

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

Kentucky Power Company's Update Of West Virginia Proceedings
For The Period June 27, 2022-July 4, 2022

Kentucky Power Company provides the following update regarding proceedings before the Public Service Commission of West Virginia:

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN.

The Public Service Commission of West Virginia on July 1, 2022 entered its order in Case No. 21-0810-E-PC regarding Wheeling Power Company's petition seeking the West Virginia commission's consent and approval of the Mitchell Ownership Agreement and the Mitchell Operating Agreement between Kentucky Power and Wheeling Power. A copy of the order is filed with this update as **EXHIBIT 1**.

Wheeling Power is reviewing the West Virginia commission's order and will make appropriate filings with the West Virginia commission on or before July 11, 2022.

Kentucky Power is reviewing the West Virginia commission's order to determine whether the Mitchell Plant agreements as approved by the West Virginia commission are consistent or inconsistent with this Commission's orders related to those agreements, including

its May 3, 2021 Order in Case No. 2021-00421,¹ and will advise the Commission of its findings in a future update.

Subsequent updates will be filed at ten-day intervals or more frequently as circumstances require.

Respectfully submitted,



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COUNSEL FOR
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¹ *In the Matter of: Electronic Application Of Kentucky Power Company For Approval Of Affiliate Agreements Related To The Mitchell Generating Station.*

Exhibit 1

**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 1st day of July 2022.

CASE NO. 21-0810-E-PC

APPALACHIAN POWER COMPANY and
WHEELING POWER COMPANY,
public utilities.

Petition for consent and approval to enter into Ownership and
Operating Agreements for the Mitchell Plant.

COMMISSION ORDER

The Commission grants its consent to enter into ownership and operating agreements with modifications.

BACKGROUND

On November 19, 2021, Appalachian Power Company (APCo) and Wheeling Power Company (WPCo or Wheeling) (together, Companies) filed a petition (Petition) for consent and approval for WPCo to enter into certain Ownership and Operating Agreements (Agreements) with an affiliate, Kentucky Power Company, for the Mitchell electric generating plant (Mitchell) that is the subject of this case.¹ The Companies are represented by Keith D. Fisher, Esq. of APCo and William C. Porth, Esq., Anne C. Blankenship, Esq., and Jonathan C. Stanley, Esq. of Robinson & McElwee, PLLC.

The Commission granted intervenor status to the West Virginia Energy Users Group (WVEUG) represented by Derrick P. Williamson, Esq. Barry A. Naum, Esq., Susan J. Riggs, Esq., and Jason C. Pizatella, Esq. of Spilman Thomas & Battle PLLC; the Consumer Advocate Division (CAD) represented by Robert F. Williams, Esq., Heather B. Osborn, Esq., and John Auville, Esq.; the West Virginia Coal Association (WVCA) represented by H. Brann Altmeyer, Esq. and Jacob C. Altmeyer, Esq. of Phillips, Gardill, Kaiser, & Altmeyer, PLLC; and West Virginia Citizens Action Group, Solar United Neighbors, and Energy Efficient West Virginia (CAG/SUN/EEWV) represented by Emmett Pepper, Esq.

¹ APCo and WPCo, although separate companies, are combined for ratemaking purposes in West Virginia. APCo is a petitioner solely because of it having common rates with WPCo. APCo is not a party to the Mitchell Agreements. We will refer to "Companies" meaning both APCo and WPCo when discussing activities in this case because of the joint filing although the Agreements do not involve APCo.

of Pepper & Nason, and Shannon Fisk, Esq., Raghava Murthy, Esq., and Melissa Anne Legge, Esq. of Earthjustice. Commission Orders, January 25, 2022, and February 8, 2022.

On March 18, 2022, the Companies filed a modified Ownership Agreement.

An evidentiary hearing was held on April 7, 2022. Prior to the evidentiary hearing, the Companies filed supplemental direct testimony on March 18, 2022, and Staff, CAD, and CAG/SUN/EEWV filed direct testimony of witnesses on March 28, 2022.² The Companies filed rebuttal testimony on April 4, 2022. On April 15, 2022, the Companies filed Commission Post-Hearing Exhibits (Commission PHE) 1 through 3 and CAD Post-Hearing Exhibits (CAD PHE) 1 through 3. The Companies filed portions of Commission PHE 1 and 3, and CAD PHE 3 under seal. All parties filed initial briefs. Filings, April 19, 2022. CAG/SUN/EEWV, CAD, and the Companies filed reply briefs. Filings, April 26, 2022.

DISCUSSION

The Companies proposed two agreements for Commission approval – the Mitchell Plant Ownership Agreement (Ownership Agreement) and the Mitchell Plant Operations and Maintenance Agreement (O & M Agreement) between WPCo and Kentucky Power Company (KPCo). These agreements were filed in this case and with the Kentucky Public Service Commission (KPSC or Kentucky Commission) in Case No. 2021-00421 with KPCo seeking permission to enter into these agreements in that case. The Companies filed a revised Ownership Agreement in the Kentucky case on March 15, 2022, and in this West Virginia case on March 18, 2022. The revised Ownership Agreement included a unit interest swap provision in addition to the originally proposed buyout transaction. Cos. Exh. CTB-SD at 1-2.

WPCo currently operates Mitchell under an Operating Agreement with KPCo and American Electric Power Services Corporation (Current Operating Agreement) with KPCo as operator. This Commission approved the Current Operating Agreement by Commission Order entered December 30, 2014, in Case No. 14-0546-E-PC. The Companies believe that the Current Operating Agreement between WPCo and KPCo must be replaced. The Companies stated that physical construction to complete United States Environmental Protection Agency required Effluent Limitation Guideline (ELG) work is not scheduled to begin on Mitchell until the operator status is assumed by WPCo.³ April 7, 2022 Evidentiary Hearing Transcript (Tr.) at 69, 98, 135, 138, and 181; Cos. Initial Brief at 4-5. The

² WVEUG elected not to file direct testimony in this case. Letter, March 23, 2022. WVCA did not file direct testimony either.

³ In Case No. 20-1040-E-CN, the Commission approved certificates of convenience and necessity for the Companies to complete Coal Combustion Residue control projects and ELG control projects for Mitchell and two other coal-fired generation plants in West Virginia.

Companies believe that, because permits for Mitchell are held by KPCo, and the Kentucky Commission did not grant permission to KPCo to perform ELG upgrades, no one can work on these upgrades until the appropriate permits are transferred to WPCo. Tr. at 135.

The Current Operating Agreement is sufficient to allow WPCo to make and pay for unilateral investments in the plant and to dispatch up to 100 percent of the capacity of the plant even if KPCo does not choose, or is not allowed, to participate in necessary investments or in sharing the capacity and energy from the plant in the future. We do not believe that all of the changes and refinements contemplated in the Agreements are necessary. However, it is clear to us that WPCo should assume the role of the operator of the plant because the Kentucky Commission has decided to forbid investments by KPCo in equipment that is necessary to allow the plant to run beyond 2028. Tr. at 143, 145, and 169; Kentucky Power Co., Case No. 2021-00004 (KY PSC, Jul. 15, 2021) at 18-19.

We are inclined to believe that it is best to focus on the operation of and investment in Mitchell going forward which may be accomplished with minor changes in the Current Operating Agreement. Under the Current Operating Agreement, WPCo has the right to make investments necessary to keep the plant open and operating and to dispatch 100 percent of the capacity of the plant. Any new agreements must provide the same right to WPCo.

The Kentucky Commission has decided to require KPCo to forego new investments necessary to allow operation of Mitchell after 2028 and seems to prefer that KPCo not retain an ownership interest after it abandons its rights to generate electricity from the plant. Kentucky Power Co., Case No. 2021-00004 (KY PSC, Jul. 15, 2021); Kentucky Power Co., Case No. 2021-00421 (KY PSC, May 3, 2022). We make it clear, and will require WPCo to affirm, that termination of KPCO's undivided fifty percent share of the plant will not force WPCo to abandon the plant and also that KPCo will have no share of the capacity and energy output of the plant after the date that the plant would have to be shut down, but for the upgrades paid for by WPCo and the continuing investments by WPCo.

