



An **AEP** Company

BOUNDLESS ENERGY

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November 19, 2021

**Via Hand Delivery**

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

**Re: Case No. 21-0810-E-PC**  
**Appalachian Power Company and Wheeling Power Company**  
*Petition for Commission Consent and Approval to Enter into Ownership and  
Operating Agreements for the Mitchell Plant*

Dear Ms. Graley:

On behalf of Appalachian Power Company and Wheeling Power Company (together, "the Companies"), I file herewith the original and twelve (12) copies of a Petition for the Commission's consent and approval to enter into ownership and operating agreements for the Mitchell Plant, and the original and twelve (12) copies of the pre-filed direct testimony of Christian T. Beam and Timothy C. Kerns.

Thank you for your attention to this matter. Please note my appearance in this matter, as well as the appearance of attorneys William C. Porth and Anne C. Blankenship, and include us on the electronic service list for this case.

Sincerely,

A handwritten signature in black ink that reads "Keith D. Fisher". The signature is written in a cursive, flowing style.

Keith D. Fisher (WV State Bar #11346)  
*Counsel for Appalachian Power Company  
and Wheeling Power Company*

Enclosures

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**CASE NO.** \_\_\_\_\_

**APPALACHIAN POWER COMPANY and  
WHEELING POWER COMPANY,**  
public utilities.

*Petition for Commission Consent and  
Approval to Enter into Ownership and  
Operating Agreements for the Mitchell Plant*

**PETITION**

COME NOW Appalachian Power Company (“APCo”) and Wheeling Power Company (“WPCo”) (jointly “the Companies”), pursuant to the Commission’s orders in Case No. 20-1040-E-CN and, to the extent required, W. Va. Code § 24-2-12, and respectfully request the Commission’s consent and approval for WPCo to enter into a new Mitchell Plant Ownership Agreement and a new Mitchell Plant Operations and Maintenance Agreement (collectively, the “New Mitchell Agreements”) with respect to the Mitchell Plant located in Moundsville, West Virginia. In support of this Petition, the Companies state as follows:

1. The Petitioners are APCo and WPCo. APCo is incorporated in the Commonwealth of Virginia and is authorized to do business in West Virginia. WPCo is incorporated in West Virginia. The Companies are public utilities providing electric service to customers within 25 counties of West Virginia. The Companies’ principal office in West Virginia is located at 500 Lee Street East, Charleston, WV 25301.

2. APCo and WPCo, although separate companies, have operated with common rates, as mandated by the Commission, for many years. APCo is a petitioner solely because of it having common rates with WPCo. APCo is not a party to the above-mentioned agreements.

3. The financial condition of the Companies is well known to the Commission. Therefore, the Companies request that the Commission grant an exemption from the requirement to provide the information specified by Rule 21 of the Commission's *Rules of Practice and Procedure*.

4. By Order entered December 30, 2014, the Commission approved a Joint Stipulation and Agreement for Settlement of Case No. 14-0546-E-PC, pursuant to which WPCo acquired a 50% undivided interest in the Mitchell Plant, the other 50% being owned by Kentucky Power Company ("KPCo"). The Commission also granted its consent and approval for WPCo to enter into several agreements, including a Revised Operating Agreement ("Current Mitchell Agreement") among WPCo, KPCo, and American Electric Power Service Corporation ("AEPSC"). Pursuant to that operating agreement, KPCo was designated as the operator of the Mitchell Plant.

5. KPCo is incorporated in Kentucky and its mailing address is 1645 Winchester Avenue, Ashland, KY 41101. KPCo is engaged in the generation, purchase, transmission, distribution, and sale of electric power. It serves approximately 165,000 retail customers in 20 counties of eastern Kentucky and also supplies electric power at wholesale in Kentucky for resale.

6. AEPSC is incorporated in New York and its mailing address is 1 Riverside Plaza, Columbus, OH 43215. AEPSC provides engineering, regulatory, financing, accounting, and planning and advisory services to subsidiaries of American Electric Power Company, Inc. ("AEP"). While AEPSC is a party to the Current Mitchell Agreement, it will not be a party to the New Mitchell Agreements.

