proposal To Increase Depreciation Rates Associated With The Contemplated Environmental Compliance Projects.

Regardless of whether the Commission approves the Case 1 or Case 2 approach, Kentucky Power proposes to increase the depreciation rates in its Environmental Surcharge for the proposed environmental compliance projects. The Commission should reject this recommendation and direct the Company to use the presently authorized depreciation rates for any projects approved in this proceeding. The Company will be able to fully recover the

[23] Kentucky Power Brief at 38-40.
[24] Kollen Testimony at 20:1-22:6.
[25] Kollen Testimony at 22:8-23:16.
[26] Becker Rebuttal at 14:18-16:6.

remaining net book value after retirement in 2028 through its Decommissioning Rider.[27]

6. Securitization

Although not currently an option under Kentucky law, securitization financing would result in $156 million NPV savings if the Mitchell plant is retired in 2028.[28] Such savings would not be available if Mitchell is retired in 2040 because the remaining net book value could not be paid off through securitization financing and the revenue requirement through 2040 would continue to include a grossed-up rate of return based on the Company's common equity and long-term debt financing.[29]

It is proper to consider the potential benefits of securitization even though it is not currently in the law, just as it is proper to consider the potential costs of CO2 regulation even though it is not currently in the law. Kentucky Power itself included carbon cost assumptions as a major factor in its NPV analysis,[30] despite the fact that carbon pricing is not currently the law. The Commission can assign probable future events the appropriate evidentiary weight.

Securitization of coal plants is increasingly becoming an industry norm. Over 25 states have passed legislation providing for securitization of retiring coal plants, storm damage and other costs.[31] And multiple state utility commissions have already acted upon that enabling legislation.

For example, in April of 2020, the New Mexico Regulation Commission approved Public Service Company of New Mexico's proposal to securitize up to $361 million in costs associated

---

[27] Kollen Testimony at 27:3-12.
[28] "*Utility Cost Recovery Through Securitization is Credit Positive*," Moody's Investor Service (July 18, 2018), included as Attachment 1.
[29] Kollen Testimony at 25:8-13.
[30] Becker Direct at 4:5-5:9.
[31] See, e.g., Michigan Customer Choice and Electric Reliability Act, Michigan Compiled Laws 460.10h-460.10o; New Mexico Energy Transition Act, New Mexico Statutes Annotated Chapter 62-18-1 through 62-18-23; Colorado Energy Impact Bond Act, Color. Rev. Stat. Title 40, Article 41. *See also* "Map of States with Some Form of Enabling Legislation for Ratepayer-Backed Bond (ROC/RRB/RBB) Utility Securitization Financings," available at https://saberpartners.com/roc-map/

with the abandonment of the San Juan coal plant.[32] Additionally, in December 2020, the Michigan Public Service Commission approved Consumers Energy's proposal to use $688.3 million in securitized bonds to retire the D.E. Karn coal plant, saving customers $124 million.[33] Accordingly, in light of the real possibility that either carbon pricing or securitization of coal plant retirement costs may occur over the thirty year period at issue in this case, the Commission can both recognize the current state of the law and give those considerations their due weight.

The total savings resulting from securitization financing under Case 2 would be approximately $156 million on an NPV basis. These substantial savings would result from paying off the estimated $391 million (jurisdictional) in remaining net book value and estimated decommissioning costs as of December 31, 2028 financed at the Company's grossed-up cost of 7.62%, the presently authorized return determined in Case No. 2020-00174, and replacing that financing with an equivalent amount of securitization debt issued by a Special Purpose Entity ("SPE") at an estimated cost of 3% - a 4.62% financing cost rate reduction.[34]

Under this approach to Case 2, the Commission could use Kentucky Power's existing Decommissioning Rider to recover the specific securitization revenues from customers. The Decommissioning Rider would likewise be an effective mechanism by which to implement the initial securitization rate reductions. There would be rate reductions because the securitization cost would be less than the financing costs of Mitchell currently being recovered in base rates and the Environmental Surcharge. And the Decommissioning Rider would be adjusted annually as the revenue requirement changes.[35]

AG-KIUC do not advocate in favor of securitization for purposes of accelerating the