The Companies suggested that the Commission could approve the revised Ownership Agreement with or without Section 9.6 which provides for a transfer of KPCo's fifty percent undivided interest in Mitchell to WPCo or a unit swap whereby each company would own one unit of Mitchell and operate that unit independent from the other company. Cos. Exh. CTB-R at 14-17; Cos. Initial Brief at 12. Section 9.6 of the revised Ownership Agreement seems to be too speculative to provide any meaningful guidance for a possible transfer of KPCo's fifty percent undivided interest in Mitchell, and is not necessary for continued operation of the plant even after KPCo (or any successor) has abandoned its share of the Mitchell capacity and energy output. We will require the Companies to remove Section 9.6 and all related provisions from the revised Ownership Agreement. Additionally, we will require the Companies to modify the dispatch sections of the Ownership Agreement to mirror the dispatch language in the Operating Agreement. The

Commission will approve the Companies' proposed revised Ownership Agreement with modifications including the deletion of Section 9.6 as well as changes to make the agreement comport with the revised Current Operating Agreement as discussed above.

This Order attaches as Appendix A, the Commission-modified Operating Agreement that we will approve and authorize. We also have modified and attached hereto as Appendix B the Commission-modified Ownership Agreement that the Companies should review and, to the extent necessary, edit to assure that internal references and references to the Operating Agreement are consistent. For example, we note that the Operating Agreement is referred to as the O&M Agreement in some sections. The Companies may edit these agreements to refer consistently to either an Operating Agreement or O&M Agreement. The Companies may correct references to sections or sub-sections of each document when they file a final draft without redlining. We direct the Companies to make any necessary editorial, but not substantive, changes to make the documents internally consistent and consistent with each other and file those documents for review by the Commission. We will review, approve, and authorize the final documents if they comply with this Order.

This Commission's approval of a modified Current Operating Agreement and modified Ownership Agreement as discussed above does not presuppose approval of a purchase by WPCo or APCo of KPCo's (or its successor's) one-half undivided interest in Mitchell. The Companies must seek Commission consent and approval in a future case for any proposed sale of KPCo's (or its successor's) interest to WPCo and/or APCo. Upon such filing, we will consider a purchase by WPCo and decide on the reasonableness of any proposal based on the evidence at that time.

In that future proceeding, we will not allow WPCo to pass an unreasonable purchase price for an abandoned plant on to West Virginia customers. We did not force or influence in any way a Kentucky decision to forego necessary investments that are required to allow Mitchell to operate after 2028. Without those investments, the plant has no value as an electric generating plant after 2028. WPCo will be making those investments and West Virginia ratepayers will be paying for the capital costs of those investments as well as for all operating costs after 2028. The value of Mitchell as an operational plant capable of providing capacity and producing electricity beyond the date that the plant would cease operating, but for the WPCo investment, will exist only for WPCo and its customers, and not for any other entity. To the extent that certain equipment could be salvaged as useable generation plant equipment, it would be fair for WPCo to compensate KPCo (or its successor) for such equipment, considering its age, condition, and cost. However, West Virginia ratepayers should pay for no more than the net salvage value of such plant and equipment that would have to be abandoned or demolished (perhaps at considerable expense in excess of salvage value) but for WPCo's investments that allow the plant to continue to operate.

Approval of these agreements is made in conjunction with previous Orders in which the Commission has shown concern for the high costs for purchased capacity and energy paid by the Companies and the Commission's factoring-in of increased production when we calculated projected energy costs in Case No. 21-0339-E-ENEC. We expect the Companies to be vigilant and prudent when making self-generation decisions. We expect them to reduce energy costs by increasing production when self-generation from any plant, including coal-fired plants, will result in reduced energy costs for the Companies' customers. We also expect them to maintain their plants and coal inventories to be able to self-generate and achieve at least a sixty-nine percent capacity factor which will then allow them to make the self-generating decisions necessary to reduce their reliance on higher cost purchased power. Our concerns, which the Companies contested as speculative in Case No. 21-0339-E-ENEC, have proven to be justified in the last year as PJM energy market prices have escalated to unprecedented levels, reaching over \$100 per Megawatt hour on some days and consistently averaging in the \$70 to \$80 per Megawatt hour range month after month. The increasing PJM energy market prices make it even more important to maximize self-generation.

Furthermore, this Order does not change our approval in Case No. 20-1040-E-CN of ELG work needed to continue operating Mitchell and other coal-generated power plants owned by the Companies. The Companies should begin ELG work as soon as possible. If regulatory permits must be transferred from KPCo to WPCo to begin this work, the Companies should facilitate this transfer.

Finally, we remain concerned that the Companies have allowed their coal stockpiles to dwindle to dangerously low levels. They should reduce that trend and continue to maintain appropriate stockpiles of coal, of at least thirty days and ideally much more than thirty days, so that the coal-fired plants can provide the base load capacity and reliability that they were designed to provide.

Motion for Protective Treatment

The Companies filed a Motion for Protective Treatment of responses to CAD discovery requests 1.4 and 1.5. Motion, Mar. 23, 2022. The documents included (1) a Confidential Information Memorandum related to the sale of KPCo to Liberty Utilities Co. and involving pre-sale strategy; and (2) drafts of the Stock Purchase Agreement between the Companies through American Electric Power and American Electric Power Service Corporation and Liberty as well as drafts of the Ownership Agreement and O&M Agreement. The Companies did not provide public versions of these documents arguing that (1) the entirety of the documents were confidential due to their strategic nature; (2) the Commission did not provide for public filings in their March 11, 2022 Commission Order requiring production of the documents; (3) the time constraints of the Order made redaction impracticable; and (4) the documents are fully available to the parties that have entered into protective agreements with the Companies. Motion, Mar. 23, 2022, at 8.

On April 22, 2022, the Companies filed an Addendum to the Motion for Protective Treatment seeking confidential treatment for Commission PHE 1, Attachment 1, Commission PHE 3, Attachment 1, and CAD PHE 3, Attachment 1. The documents contain, respectively, (1) competitive market information relating to the Day-Ahead bids from the Mitchell plant into the PJM market; (2) information relating to the negotiated sales price of the Sporn Plant as opposed to the net value publicly disclosed; and (3) information related to inventory and capacity factors at the Mitchell Plant. The Companies argued that all of this information constitutes trade secrets that must be protected, and therefore, did not provide a public, redacted version of these documents. The Companies filed public versions of Commission PHE 3, Attachment 1 and CAD PHE 3, Attachment 1, but not for Commission PHE-1.

The Commission should never have to order a party to file a public copy of a document when the party files a redacted copy of that document. Rule 4.1.5 of the Commission Rules of Practice and Procedure (Procedural Rules), 150 C.S.R. 1, requires the filing of a public redacted version of any document filed under seal. Furthermore, we find it unreasonable to argue that every word of the Confidential Information Memorandum and drafts discussed above is redacted as a trade secret. The Companies are, or should be, very familiar with the Commission practices and prior Commission orders that instruct a party how to redact material. Peoples Gas WV, LLC et al., Case No. 20-0329, Comm'n Order, Jan. 14, 2022, at 8 (citing Monongahela Power Co., Case No. 09-1485-E-P, Comm'n Order, Oct. 28, 2010, at 2-3). The Companies will be directed to comply with Procedural Rule 4.1.5 by filing a public version of any documents filed under seal for which they have not yet filed a public version. These documents should be filed within ten days of the date of this Order as closed entries in this case.

No party objected to the Motion for Protective Order or Addendum. Because no party objected to the motion and no Freedom of Information Act (FOIA) request is pending, the Commission finds that it is unnecessary to rule on this motion at this time. The Commission will defer ruling on the motion until such time as a FOIA or other request is made for that information. The documents filed under seal are in the custody of the Executive Secretary and the Commission will continue to maintain the confidentiality of those documents. Upon the filing of a FOIA request pursuant to W. Va. Code § 29B-1-1, et seq., for the sealed information, the Commission will notify the Companies and will provide them with the opportunity to present arguments regarding continued protective treatment.

FINDINGS OF FACT

1. The Companies seek Commission approval of a proposed Ownership Agreement and an O&M Agreement. Petition, Nov. 19, 2021.

2. The Current Operating Agreement was approved by the Commission on December 30, 2014 in Case No. 14-0546-E-PC.

3. The Kentucky Commission decided to forbid investments by KPCo in equipment that is necessary to allow the plant to run beyond 2028. Tr. at 143, 145, and 169; Kentucky Power Co., Case No. 2021-00004 (KY PSC, Jul. 15, 2021) at 18-19.

4. Under the current Operating Agreement, WPCo has the right to make investments necessary to keep Mitchell open and operating and to dispatch 100 percent of the capacity of Mitchell.

5. Any value that Mitchell has as an operational plant capable of providing capacity and producing electricity beyond the date that the plant would cease operating, but for the WPCo investment, will exist only for WPCo.