7. APCo, WPCo, KPCo, and AEPSC are wholly-owned subsidiaries of AEP.

8. In its December 30, 2014 Order in Case No. 14-0546-E-PC, the Commission recognized that the agreed-upon transactions respecting the Mitchell Plant, in total, “provide[] benefits to the Companies’ customers and to the State of West Virginia in the form of: resolution of a long-term power supply for the WPCo load; assistance to low-income customers; commitments to energy efficiency; commitments to expand funding for energy efficiency programs; and benefits of continued West Virginia coal production.” Dec. 30, 2014 Order, Case No. 14-0546-E-PC, at 15.

9. The Commission further recognized that the subject agreements, including the Current Mitchell Agreement, were reasonable and that “no party to these agreements is given an undue advantage over any other party, and the agreements do not adversely affect the West Virginia public.” *Id.* at 16-17.

10. Since the effective date of those agreements, WPCo has continued to own a 50% undivided interest in the Mitchell Plant, and KPCo has continued to own the remaining 50% and to operate the plant.

11. In 2015, the federal Environmental Protection Agency (“EPA”) promulgated a rule to regulate the disposal and beneficial re-use of coal combustion residuals (“CCR”) and a rule revising effluent limitation guidelines (“ELG”) for electric generating facilities. The latter rule, not finalized until October 2020, establishes discharge limits that must be achieved as soon as possible between October 13, 2021 and December 31, 2025. The ELG rule further required the Companies to notify the West Virginia Department of Environmental Protection (“WVDEP”), by October 13, 2021, if they did not intend to make the necessary ELG modifications at one or more of their West Virginia electric generating facilities and would

instead commit to cease combustion of coal by refueling or retiring the unit(s) by December 31, 2028.

12. The Mitchell Plant is subject to both the CCR and ELG rules, and the work required at the plant to comply with these rules is subject to the jurisdiction of both this Commission and the Public Service Commission of Kentucky ("KPSC").

13. Accordingly, the Companies filed a petition with this Commission, on December 23, 2020, seeking approval and cost recovery for CCR/ELG upgrades to the Mitchell Plant, and KPCo filed a petition with the KPSC, on February 8, 2021, seeking approval and cost recovery for such upgrades to the plant.

14. In the proceeding before this Commission, Case No. 20-1040-E-CN, the Companies proffered two alternatives for Commission review: (1) to make the necessary CCR and ELG upgrades at all three of its coal-fired power plants in West Virginia (Amos, Mountaineer, and Mitchell); or (2) to make such upgrades only at the Amos and Mountaineer Plants and, accordingly, retire the Mitchell Plant by December 31, 2028.<sup>1</sup>

15. An evidentiary hearing was held in Case No. 20-1040-E-CN on June 8-9, 2021.

16. On July 15, 2021, the KPSC issued an Order approving compliance work to meet the CCR Rule requirements at Mitchell but denying approval for the compliance work to meet the ELG Rule requirements.

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<sup>1</sup> Like the Mitchell Plant, APCo's Amos and Mountaineer Plants are subject to the CCR and ELG rules and the jurisdiction of two regulatory bodies, this Commission and the Virginia State Corporation Commission ("VSCC"). Thus, APCo also sought the approval of the VSCC for CCR and ELG upgrades at the Amos and Mountaineer Plants. While the VSCC ultimately approved only the CCR upgrades by order entered August 23, 2021, that decision is not relevant to the instant proceeding and will not be discussed in detail. APCo, consistent with the VSCC's order, shortly will be filing a case in Virginia seeking recovery of ELG costs at the Amos and Mountaineer Plants.

17. On August 4, 2021, this Commission issued an Order granting the Companies a certificate of convenience and necessity to carry out CCR and ELG projects at all three plants and for associated cost recovery. The Commission directed in its Order that if there are changes in ownership or cost allocations necessitated by decisions in other states, the Companies should bring such changes to the attention of the Commission.