[32] *In the Matter of Public Service Company of Mexico's Abandonment of San Juan Generating Station Units 1 and* 4, Case No. 19-00018-UT, Order (April 1, 2020).
[33] *In the Matter of the Application of Consumers Energy Company for a Financing Order Approving the Securitization of Qualified Costs*, Case No. U-20889, Order (December 17, 2020).
[34] Kollen Testimony at 25:19-26:9.
[35] Kollen Testimony at 26:11-27:1.

retirement of coal plants in Kentucky. Indeed, AG-KIUC strongly support the operation of Kentucky coal plants for as long as the units are economical. Many Kentucky citizens, businesses local governments and school districts heavily rely on the Kentucky coal industry. However, in this instance, the West Virginia Mitchell plant provides almost no economic benefit to the Kentucky economy and the savings to ratepayers from retiring the units in 2028 rather than 2040 are substantial, particularly if securitization is used.

B. The Company's Analysis Ignores Several Qualitative Factors That Weigh Heavily In Favor Of Adopting The Case 2 Approach.

1. Operating The Mitchell Plant Beyond 2028 Forces Kentucky Power Customers To Pay Millions of Dollars To Provide Economic Benefits To West Virginia That May Otherwise Flow To Kentucky.

Continuing operation of Mitchell through 2040 perpetuates economic development benefits to West Virginia that could otherwise flow to Kentucky if future capacity resources used by the Company were located within the Commonwealth. For instance, in 2020, the Mitchell plant employed 225 people with an average total compensation of $144,477, for a total annual employee cost of $32.5 million.[36] Those employees resided in West Virginia and Ohio. No employees resided in Kentucky.[37] And while the Company does not know where its onsite contractors reside,[38] it is likely that they reside in either West Virginia and Ohio since those states are within a reasonable distance and commute to and from the plant site.[39]

Additionally, 99.3% of the coal burned at the Mitchell plant (or 1,229,276 tons) in 2020 came from West Virginia, with only the remaining 0.7% (9,250 tons) coming from Kentucky.[40] That year, West Virginia received $2.963 million in state and local taxes, $6.285 million in business and occupation taxes, $0.159 million in state unemployment taxes, and $0.992 million

[36] Ex. LK-5 (Kentucky Power Response to AG-KIUC 1-8)
[37] Ex. LK-4 (Response to AG-KIUC 1-7).
[38] Ex. LK-6 (Response to AG-KIUC 1-9).
[39] Kollen Testimony at 10:1-6.
[40] Kollen Testimony at 9:8-11; Ex. LK-3 (Response to AG-KIUC 1-4).

in state employment taxes from the Mitchell plant.[41] Total West Virginia tax revenue in 2020 was $10.4 million. Kentucky has never received any tax revenue from the Mitchell plant, nor will it in the future.[42]

As these statistics reflect, the Mitchell plant provides little to no economic value to the Commonwealth. While retiring the Mitchell plant in 2028 continues this lopsided practice for several more years, the Case 2 approach resolves this issue sooner than the Case 1 scenario while allowing the Company time to secure replacement capacity, potentially located in Kentucky.

Conversely, the Mitchell plant provides significant economic value to West Virginia and its communities,[43] increasing the likelihood that the West Virginia Commission will authorize the ELG compliance scenario. But even in the event that this Commission and the West Virginia Commission reach different decisions with respect to the ELG scenario, Kentucky Power or its new owner could explore selling its 50% undivided ownership interest in one or both of the Units to Wheeling Power Company, Appalachian Power Company, or another party, or otherwise restructuring its ownership interest in the Mitchell Plant.[44]

2. Approving Case 2 Mitigates The Political And Economic Risks Inherent In Case 1.

Kentucky Power's proposal to invest millions of dollars to enable continued operation of a West Virginia coal plant through 2040 fails to adequately address the risk exposure inherent in that approach. Indeed, political, environmental or economic changes could force the Company to retire the Mitchell plant before 2040, even if customers paid for Mitchell's ELG compliance as a result of this proceeding. Such changes could include enactment of stricter carbon legislation than assumed by the Company and/or regulation that will require additional

[41] Ex. LK-8 (Response to AG-KIUC 1-11).
[42] Kollen Testimony at 11:1-11:4.
[43] Kollen Testimony at 11:6-9.
[44] Kollen Testimony at 11:6-19.

capital investment, restrictions on the ability of the Mitchell Plant to operate, and/or increase the cost to operate, as well as shifting economics of commercially available natural gas and renewable resources.[45] Adopting the Case 2 approach significantly mitigates this risk exposure.