6. The Companies filed a confidential version of responses to CAD discovery requests 1.4 and 1.5, but did not comply with Procedural Rule 4.1.5 by filing a public version of those documents. Additionally, the Companies did not file a public version of Commission PHE-1. Motion, Mar. 23, 2022, at 8; Responses, Apr. 15, 2022.

7. No one has filed a FOIA request for the information filed under seal.

8. No party objected to the request for protective treatment.

CONCLUSIONS OF LAW

1. The Current Operating Agreement is sufficient to allow WPCo to make and pay for unilateral investments in the plant and to dispatch up to 100 percent of the capacity of the plant even if KPCo does not choose, or is not allowed, to participate in necessary investments or in sharing the capacity and energy from the plant in the future.

2. The Commission should approve the modified Operating Agreement attached as Appendix A.

3. Because the Kentucky Commission decided to forbid investments by KPCo in equipment that is necessary to allow the plant to run beyond 2028, WPCo should assume the role of the operator of the plant.

4. We will require the Companies to remove Section 9.6 and all related provisions from the revised Ownership Agreement.

5. The dispatch sections of the revised Ownership Agreement should be modified to mirror the dispatch language in the revised Current Operating Agreement.

6. The Commission should approve the modified Ownership Agreement attached as Appendix B.

7. The Companies should begin ELG work on Mitchell in time to meet regulatory deadlines and should transfer any necessary permits from KPCo to WPCo to facilitate the initiation of that work, if necessary.

8. The Companies should comply with Procedural Rule 4.1.5 by filing a public version of any documents filed under seal for which they have not yet filed a public version.

9. The Commission should maintain confidentiality of the responses to CAD discovery requests 1.4 and 1.5. Commission PHE 1, Attachment 1, Commission PHE 3, Attachment 1, and CAD PHE 3, Attachment 1 filed under seal until such time as a FOIA or other request is made for that information.

ORDER

IT IS THEREFORE ORDERED that the Commission grants approval of the current Operating Agreement with modifications as attached hereto as Attachment A and an Ownership Agreement with modifications as discussed herein and as reflected on the redlined document attached hereto as Attachment B. The Companies shall make non-substantive edits to the Ownership Agreement to assure that it is internally consistent and consistent with the modified Operating Agreement and file a clean copy of each document as closed entries within ten days of the date of this Order. The Companies shall also file a redlined version based on a final (not redlined) version of the attached Operating Agreement and Ownership Agreement.

IT IS FURTHER ORDERED that the Companies shall cause permits for Mitchell to be transferred from KPCo to WPCo if necessary to begin ELG work on the plant.

IT IS FURTHER ORDERED that the Commission will reopen the case solely for the purpose of an Order that approves or modifies the documents filed by the Companies.

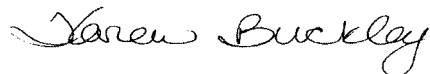
IT IS FURTHER ORDERED that the Executive Secretary of the Commission shall maintain under seal and separate and apart from the case file the information filed under seal in the Companies responses to CAD discovery requests 1.4 and 1.5, Commission Post Hearing Exh. 1, Attachment 1, Commission Post Hearing Exh. 3, Attachment 1, and CAD Post Hearing Exh. 3, Attachment 1.

IT IS FURTHER ORDERED that the Companies shall file, within ten days of the date of this Order, a public version of responses to CAD discovery requests 1.4 and 1.5 as well as Commission Post Hearing Exh. 1, Attachment 1.

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,

A handwritten signature in cursive script that reads "Karen Buckley".

Karen Buckley, Executive Secretary

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210810cd

MITCHELL OPERATING AGREEMENT

KENTUCKY POWER COMPANY

WHEELING POWER COMPANY

and

AMERICAN ELECTRIC POWER SERVICE CORPORATION, AS AGENT

THIS MITCHELL PLANT OPERATING AGREEMENT (“Agreement”), with an effective date of ~~December 31, 2014~~ (“Effective Date”), is by and among Kentucky Power Company, a Kentucky corporation qualified as a foreign corporation in West Virginia (“KPCo”), and Wheeling Power Company, a West Virginia corporation (“WPCo”) (such two parties hereinafter sometimes referred to as the “Owners”); and American Electric Power Service Corporation, a New York corporation qualified as a foreign corporation in West Virginia (“Agent”). KPCo, WPCo and Agent may hereinafter be referred to as a “Party” or collectively as the “Parties”.

WITNESSETH:

WHEREAS, KPCo acquired a fifty percent (50%) undivided ownership interest in the Mitchell Power Generation Facility consisting of two 800MW generating units and associated plant, equipment and real estate, located in Moundsville, West Virginia (the “Mitchell Facility”) on December 31, 2013; and

WHEREAS, AEP Generation Resources Inc. (“AEPGR”), an affiliate of the Parties, acquired a fifty percent (50%) undivided ownership interest in the Mitchell Facility, also on December 31, 2013; and

WHEREAS, pursuant to an Asset Contribution Agreement between AEPGR and Newco Wheeling Inc., a West Virginia corporation merged or to be merged into WPCo upon the closing of the transactions (the “Transfer Date”) set forth in such Asset Contribution Agreement (the “ACA”), AEPGR transferred its fifty percent (50%) undivided interest in the Mitchell Facility to Newco Wheeling Inc., exclusive of its interest in the Conner Run Fly Ash Impoundment and Dam (“Conner Run”), which interest in Conner Run was retained on the Transfer Date by AEPGR; and

WHEREAS, the Agreement shall be effective upon the Effective Date ~~but the rights and obligations set forth herein shall not commence until 12:01 AM on the day following the Transfer Date;~~ and

WHEREAS, the Owners desire that WPCo ~~KPCo~~ shall operate and maintain the Mitchell Facility, exclusive of Conner Run (the “Mitchell Plant”), in accordance with the provisions set forth herein; and

WHEREAS, the Owners are subsidiaries of American Electric Power Company, Inc. (“AEP”), the parent company in an integrated public utility holding company system, and use the services of Agent (an affiliated company engaged solely in the business of furnishing essential services to the Owners and to other affiliated companies), as outlined in the service agreements between Agent and KPCo and between Agent and WPCo.

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

ARTICLE ONE

FUNCTION OF WPCo ~~KPCo~~ AND AGENT

- 1.1 WPCo ~~KPCo~~ shall operate and maintain the Mitchell Plant in accordance with good utility practice ~~consistent with procedures employed by KPCo at its other generating stations,~~ and in conformity with the terms and conditions of this Agreement.
- 1.2 WPCo ~~KPCo~~ shall keep all necessary books of record, books of account and memoranda of all transactions involving the Mitchell Plant, and shall make computations and allocations on behalf of the Owners, as required under this Agreement. The books of record, books of account and memoranda shall be kept in such manner as to conform, where so required, to the Uniform System of Accounts as prescribed by the Federal Energy Regulatory Commission (“FERC”) for Public Utilities and Licensees (“Uniform System of Accounts”), and to the rules and regulations of other regulatory bodies having jurisdiction as they may from time to time be in effect.
- 1.3 The Owners shall establish such bank accounts as may from time to time be required or appropriate.

- 1.4 As soon as practicable after the end of the month, WPCo ~~KPCo~~ shall furnish to KPCo ~~WPCo~~ a statement setting forth the dollar amounts associated with the operations and maintenance of the Mitchell Plant as allocated hereunder to KPCo and WPCo for such month. The Owners shall, on a timely basis, deposit sufficient dollar amounts in the appropriate bank accounts to cover their respective allocations of such costs.
- 1.5 WPCo ~~KPCo~~ shall be responsible for the day to day operation and maintenance of the Mitchell Plant. WPCo ~~KPCo~~ shall obtain such materials, labor and other services as it considers necessary in connection with the performance of the functions to be performed by it hereunder from such sources or through such persons as it may designate.
- 1.6 Agent, as directed by the Operating Committee and consistent with Agent's service agreements with KPCo and WPCo, shall provide services necessary for the safe and efficient operation and maintenance of the Mitchell Plant.

ARTICLE TWO

APPORTIONMENT OF CAPACITY AND ENERGY

- 2.1 The Total Net Capability of the Mitchell Plant at the Mitchell Unit 1 and Unit 2 low-voltage busses, after taking into account auxiliary load demand, is 1,560,000 kilowatts. The Owners may from time to time modify the Total Net Capability of the Mitchell Plant as they may mutually agree.
- 2.2 The Total Net Generation of the Mitchell Plant during a given period, as determined by the requirements of KPCo and WPCo, shall mean the electrical output of the Mitchell Plant generators during such period, measured in kilowatt hours by suitable instruments, reduced by the energy used by auxiliaries for the Mitchell Unit 1 and Unit 2 during such period.
- 2.3 Except as set forth in Section 7.6 (including Section 7.6 Subsections), in any hour, KPCo and WPCo shall share the minimum load responsibility of Mitchell Unit 1 and Unit 2 in respective amounts proportionate to their ownership interests in the Mitchell Plant at such time. Each Owner may independently dispatch its share of the generating capacity between minimum and full load.
- 2.4 In any hour during which the Mitchell Units are out of service, the energy used by the out-of-service Units' auxiliaries during such hour shall be provided by KPCo and WPCo in

respective amounts proportionate to their ownership interests in the Mitchell Plant at such time.