18. Given the conflicting decisions of the governing regulatory bodies, coupled with the looming October 13, 2021 deadline, the Companies sought to reopen Case No. 20-1040-E-CN in order to apprise the Commission of those decisions and their anticipated impact, to provide updated estimates of CCR and ELG compliance costs, and to seek certain assurances in light of the Commission's August 4, 2021 Order.

19. After the submission of pre-filed written testimony by the parties and an evidentiary hearing, the Commission issued an Order on October 12, 2021 essentially affirming its prior decision to approve CCR and ELG upgrades at all three plants. In that Order, the Commission directed "that the changes in the [current] Operating Agreement for the Mitchell plant or changes in ownership of the Mitchell plant necessary to accommodate the continued operation of the plant without the involvement of Kentucky Power Company or Kentucky jurisdictional customers shall be filed for approval by this Commission." Oct. 12, 2021 Order, Case No. 20-1040-E-CN, at 16.

20. Consistent with the October 12, 2021 Order, the Companies did not file a notice with the WVDEP to retire any of the plants and will continue working toward completing the CCR and ELG upgrades at all three plants.

21. As contemplated by the Commission's August 4 and October 12, 2021 Orders, it is necessary to replace the Current Mitchell Agreement in light of the conflicting decisions of this Commission and the KPSC.<sup>2</sup>

22. The crafting of the New Mitchell Agreements unfolded as orders affecting the future of the Mitchell Plant were issued by this Commission and the KPSC. That process included meetings of the Mitchell Operating Committee to discuss necessary changes to the Current Mitchell Agreement and review of new contractual terms required to address those changes and the two commissions' orders related to Mitchell. Also, it was recently publicly announced that AEP will be selling KPCo to Liberty Utilities Co. ("Liberty"), with the transaction set to close in Second Quarter 2022. Whether or not that sale is consummated, it is necessary for WPCo to replace KPCo as the operator of the Mitchell Plant.

23. The need for and terms of the New Mitchell Agreements are a direct result of this Commission's and the KPSC's previously-described orders. Those orders necessitate replacement of the Current Mitchell Agreement with the New Mitchell Agreements to ensure that future investment in and operation of the Mitchell Plant are undertaken consistent with each company's ownership and participation with respect to the Mitchell Plant, as well as to ensure that costs are appropriately allocated and assigned between Mitchell's owners. In short, the changes reflected in the proposed New Mitchell Agreements are necessary regardless of the

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<sup>2</sup> Although the Companies are not subject to the jurisdiction of the KPSC, they find it worthwhile to note the KPSC recently stated that it "expects Kentucky Power and Wheeling to promptly seek modifications to the Mitchell operating agreement should Wheeling move forward with the ELG project, in particular the provisions designating Kentucky Power the operator of Mitchell and assigning it certain responsibilities in that role. The Commission further expects Kentucky Power and Wheeling to promptly seek modifications of environmental permits related to ELG currently held in Kentucky Power's name. These modifications will be necessary to ensure Kentucky Power's representations that neither it nor its customers will bear any of the costs of Wheeling's ELG project." *See In the Matter of: Electronic Investigation of the Service, Rates and Facilities of Kentucky Power Company*, Case No. 2021-00371, Order at 9 (Ky. P.S.C. Oct. 8, 2021).

identity of KPCo's corporate parent. In addition, the New Mitchell Agreements are appropriate to govern the relationship regarding the Mitchell Plant whether or not the ownership of KPCo changes, as they address the requirements of this Commission and the KPSC.

24. The Companies submit with this filing the proposed Mitchell Plant Ownership Agreement and the proposed Mitchell Plant Operations and Maintenance Agreement (*i.e.* the New Mitchell Agreements), which are attached to and described in further detail in the direct testimony of Company witness Beam. Attached as Exhibits 1 and 2, respectively, to this petition are: Summary of Principal Terms of Mitchell Plant Ownership Agreement and Summary of Principal Terms of Mitchell Plant Operations and Maintenance Agreement.