3. Approving Case 2 Provides Greater Flexibility Regarding The Utility's Future Resource Mix Than Case 1.

Case 2 provides greater flexibility and opportunity to determine the best path forward for both the Company and the Kentucky economy than Case 1, which doubles down on the continued operation of a coal-fired plant located in West Virginia for nearly twenty years.

American Electric Power ("AEP") recently announced that it has made the decision to divest the Company and redeploy the sale proceeds to other investments after a recent comprehensive portfolio review.[46] Selling Kentucky Power is likely to be easier with a 2028 end date to the ownership of an aging West Virginia coal plant. A new owner will have a different asset base, cost structure, including financing cost structure, and customer base. These differences could result in significantly different alternatives and economic outcomes than under AEP's ownership of the Company and its continued ownership and operation of the Mitchell Plant. For example, under a generation and transmission cooperative ownership structure, the new owner would have a significantly lower financing cost than under AEP's ownership for the same assets, including the remaining net book value of the Mitchell Plant.[47]

Additionally, a new owner would not be party to the AEP Transmission Agreement. Exiting that Agreement likely would result in lower transmission costs for Kentucky Power's customers.[48] A new owner of the Kentucky Power assets and service territory is probably the best way to address the $19 million (and growing) transmission subsidy paid by Kentucky

[45] Kollen Testimony at 6:11-17.
[46] Kollen Testimony at 7:5-7 (citing Q1 Earnings Call held April 22, 2021).
[47] Kollen Testimony at 7:2-14.
[48] Kollen Testimony at 29:16-18.

consumers to other AEP affiliates.[49] The Commission was adamant about this in the Company's recent rate case order, explaining that *"[T]he Commission is putting the utility on notice that its transmission planning and investment activities are not sustainable and must be substantively addressed in the near future."*[50]

Ultimately, regardless of whether Kentucky Power is owned by AEP or another entity, retiring the Mitchell Plant in 2028 provides the Company and Commission an opportunity to assess the economics of new owned or purchased natural gas generation or other resources located in Kentucky. In this manner, Kentucky and its communities could be beneficiaries of an expanded state and local tax base, just as West Virginia and its communities have been beneficiaries of the Mitchell plant. And Kentucky Power would have flexibility to craft an economic resource mix that works best for the Commonwealth beyond 2028. As a Fixed Resource Requirement ("FRR") entity in PJM, Kentucky Power can lawfully meet its PJM reserve requirements through self-owned capacity, demand response, energy efficiency, or through capacity purchased from third parties, provided that capacity has not cleared in PJM's RPM auctions.[51] Hence, retirement of the Mitchell plant in 2028 opens up wide-ranging opportunities for Kentucky. If West Virginia elects to operate Mitchell through 2040, then a contractual restructuring and renegotiation would be required.

[49] Case No. 2020-00174 Order (January 13, 2021) at 59.
[50] Id. at 60.
[51] PJM Reliability Assurance Agreement, Schedule 8.1, Section D (authorizing the "*purchase of capacity*" to be included in an FRR Capacity Plan).

WHEREFORE, the Commission should approve a CPCN for Kentucky Power's Case 2 approach with no increases in depreciation rates under the Company's Environmental Surcharge.

Respectfully submitted,

DANIEL J. CAMERON
ATTORNEY GENERAL

J. Michael West, Esq.
Lawrence W. Cook, Esq.
Angela Goad, Esq.
John G. Horne II, Esq.
Assistant Attorneys General
700 Capital Ave, Suite 20
Frankfort, KY 40601-8204
Ph: 502.696.5433 Fax: 502.573.1005
John.Horne@ky.gov
Michael.West@ky.gov
Larry.Cook@ky.gov
Angela.Goad@ky.gov

/s/ Michael L. Kurtz

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: 513.421.2255 Fax: 513.421.2764
mkurtz@BKLlawfirm.com
kboehm@BKLlawfirm.com
jkylercohn@BKLlawfirm.com

COUNSEL FOR KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

June 24, 2021