ARTICLE THREE

REPLACEMENTS, ADDITIONS, AND RETIREMENTS

- 3.1 ~~WPCo~~ ~~KPCo~~ shall from time to time make or cause to be made any additions to, replacements of, and retirements of, capitalizable facilities associated with the Mitchell Plant in accordance with the approved annual budget.
- 3.2 The dollar amounts associated with any additions to, replacements of, or retirements of, capitalizable facilities associated with the Mitchell Plant shall be allocated to KPCo and WPCo in respective amounts proportionate to their ownership interests in the Mitchell Plant at the time such additions, replacements, or retirements are made.

ARTICLE FOUR

WORKING CAPITAL REQUIREMENTS

- 4.1 KPCo and WPCo shall periodically mutually determine the amount of funds required for use as working capital in meeting payrolls and other expenses incurred in the operation and maintenance of the Mitchell Plant, and in buying materials and supplies (exclusive of fuel) for the Mitchell Plant.
- 4.2 KPCo and WPCo shall from time to time provide their share of working capital requirements in respective amounts proportionate to their ownership interests at such time in the Mitchell Plant.

ARTICLE FIVE

INVESTMENT IN FUEL

- 5.1 ~~WPCo~~ ~~KPCo~~ and Agent shall establish and maintain reserves of coal in stock piles for the Mitchell Plant of such quality and in such quantities as the Operating Committee shall determine to be required to provide adequate fuel reserves against interruptions of normal fuel supply, provided each Owner, subject to the approval of the Operating Committee and subject to no adverse impact on the operation of the Mitchell Plant, will have the right, but

not the obligation, to directly purchase coal, transportation and consumables for its ownership interest. For the purposes of this Agreement, “consumables” shall be as defined in FERC account 502.

- 5.2 Except as provided in Section 5.1 for an Owner to elect to procure coal for its own interest, the Owners shall make such monthly investments in the common coal stock piles associated with the Mitchell Plant as are necessary to maintain the number of tons in such coal stock piles, after taking into account the coal consumption from the common coal stock piles by Mitchell Unit 1 and Unit 2 during such month.
- 5.3 At any time, KPCo's and WPCo's respective shares of the investment in the common coal stock piles shall be proportionate to their ownership interests in the Mitchell Plant, unless an Owner elects to procure its own coal as provided in Section 5.1, in which case inventories will be separately maintained for accounting purposes.
- 5.4 Fuel oil and consumables charged to operation for the Mitchell Plant shall be owned and accounted for between the Owners in the same manner as coal.

ARTICLE SIX

APPORTIONMENT OF STATION COSTS

- 6.1 Except in the case where an Owner has elected to purchase coal for its own interest as provided for in Section 5.1 (in which case the allocation to the Owners of fuel expense shall be in accordance with procedures and processes approved by the Operating Committee), the allocation to the Owners of fuel expense associated with Mitchell Unit 1 and Unit 2 shall be determined by WPCo ~~KPCo~~ and Agent as follows:
- (a) In any calendar month, the average unit cost of coal available for consumption from the Mitchell Plant common coal stock piles shall be determined based on the prior month's ending inventory dollar and ton balances plus current month receipts delivered to the Mitchell Plant common coal stock piles. Each Owner's average unit cost will be the same, and receipts and inventory available for consumption amounts will be allocated to each Owner based on monthly usage.
 - (b) The number of tons of coal consumed by the Mitchell Plant in each calendar month from the Mitchell Plant common coal stock piles shall be determined

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

- (c) In each calendar month, KPCo's and WPCo's respective shares of the Mitchell Plant fuel consumed expense as determined by the provisions of Section 6.1(b) shall be proportionate to each Owner's dispatch of the Mitchell Plant in such month.
- (d) Fuel oil reserves will be owned and accounted for in the same manner as coal stock piles, and fuel oil consumed will be allocated to the Owners in the same manner as coal consumed.

6.2 Except for adjustments related to assignment of facilities necessary to maintain capacity and energy production that are directly assigned to one owner pursuant to Section 7.9 for ~~For~~ purposes of this Agreement, KPCo's Assigned Capacity in the Mitchell Plant shall be equal to 50% of the Total Net Capability, and WPCo's Assigned Capacity shall be equal to 50% of the Total Net Capability.

6.3 For each calendar month ~~WPCo~~ ~~KPCo~~ and Agent will, to the extent practicable, determine all Mitchell Plant operations expenses and associated overheads, as accounted for under the FERC Uniform System of Accounts.

6.4 For each calendar month ~~WPCo~~ ~~KPCo~~ and Agent will, to the extent practicable, determine all Mitchell Plant maintenance expenses and associated overheads, as accounted for under the FERC Uniform System of Accounts.

6.5 In each calendar month, KPCo's and WPCo's respective shares of operations and maintenance expenses associated with the Mitchell Plant, as determined in accordance with Sections 6.3 and 6.4, shall be allocated as follows:

- (a) In each calendar month, KPCo's and WPCo's respective shares of the Mitchell Plant steam expenses as recorded in FERC Account 502, and emission tons, with allowance expenses as recorded in FERC Account 509,

shall be proportionate to each Owner's dispatch of the Mitchell Plant in such month.

- (b) In each calendar month, the maintenance of boiler plant expenses as recorded in FERC Account 512, and maintenance of electric plant expenses as recorded in FERC Account 513, shall be directly assigned to Mitchell Unit 1 or Unit 2 or designated as a common expense attributable to both units. In each calendar month, KPCo's and WPCo's respective shares of these expenses shall be proportionate to each Owner's capacity entitlement as adjusted pursuant to Section 7.9. dispatch of the applicable unit, or both units in the case of common expenses, over the previous sixty (60) calendar months. Dispatch is assumed to have been allowed fifty percent (50%) to each Owner for months that are prior to this Agreement.
- (c) Prior to (date when generation must cease but for ELG and other WPCo investments) ~~i~~n each calendar month, KPCo's and WPCo's respective shares of all other operations, maintenance, administrative and general expenses shall be proportionate to their respective ownership interests. After (date) these expenses will be assigned proportionate to each Owner's capacity entitlement as adjusted pursuant to Section 7.9.

6.6 Each Owner shall bear the cost of all taxes attributable to its capacity entitlement as adjusted pursuant to Section 7.9 ~~respective ownership interest in the Mitchell Plant.~~

ARTICLE SEVEN

OPERATING COMMITTEE AND OPERATIONS

7.1 By written notice to each other, the Owners and Agent each shall name one representative (“Operating Representative”) and one alternate to act for it in matters pertaining to operating arrangements under this Agreement. Any Party may change its Operating Representative or alternate at any time by written notice to the other Parties. The Operating Representatives for the respective Parties, or their alternates, shall comprise the Operating Committee. All decisions, directives, or other actions by the Operating Committee must be by unanimous agreement of the Operating Representatives of the Owners. The

Operating Representative of Agent, or of any third party that provides services in replacement of Agent, shall be free to express the views of Agent or such third party on any matter, but shall not have a vote on the Operating Committee. Except as otherwise provided in Sections 11.1, 11.2 and 11.3 with respect to a dispute referred to the Operating Committee by an Owner, the failure of the Owners' respective Operating Representatives to unanimously agree with respect to a matter pending before the Operating Committee shall not be considered to be a dispute that would be subject to resolution under Article Eleven.

7.2 The Operating Committee shall have the following responsibilities:

- (a) Review and approval of an annual budget and annual operating plan, including determination of the emission allowances required to be acquired by KPCo and WPCo. If the Operating Committee fails to approve an annual budget, the approved annual budget from the previous year will continue to apply until such time as the new annual budget is approved.
- (b) Establishment and review of procedures and systems for dispatch, notification of dispatch, and unit commitment under this Agreement, including any commitment of Called Capacity pursuant to Section 7.6.2.
- (c) Establishment and monitoring of procedures for communication and coordination with respect to the Mitchell Plant capacity availability, fuel-firing options, and scheduling of outages for maintenance, repairs, equipment replacements, scheduled inspections, and other foreseeable cause of outages, as well as the return to availability following an unplanned outage.
- (d) Decisions on capital expenditures, including unit upgrades and re-powering.
- (e) Determinations as to changes in the unit capability and decisions on unit retirement.
- (f) Establishment and modification of billing procedures under this Agreement.
- (g) Approval of material contracts for fuel, transportation or consumable supply. Establishment of specification of fuels, oversight of fuel inspection and certification procedures, management of fuel inventories, and allocation of rights under fuel supply, transportation and consumable contracts.