25. The New Mitchell Agreements include numerous provisions intended to address the requirements of the Orders of this Commission and the KPSC mentioned above and are necessary whether or not Liberty purchases KPCo.

26. The proposed Mitchell Plant Ownership Agreement continues WPCo's and KPCo's respective 50% undivided interests in the Mitchell Plant, but contemplates the following key changes from the Current Mitchell Agreement:

- WPCo will replace KPCo as the operator of the Mitchell Plant, and AEPSC is not a party to either of the New Mitchell Agreements;
- WPCo will purchase KPCo's ownership interest in the Mitchell Plant on or before December 31, 2028 (the "Buyout Transaction"), unless an early retirement event occurs, with the purchase price being either an agreed-upon price or Fair Market Value (determined by an appraisal process), adjusted for coal inventory, excess ELG expenditures by WPCo, and decommissioning costs, and approved by the parties' respective commissions in either case;

- WPCo will bear the full cost of, and own outright, the upgrades at the Mitchell Plant necessary to ensure its compliance with the ELG rules, while KPCo will share in the cost and ownership of other capital expenditures made at the plant with an in-service date through December 31, 2028, including CCR compliance upgrades;
- A technical expert will be retained to determine which capital expenditures are ELG versus CCR;
- If a non-ELG capital item has a depreciable life that extends beyond December 31, 2028, KPCo will 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 WPCo shall be responsible for the remaining amount of such capital expenditure not allocated to KPCo pursuant to the foregoing;
- Capital expenditures for assets that go into service after December 31, 2028 will be allocated entirely to WPCo;
- An initial capital budget for the period of effective date through December 31, 2028, together with an initial annual operating budget and initial forecast of operating and capital costs for the same period, will be attached to the Mitchell Plant Ownership Agreement and amendments to such budgets must be approved by the Operating Committee;

- The voting rights of KPCo and WPCo on the Operating Committee remain 50/50 under Section 7.1 of the proposed Mitchell Plant Ownership Agreement even if one owner has more capital invested in the Mitchell Plant than the other owner;
- If an early retirement event occurs, 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;
- In case the Mitchell Plant Operations and Maintenance Agreement is terminated pursuant to Section 8.2 thereof, KPCo shall have the sole and exclusive right to select and designate a successor or replacement, so long as the entity is a Qualified Replacement Operator; and
- The Mitchell Plant Ownership Agreement will be effective until it is terminated by mutual agreement of WPCo and KPCo or until the aforementioned Buyout Transaction.

27. The proposed Mitchell Plant Operations and Maintenance Agreement carries out the intention of the Mitchell Plant Ownership Agreement that WPCo is to replace KPCo as operator of the Mitchell Plant and, therefore, become responsible for managing the day-to-day operations and maintenance of the plant, including dispatch, environmental, and NERC compliance. As explained in further detail by Company witness Kerns, Mitchell Plant operations will not be impacted by the transfer of operator responsibilities to WPCo; the plant employees will be transferred to WPCo and will remain on site and continue to safely and reliably operate the Mitchell Plant as they have in the past.

28. This Petition is supported by the direct testimony and exhibits of Company witnesses Christian T. Beam and Timothy C. Kerns.

29. The Companies are asking the Commission for its consent and approval for WPCo to enter into the proposed Mitchell Plant Ownership Agreement and the proposed Mitchell Plant Operations and Maintenance Agreement pursuant to the Commission's orders in Case No. 20-1040-E-CN and, to the extent required, W. Va. Code § 24-2-12.

30. The terms and conditions of the New Mitchell Agreements are reasonable. The agreements benefit the Companies and their customers by providing transparency, clarity, and certainty regarding the Mitchell Plant's continued operations, environmental compliance, cost allocation, and ownership. The New Mitchell Agreements implement the terms of the Commission's recent orders regarding cost allocation at the Mitchell Plant and provide a process through which WPCo can acquire full ownership of the plant in accordance with those orders and then continue operations after 2028. WPCo and KPCo have engaged in discussions to address the conflicting commission decisions and to reach a thoughtful, effective resolution with the New Mitchell Agreements, which are needed whether or not KPCo is sold to Liberty. Furthermore, WPCo has the experience and resources to successfully take over duties as operator of the Mitchell Plant and, accordingly, the Companies' customers in West Virginia will continue to receive adequate and reliable power supplies at reasonable prices with long-term stability of rates. In sum, the New Mitchell Agreements offer benefits to both WPCo and KPCo (or its successor) and do not give an undue advantage to either party, nor do they adversely affect the public in West Virginia.