Establishment of an Owner's procurement rights and procedures if the Owner elects to purchase coal, transportation or consumables for its own interest.

- (h) Establishment of, termination of, and approval of any change or amendment to the operating arrangements between KPCo and Agent or any replacement third party with respect to the Mitchell Plant generating units; provided, however, that Agent or any replacement third party shall participate in discussions pursuant to this subsection 7.2(h) only if and to the extent requested to do so by both Owners.
- (i) Review and approval of plans and procedures designed to ensure compliance with any environmental law, regulation, ordinance or permit, including procedures for allocating and using emission allowances or for any programs that permit averaging at more than one unit for compliance.
- (j) Other duties as assigned by agreement of the Owners.

7.3 The Operating Committee shall meet at least annually, and at such other times as any Party may reasonably request.

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

7.5 The Owners will each make an initial unit commitment one business day ahead of real-time dispatch.

7.6 Application of this Section 7.6 (including subsections) is subject to (i) the receipt of any necessary regulatory approvals or waivers expressly granted for this Section 7.6; and (ii) the Operating Committee establishing and approving procedures and systems for dispatch. As used in this Section and subsections of this Section, the terms "Party" or "Parties" refers only to KPCo and WPCo, or both of them, as the case may be.

7.6.1 If Mitchell Unit 1 or Unit 2 is designated to be committed by both Parties, such unit will be brought on line or kept on line. If neither Party designates Mitchell Unit 1 or Unit 2 to be committed, such unit will remain off line or be taken offline.

7.6.2 When a Mitchell Unit is designated to be committed by one Party, but designated not to be committed by the other Party, the unit will be brought on line or kept on line if the Party designating the unit for commitment undertakes to pay any applicable start-up costs for the

unit, as well as any applicable minimum running costs for the unit thereafter, in which event the unit shall be brought on line or kept on line, as the case may be. The Party so designating the unit to be committed shall have the right to schedule and dispatch up to all of the Available Capacity of the unit. Available Capacity means that portion of the Owners' aggregate Assigned Capacity that is currently capable of being dispatched. The Party exercising this right shall be referred to as the "Calling Party," and the capacity called by that Party in excess of its Assigned Capacity Percentage of the Available Capacity of that unit shall be referred to as its "Called Capacity." The other Party shall be referred to as the "Non-Calling Party". The Calling Party shall provide reasonable notice to the Non-Calling Party of its call, including any start-up or shut-down time for the Unit. For purposes of this Agreement, KPCo's Assigned Capacity Percentage shall be 50%, and WPCo's Assigned Capacity Percentage shall be 50% as adjusted pursuant to section 7.9.

- 7.6.3 The Non-Calling Party can reclaim any Called Capacity attributable to its Assigned Capacity share by giving the Calling Party notice equal to the normal cold start-up time for the unit. At the end of the notice period, the Non-Calling Party shall have the right to schedule and dispatch the recalled capacity. At that point, the Non-Calling Party shall resume its responsibility for its share of any applicable start-up costs for the unit and prospectively shall bear its responsibility for the costs associated with its Assigned Capacity from the unit.
- 7.6.4 If any capacity remains available but is not dispatched from a Party's Available Capacity committed as a result of the initial unit commitment, the other Party may ~~only~~ schedule and dispatch such capacity pursuant to 7.6.1 through 7.6.3, above agreement with the non-dispatching Party.
- 7.7 KPCo and WPCo shall be individually responsible for any fees charged by FERC on the basis of the sales or transmission by each of capacity or energy at wholesale in interstate commerce.
- 7.8 Emission Allowances. On the Transfer Date pursuant to the ACA, AEPGR, the previous owner of WPCo's interest in the Mitchell Plant, will assign to WPCo all Emission Allowances allocated to AEPGR for the Mitchell Plant for each vintage year after 2014, issued by the U.S. Environmental Protection Agency ("USEPA") pursuant to Title IV of the Clean Air Act Amendments of 1990 and any regulations thereunder, and any other

emission allowance trading program created under the Clean Air Act and administered by USEPA or the State of West Virginia, including but not limited to the Clean Air Interstate Rule 40 CFR Parts 96 and 97, and any amendments thereto (“Emission Allowances”), and all Emission Allowances for 2014 and any vintage year prior to 2014 that were allocated to the Mitchell Plant and that have not been expended as of the date of assignment. To the extent that additional Emission Allowances are required for operation of the Mitchell Plant, KPCo and WPCo will each be responsible for acquiring sufficient Emission Allowances to satisfy the Emission Allowances required because of its dispatch of energy from the Mitchell Plant, and the Emission Allowances required to satisfy the Emission Allowance surrender obligations attributable to the Mitchell Plant imposed under the Consent Decree between USEPA and Ohio Power Company entered on December 10, 2007, in Civil Action No. C2-99-1182 and consolidated cases by the U.S. District Court in the Southern District of Ohio. On or before January 10 of each year, Agent shall determine and notify KPCo and WPCo of the number of additional annual Emission Allowances consumed by each of them through December 31 of the previous year, and KPCo and WPCo shall each transfer into the Mitchell Plant U.S. EPA Allowance Transfer System account that number of Emission Allowances with a small compliance margin by January 31 of that year. For seasonal Emission Allowance programs, Agent shall determine and notify KPCo and WPCo of the number of additional seasonal Emission Allowances consumed by each of them during the applicable compliance period by the 10th day of the first month following the end of the compliance period, and KPCo and WPCo shall each transfer into the appropriate Mitchell Plant U.S. EPA Allowance Transfer System Account that number of Emission Allowances with a small compliance margin by the last day of the first month following the end of the compliance period. In the event that KPCo or WPCo fails to surrender the required number of Emission Allowances by January 31 or the last day of the first month following any seasonal compliance period, Agent shall purchase the required number of Emission Allowances, and KPCo or WPCo, as the case may be, shall reimburse Agent for such purchases, with interest at the Federal Funds Rate (as published by the Board of Governors of the Federal Reserve System as from time to time in effect) running from the date of such purchases to the date of payment. The Operating Committee will develop procedures to be implemented after the end of each calendar year to account for

the Emission Allowances required by the use of the Mitchell Plant by KPCo and WPCo and to correct any imbalance between Emission Allowances supplied and Emission Allowances used through the end of the preceding year by settlement or payment.

- 7.9 Capital repairs and improvements to the Mitchell Plant will be determined by the Operating Committee pursuant to the annual budgeting process set forth in Section 7.10. Expenditures that the Operating Committee determines have been or will be incurred exclusively for one Owner shall be assigned exclusively to that Owner. To the extent that capacity and energy production would not be available but for the investments and costs assigned exclusively to one owner, such capacity and energy production shall be assigned solely to the owner to which the costs are assigned.
- 7.10 At least 90 days before the start of each operating year, WPCo ~~KPCo~~ and Agent shall submit to the Operating Committee a proposed annual budget with respect to the Mitchell Plant, a proposed annual operating plan, and an estimate and schedule of costs to be incurred for major maintenance or replacement items during the next six-year period. The annual budget shall be presented on a month-by-month basis for each month during the next operating year, and shall include an operating budget, a capital budget, an estimate of the cost of any major repairs that are anticipated will occur during such operating year with respect to the Mitchell Plant, and an itemized estimate of all projected non-fuel variable operating expenses relating to the operation of the Mitchell Plant during that operating year. The members of the Operating Committee will meet and work in good faith to agree upon the final annual budget and final annual operating plan. Once approved, the annual budget and annual operating plan shall remain in effect throughout the applicable operating year, subject to such changes, revisions, amendments, and updating as the Operating Committee may determine.

ARTICLE EIGHT

EFFECTIVE DATE AND TERM

- 8.1 Subject to receipt of necessary regulatory approvals ~~FERC approval or acceptance for filing,~~ the Effective Date of this Agreement shall be _____ ~~December 31, 2014.~~
- 8.2 Subject to necessary regulatory approvals ~~FERC approval or acceptance, if necessary,~~ this Agreement shall remain in force until such time as (i) KPCo or WPCo has divested itself

of all or any portion of its ownership interest in the Mitchell Plant, other than assignment or other transfer of such ownership interests to another AEP affiliate; or (ii) either KPCo or WPCo is no longer a direct or indirect wholly owned subsidiary of AEP; or (iii) KPCo and WPCo may mutually agree to terminate this Agreement.

ARTICLE NINE

GENERAL

- 9.1 This Agreement shall inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns, but this Agreement may not be assigned by any signatory without the written consent of the others, which consent shall not be unreasonably withheld.
- 9.2 This Agreement is subject to the regulatory authority of any State or Federal agency having jurisdiction.
- 9.3 The interpretation and performance of this Agreement shall be in accordance with the laws of the State of ~~West Virginia~~ Ohio, excluding conflict of laws principles that would require the application of the laws of a different jurisdiction.
- 9.4 This Agreement supersedes all previous representations, understandings, negotiations, and agreements, either written or oral between the signatories or their representatives with respect to operation of the Mitchell Plant, and constitutes the entire agreement of the signatories with respect to the operation of the Plant. Notwithstanding the foregoing, this Agreement does not supersede any previous agreements among any of the signatories allocating or transferring rights to capacity and associated energy, or ownership, of the Mitchell Plant.
- 9.5 Each Party shall designate in writing a representative to receive any and all notices required under this Agreement. Notices shall be in writing and shall be given to the representative designated to receive them, either by personal delivery, certified mail, facsimile, e-mail or any similar means, properly addressed to such representative at the address specified below:

KENTUCKY POWER COMPANY

President & CEO

Attn: _____
Phone: _____
Facsimile: _____
E-Mail: _____

WHEELING POWER COMPANY

President
Attn: _____
Phone: _____
Facsimile: _____
E-Mail: _____

AMERICAL ELECTRIC POWER
SERVICE CORPORATION

Executive Vice President – Generation
Attn: _____
Phone: _____
Facsimile: _____
E-Mail: _____

All notices shall be effective upon receipt, or upon such later date following receipt as set forth in the notice. Any Party may, by written notice to the other Parties, change the representative or the address to which such notices are to be sent.

ARTICLE TEN
LIMITATION OF LIABILITY

10.1 Notwithstanding anything in this Agreement to the contrary, neither of the Owners or Agent shall be liable under this Agreement for special, consequential, indirect, punitive or exemplary damages, or for lost profits or business interruption damages, whether arising by statute, in tort or contract or otherwise.

ARTICLE ELEVEN
DISPUTE RESOLUTION

11.1 [Use language from Appendix B, modified Ownership Agreement or reference modified Ownership agreement]

~~11.1 If either Owner believes that a dispute has arisen as to the meaning or application of this Agreement, it shall present that matter to the Operating Committee in writing, and shall provide a copy of that writing to the other Owner.~~

~~11.2 If the Operating Committee is unable to reach agreement on a dispute submitted to the Operating Committee pursuant to Section 11.1 within thirty (30) days after the dispute is presented to it, the matter shall be referred to the chief operating officers of the Owners for resolution in the manner that such individuals shall agree is appropriate; provided, however, that either Owner involved in the dispute may invoke the arbitration provisions set forth in Section 11.3 at any time after the end of the thirty (30) day period provided for the Operating Committee to reach agreement if the Operating Committee has not reached agreement.~~

~~11.3 If the Owners are unable to resolve a dispute through the Operating Committee within thirty (30) days after the dispute is presented to the Operating Committee pursuant to Section 11.1, or through reference of the matter to the chief operating officers of the Owners pursuant to Section 11.2, either Owner may commence arbitration proceedings by providing written notice to the other Owner, detailing the nature of the dispute, designating the issue(s) to be arbitrated, identifying the provisions of this Agreement under which the dispute arose, and setting forth such Owner's proposed resolution of such dispute.~~

~~11.3.1 Within ten (10) days of the date of the notice of arbitration, a representative of each Owner shall meet for the purpose of selecting an arbitrator. If the Owners' representatives are~~

~~unable to agree on an arbitrator within fifteen (15) days of the date of the notice of arbitration, then an arbitrator shall be selected in accordance with the procedures of the American Arbitration Association (“AAA”). Whether the arbitrator is selected by the Owners' representatives or in accordance with the procedures of the AAA, the arbitrator shall have the qualifications and experience in the occupation, profession, or discipline relevant to the subject matter of the dispute.~~

~~11.3.2 Any arbitration proceeding shall be subject to the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. (1994), as it may be amended, or any successor enactment thereto, and shall be conducted in accordance with the commercial arbitration rules of the AAA in effect on the date of the notice to the extent not inconsistent with the provisions of this Article.~~

~~11.3.3 The arbitrator shall be bound by the provisions of this Agreement where applicable, and shall have no authority to modify any terms and conditions of this Agreement in any manner. The arbitrator shall render a decision resolving the dispute in an equitable manner, and may determine that monetary damages are due to an Owner or may issue a directive that an Owner take certain actions or refrain from taking certain actions, but shall not be authorized to order any other form of relief; provided, however, that nothing in this Article shall preclude the arbitrator from rendering a decision that adopts the resolution of the dispute proposed by an Owner. Unless otherwise agreed to by the Owners, the arbitrator shall render a decision within one hundred twenty (120) days of appointment, and shall notify the Owners in writing of such decision and the reasons supporting such decision. The decision of the arbitrator shall be final and binding upon the Owners, and any award may be enforced in any court of competent jurisdiction.~~

~~11.3.4 The fees and expenses of the arbitrator shall be shared equally by the Owners, unless the arbitrator specifies a different allocation. All other expenses and costs of the arbitration proceeding shall be the responsibility of the Owner incurring such expenses and costs.~~

~~11.3.5 Unless otherwise agreed by the Owners, any arbitration proceedings shall be conducted in Columbus, Ohio.~~

~~11.3.6 Except as provided in this Article, the existence, contents, or results of any arbitration proceeding under this Article may not be disclosed without the prior written consent of the Owners, provided, however, that either Owner may make disclosures as may be required to fulfill regulatory obligations to any agencies having jurisdiction, and may inform its~~

~~lenders, affiliates, auditors, and insurers, as necessary, under pledge of confidentiality, and may consult with expert consultants as required in connection with an arbitration proceeding under pledge of confidentiality.~~

~~11.3.7 Nothing in this Agreement shall be construed to preclude either Owner from filing a petition or complaint with FERC with respect to any claim over which FERC has jurisdiction. In such case, the other Owner may request that FERC reject the petition or complaint or otherwise decline to exercise its jurisdiction. If FERC declines to act with respect to all or part of a claim, the portion of the claim not so accepted by FERC may be resolved through arbitration, as provided in this Article. To the extent that FERC asserts or accepts jurisdiction over all or part of a claim, the decisions, findings of fact, or orders of FERC shall be final and binding, subject to judicial review under the Federal Power Act, 16 U.S.C. § 791a et seq., as amended from time to time, and any arbitration proceedings that may have commenced prior to the assertion or acceptance of jurisdiction by FERC shall be stayed, pending the outcome of the FERC proceedings. The arbitrator shall have no authority to modify, and shall be conclusively bound by, any decisions, findings of fact, or orders of FERC; provided, however, that to the extent that any decisions, findings of fact, or orders of FERC do not provide a final or complete remedy to an Owner seeking relief, such Owner may proceed to arbitration under this Article to secure such a remedy, subject to any FERC decisions, findings, or orders.~~

~~11.4 The procedures set forth in this Article shall be exclusive means for resolving disputes arising under this Agreement and shall survive this Agreement to the extent necessary to resolve any disputes pertaining to this Agreement. Except as provided in Sections 11.3 and 11.3.7, neither Either Owner shall have the right to bring any dispute for resolution before a court, agency, or other entity having jurisdiction over this Agreement, unless both Owners agree in writing to such procedure.~~

~~11.5 To the extent that a dispute involves the actions, inactions or responsibilities of Agent under this Agreement, the provisions of this Article shall be applicable to such dispute. For such purposes, Agent shall be treated as an Owner in applying the provisions of this Article.~~

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

KENTUCKY POWER COMPANY

By: _____

Title: President & CO

WHEELING POWER COMPANY

By: _____

Title: President

AMERICAN ELECTRIC POWER SERVICE
CORPORATION

By: _____

Title: Executive Vice President – Generation

APPENDIX B [~~Unit Interest Swap Transaction~~]

[RATE SCHEDULE NO. 303]

MITCHELL PLANT OWNERSHIP AGREEMENT

KENTUCKY POWER COMPANY

and

WHEELING POWER COMPANY

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

WITNESSETH:

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

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

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

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

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

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

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

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

ARTICLE ONE
OWNERSHIP AND OPERATIONS

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

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

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

1.4 Each Owner hereby waives any rights it may have at law or equity to bring an action for partition or division of the Mitchell Plant or any Project Asset or any contracts

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

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

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

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

1.8 Notwithstanding the provisions of this Article One, to the extent that either Owner funds or bears an amount greater than 50% of any capital expenditures or ELG Capital Expenditures as contemplated in the Capital Budget or this Agreement, the directly resulting portion of any property, plant and equipment, or improvements thereto shall be owned by the Owners in proportion to their respective amounts funded and shall be

included only in such proportion in each Owner's ownership accounts for regulatory, accounting, tax and other purposes.

ARTICLE TWO

APPORTIONMENT OF CAPACITY AND ENERGY

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

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

2.3 Each Owner shall be entitled to receive 50% of the Total Net Capability and the Total Net Generation (with respect to each Owner, such Owner's "Assigned Capacity"), and all associated energy, capacity, ancillary services and other energy products, in accordance with this Agreement. Provided that such percentage shall be adjusted in accordance with Section 7.9 of the O&M Agreement.

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

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

ARTICLE THREE

REPLACEMENTS, ADDITIONS, AND RETIREMENTS

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

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

ARTICLE FOUR

WORKING CAPITAL REQUIREMENTS

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

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

4.3 Each Owner agrees that if such Owner fails at any time during the Term to satisfy the Ratings Requirement, it will, within thirty (30) days of such failure, provide in favor of the other Owner and maintain credit support in the form of (a) a cash deposit, (b) a guaranty issued by an Affiliate of such Owner that satisfies the Ratings Requirement in form and substance reasonably acceptable to the other Owner or (c) a letter of credit in form and substance reasonably acceptable to other Owner, issued by a commercial bank or other financial institution with a Credit Rating of at least "A-" by S&P Global Ratings, or any successor thereto ("S&P") or at least "A3" by Moody's Investors Service, Inc., or any successor thereto ("Moody's"), and in an amount equal to (i) one-half (1/2) of the then-applicable annual operating budget for the Mitchell Plant established pursuant to Section 7.2 from time to time, plus (ii) the sum of such Owner's allocated amount of capital

expenditures for such year contained in the then-applicable Capital Budget, plus (iii) an amount equal to the latest estimate of Decommissioning Costs prepared by the Operator, determined on a net present value basis using a discount rate equal to the WACC as of the date of determination. Such credit support posted in favor of an Owner shall be promptly returned within thirty (30) days of the other Owner furnishing written evidence demonstrating that it satisfies the Ratings Requirement.

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

ARTICLE FIVE

INVESTMENT IN FUEL

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

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

Mitchell Plant and conform to the then current engineering specifications for the Mitchell Plant or as otherwise mutually agreed by each Owner.

5.3 Each Owner shall be responsible for, and own, 50% of the investment in the common coal stock piles or such percentage as adjusted pursuant to Article 5 of the O&M Agreement.

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

ARTICLE SIX

APPORTIONMENT OF STATION COSTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Notwithstanding anything to the contrary herein, if the in-service date of a capital item is reasonably anticipated by the Operating Committee to be after

December 31, 2028, then the capital expenditures for such capital item shall be allocated exclusively to, and paid for by, WPCo.

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

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

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

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

ARTICLE SEVEN

OPERATING COMMITTEE AND OPERATIONS

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

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

(a) Review and approval of any amendments to the Capital Budget, and adoption of an annual operating budget, annual operating plan and a six-year forecast of operating and capital expenses, each as delivered to the Operating Committee by the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.5 The Owners will each make an initial unit commitment one business day ahead of real-time dispatch.

7.6 Application of this Section 7.6 (including subsections) is subject to (i) the receipt of any necessary regulatory approvals or waivers expressly granted for this Section 7.6; and (ii) the Operating Committee establishing and approving procedures and systems for dispatch.

As used in this Section and subsections of this Section, the terms “Party” or “Parties” refers only to KPCo and WPCo, or both of them, as the case may be.

7.6.1 If Mitchell Unit 1 or Unit 2 is designated to be committed by both Parties, such unit will be brought on line or kept on line. If neither Party designates Mitchell Unit 1 or Unit 2 to be committed, such unit will remain off line or be taken offline.

7.6.2 When a Mitchell Unit is designated to be committed by one Party, but designated not to be committed by the other Party, the unit will be brought on line or kept on line if the Party designating the unit for commitment undertakes to pay any applicable start-up costs for the unit, as well as any applicable minimum running costs for the unit thereafter, in which event the unit shall be brought on line or kept on line, as the case may be. The Party so designating the unit to be committed shall have the right to schedule and dispatch up to all of the Available Capacity of the unit. Available Capacity means that portion of the Owners' aggregate Assigned Capacity that is currently capable of being dispatched. The Party exercising this right shall be referred to as the “Calling Party,” and the capacity called by that Party in excess of its Assigned Capacity Percentage of the Available Capacity of that unit shall be referred to as its “Called Capacity.” The other Party shall be referred to as the “Non-Calling Party”. The Calling Party shall provide reasonable notice to the Non-Calling Party of its call, including any start-up or shut-down time for the Unit. For purposes of this Agreement, KPCo's Assigned Capacity Percentage shall be 50%, and WPCo's Assigned Capacity Percentage shall be 50% as adjusted pursuant to section 7.9.

7.6.3 The Non-Calling Party can reclaim any Called Capacity attributable to its Assigned Capacity share by giving the Calling Party notice equal to the normal cold start-up time for the unit. At the end of the notice period, the Non-Calling Party shall have the right to schedule and dispatch the recalled capacity. At that point, the Non-Calling Party shall resume its responsibility for its share of any applicable start-up costs for the unit and prospectively shall bear its responsibility for the costs associated with its Assigned Capacity from the unit.

7.6.4 If any capacity remains available but is not dispatched from a Party's Available Capacity committed as a result of the initial unit commitment, the other Party may schedule and dispatch such capacity pursuant to 7.6.1 through 7.6.3, above.

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

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

7.7 Emission Allowances. Prior to the earlier of any Buyout Transaction or December 31, 2028 (or earlier retirement of the Facility), to the extent that emission allowances issued by the U.S. Environmental Protection Agency (“USEPA”) pursuant to Title IV of the Clean Air Act Amendments of 1990 and any regulations thereunder, and any other emission allowance trading program created under the Clean Air Act and administered by USEPA or the State of West Virginia, including but not limited to the Cross-State Air Pollution Rule 40 C.F.R. Part 97, and any amendments thereto (the “Emission Allowances”), are required for operation of the Mitchell Plant, each Owner will be entitled to receive for its own benefit 50% of any Emissions Allowances allocated to the Mitchell Plant. Each Owner will be responsible for acquiring any additional Emission Allowances needed to satisfy the Emission Allowances required because of such Owner's dispatch of energy from the Mitchell Plant. Additionally, prior to such time, each Owner will be responsible for acquiring the Emission Allowances required, to the extent necessary in addition to its share of the Emissions Allowances allocated to the Mitchell Plant, to satisfy 50% of the Emission Allowance surrender obligations attributable to the Mitchell Plant imposed under the Consent Decree entered in *United States, et al. v. American Electric Power Service Corp., et al.*, Civil Action Nos. C2-99-1182 and C2-99-1250 and *United States, et al. v. American Electric Power Service Corp., et al.*, Civil Action No. C2 05-360 and *Ohio Citizen Action, et al. v. American Electric Power Service Corp.*, Civil Action No. C2-04-1098 dated December 10, 2007 as subsequently modified or amended, it being understood that the Owners may be subject to additional rights and obligations

under any applicable agreement among the Owners (and/or their Affiliates) and American Electric Power Company, Inc. (and/or its Affiliates) pertaining to the allocation of emission limitations associated with the Mitchell Plant. As early as possible, but no later than three business days after the deadline for submitting final electronic data to the EPA for compliance purposes, the Operator shall notify each Owner of the number of annual or seasonal Emission Allowances that are needed to offset each Owner's share of emissions for the previous year or season. Each Owner shall supply its respective share of allowances, with a reasonable compliance margin as determined by the Operating Committee, by transferring the applicable allowances to the Mitchell Plant's Allowance Facility Account on or before 15 days prior to the remittance date. In the event that an Owner fails to surrender the required number of Emission Allowances in accordance with the prior paragraph, the other Owner shall have the option to purchase the required number of Emission Allowances, and the Owner that failed to surrender the required number of Emission Allowances shall reimburse the other Owner for any amounts it shall have incurred to make such purchases, with interest at the "Federal Funds Rate" (as published by the Board of Governors of the Federal Reserve System as from time to time in effect) running from the date of such purchases to the date of payment. The Operating Committee will develop procedures to be implemented after the end of each calendar year to account for each Owner's share of the Emission Allowances required by the use of the Mitchell Plant and to correct any imbalance between the Emission Allowances supplied and the Emission Allowances used through the end of the preceding year by settlement or payment.

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

7.9 Notwithstanding anything in this Agreement to the contrary, (i) in the case of the O&M Agreement or any other agreement relating to the Mitchell Plant that is entered into jointly by or on behalf of the Owners, on one hand, with an Affiliate of an Owner (or with an Owner itself, as in the case of the O&M Agreement) on the other hand, the non-

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

ARTICLE EIGHT

EFFECTIVE DATE AND TERM

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

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

ARTICLE NINE TRANSFERS

9.1 Neither Owner may assign, transfer or otherwise dispose of its Ownership Interest, either in whole or part, whether by sale, lease, division, declaration or creation of a trust, by operation of law or otherwise ("Dispose" or a "Disposition") to any person or entity (the "Proposed Purchaser") without the prior written consent of the other Owner (the "Non-Offering Owner" and the Owner proposing the Disposition, the "Offering Owner"), which consent may be granted or withheld in the Non-Offering Owner's sole discretion; ~~provided, that the foregoing shall not restrict the Owners from pursuing or consummating the Buyout Transaction.~~ Notwithstanding the foregoing, either Owner may Dispose of, all (but not less than all) of its Ownership Interest to a state regulated utility Affiliate, provided that (i) the Disposition shall not relieve the Offering Owner of its obligations under this Agreement, (ii) the Disposition shall be made in compliance with the Consent Decree entered in *United States, et al. v. American Electric Power Service Corp., et al.*, Civil Action Nos. C2-99-1182 and C2-99-1250 and *United States, et al. v. American Electric Power Service Corp., et al.*, Civil Action Nos. C2-04-1098 and C2-05-360, and all amendments or modifications thereto, as in effect as of the date of the Disposition, (iii) the

Proposed Purchaser shall agree to and assume, in respect of the Ownership Interest subject to the Disposition, the rights and obligations of the Offering Owner and its Affiliates under any applicable agreement with American Electric Power Company, Inc. (and/or its Affiliates) pertaining to the allocation of emission limitations associated with the Mitchell Plant, and (iv) in the event the Offering Owner (or any Affiliate thereof) shall be the Operator, the Proposed Purchaser shall also have been assigned, and agreed to have assumed, the rights and obligations of the Operator under this Agreement and the O&M Agreement as of the effective date of such Disposition; provided, that in the case of this clause (iv), a written consent from the Non-Offering Owner (which consent shall not be unreasonably withheld, conditioned or delayed) shall be obtained prior to such Disposition to the extent such Disposition results in the change of the Operator.

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

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

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

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

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

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

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

ARTICLE TEN

DEFAULTS AND REMEDIES

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

(a) an Owner fails to make any payment required by it as and when due and payable in accordance with the terms of this Agreement, the O&M Agreement or any other agreement related to the Mitchell Plant or any Project Asset and such failure is not

remedied within ten (10) days after receipt of written notice thereof by such Owner from the other Owner; provided, that any such notice shall include a statement of the amount the Defaulting Owner has failed to pay (a “Payment Default”); or

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

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

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

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

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

(d) at the Non-Defaulting Owner's option, (i) draw on any letter of credit posted by the Defaulting Owner pursuant to Section 4.3 in an amount equal to the Paid Amount, including all interest accrued thereon or (ii) receive one hundred percent (100%)

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

ARTICLE ELEVEN

LIMITATION OF LIABILITY

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

ARTICLE TWELVE

DISPUTE RESOLUTION

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

12.2 If the Operating Committee does not reach agreement on the resolution of a dispute not constituting a Technical Dispute ~~or Unit Interest Swap Dispute~~ submitted to the Operating Committee pursuant to Section 12.1 within thirty (30) days after the dispute

is presented to it, the matter shall be referred to senior executive officers with the authority to resolve such dispute of each of the Owners for resolution in the manner that such individuals shall agree is appropriate; provided, however, that either Owner may exercise any and all rights at law or equity at any time after the end of the thirty (30) day period provided for the Operating Committee to reach agreement if the Operating Committee has not reached agreement.

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

12.4 Unit Interest Swap Dispute.

~~——(a)—— If the Operating Committee does not reach agreement by May 1, 2025 (or such other date as determined by the Operating Committee) with respect to the resolution of any Unit Interest Swap Dispute, then at the request of either Owner, the~~

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

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

~~The Arbitrator shall have the sole power to rule on any challenge to its own jurisdiction without any need to refer such matters first to a court.~~

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

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

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

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

expert consultants as required in connection with any proceeding under pledge of confidentiality.

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

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

ARTICLE THIRTEEN

GENERAL

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

13.2 This Agreement and all of its terms, including those addressing future events, is subject to the regulatory authority of any Statestate or Federalfederal agency having jurisdiction, including the KPSC and the WVPSC. Each Owner is responsible for compliance with the orders of its state public service commission regarding ELG Upgrades and associated costs, including maintenance capital and landfill capital expense, incurred to keep the Mitchell Plant operating after the date the Mitchell Plant would otherwise be required to retire under the ELG Rule in the absence of the ELG Upgrades, including KPSC

Case Nos. 2021-00004 and 2021-00421, with respect to KPCo and WVPSC Case Nos. 20-1040-E-CN and 21-0810-E-PC with respect to WPCo.

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

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

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

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

KENTUCKY POWER COMPANY

[] _____

[] _____

Attn: _____

Phone:[] _____

Email:[] _____

WHEELING POWER COMPANY

[] _____

[] _____

Attn: _____

Phone:[] _____

Email:[] _____

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

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

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

13.9 Any of the terms, covenants, or conditions hereof may be waived only by a written instrument executed by or on behalf of the Owners waiving compliance. No course of dealing on the part of any Owners, or its respective officers, employees, agents, accountants, attorneys, investment bankers, consultants or other authorized representatives,

nor any failure by an Owner to exercise any of its rights under this Agreement shall operate as a waiver thereof or affect in any way the right of such Owner at a later time to enforce the performance of such provision. No waiver by any Owner of any condition, or any breach of any term or covenant contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term or covenant. The rights of the Owners under this Agreement shall be cumulative, and the exercise or partial exercise of any such right shall not preclude the exercise of any other right.

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

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

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

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

ARTICLE FOURTEEN

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Event of Default” shall have the meaning given to such term in Section 10.1. “FERC” shall have the meaning given to such term in Section 5.1.

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

“FPA” means the Federal Power Act.

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

“KPCo” shall have the meaning given to such term in the Preamble. “KPSC” shall mean the Kentucky Public Service Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Signature pages follow.]

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

KENTUCKY POWER COMPANY

By: _____

Title:

WHEELING POWER COMPANY

By: _____

Title:

Solely with respect to Section 13.4:

AMERICAN ELECTRIC POWER SERVICE
CORPORATION

By: _____

Title:

[Signature page to Ownership Agreement]
(Mitchell Plant)

Exhibit A

Capital Budget, Initial Budgets and Forecast

[To Be Attached as of the Effective Date.]

Exhibit B

Form of Monthly Sample Report

[To Be Attached as of the Effective Date.]

Exhibit C
Unit Interest Swap Transaction Implementation

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

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

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

~~In connection with entering into and consummating definitive transaction documents for a Unit Interest Swap Transaction, the Owners shall negotiate and enter into amendments or replacements (or termination) of each of this Agreement and the O&M Agreement to reflect the Unit Interest Swap Transaction and the separate ownership, dispatch, operation, maintenance, capital expenditures and Decommissioning of each Unit with a common operator of the Mitchell Plan (including the unilateral ability of each Owner to determine whether or not to operate Dispose of or retire its applicable Unit), subject to applicable state and other regulatory approvals.~~

VERIFICATION

The undersigned, Brian K. West, being duly sworn, deposes and says he is the Vice President, Regulatory & Finance for 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.



Brian K. West

Commonwealth of Kentucky)
)
County of Boyd) Case No. 2021-00370

Subscribed and sworn before me, a Notary Public, by Brian K. West this 5th day of July, 2022.



Notary Public

My Commission Expires June 24, 2025

Notary ID Number: KYNP 32110