31. The Companies are also asking the Commission for a procedural schedule that allows this matter to be adjudicated by February 17, 2022. It is important that approval of the

New Mitchell Agreements and the associated transfer of operations of the Mitchell Plant to WPCo be timely to satisfy various requirements in this Commission's and the KPSC's orders. To comply with those orders, operations must be transferred to WPCo so that the permits can be updated in its name, equipment and materials procured and paid for by WPCo and then appropriately billed to KPCo using the cost allocation methods in the New Mitchell Agreements, and physical ELG work to be performed by WPCo can begin. For these reasons, the Company is requesting an order by February 17, 2022, to ensure that the timely transfer of permits, ordering of equipment and materials, and the physical ELG work itself can be completed by WPCo by the necessary permit deadlines.

32. The New Mitchell Agreements are also being submitted to the KPSC contemporaneously herewith. Subsequent to this filing, any necessary filing(s) will be made with the FERC for approval of the New Mitchell Agreements.

WHEREFORE, the Companies respectfully request that the Commission enter an Order approving the proposed Mitchell Plant Ownership Agreement and the proposed Mitchell Plant Operations and Maintenance Agreement submitted herewith, granting consent and approval for WPCo to enter into the agreements, granting waivers as requested herein, and granting such other relief as may be appropriate.

Respectfully submitted,

**APPALACHIAN POWER COMPANY and  
WHEELING POWER COMPANY**

By Counsel,



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*Counsel for Appalachian Power Company  
and Wheeling Power Company*

Dated: November 19, 2021

Company Exhibit 1

**SUMMARY OF PRINCIPAL TERMS OF PROPOSED  
MITCHELL PLANT OWNERSHIP AGREEMENT**

*This summary outlines certain of the principal terms of the proposed Mitchell Plant Ownership Agreement (the "Ownership Agreement") by and among Kentucky Power Company ("Kentucky Power"); Wheeling Power Company ("Wheeling Power" and together with Kentucky Power, each an "Owner" and together the "Owners"); and, solely with respect to its removal from the prior Mitchell Plant operating agreement, American Electric Power Service Corporation. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Ownership Agreement.*

**Ownership of Mitchell Plant:**

The Mitchell Power Generation Facility (the "**Mitchell Plant**", as further defined in the Ownership Agreement) is jointly owned by each of Kentucky Power and Wheeling Power in a 50-50 undivided ownership interest structure. Each Owner agrees not to seek partition or division of the Mitchell Plant or any Project Assets or contracts related thereto.

To the extent that either Owner funds or bears an amount greater than 50% of any capital expenditures or ELG Capital Expenditures (as defined below) as contemplated in the Capital Budget or as otherwise provided in 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.

The Capital Budget (which will be attached to the Ownership Agreement at the time of execution) will reflect, among other things, the capital budget for the period from the Effective Date through December 31, 2028, including the allocation of cost responsibility between the Owners.

**Operation of Mitchell Plant:**

Wheeling Power is designated as 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 of and on behalf of the Owners and in accordance with the terms and conditions of this Agreement and the O&M Agreement.

**Apportionment of Capacity and Energy:**

Each Owner is entitled to receive 50% of the Total Net Capability and the Total Net Generation and all associated energy, capacity, ancillary services and other energy products. In any hour, each Owner shall share 50% of the minimum load responsibility of each Unit. Unless otherwise agreed by the Owners, the Facility will be scheduled and dispatched on a joint and equal basis, including bidding the Mitchell Plant or any Unit as a single bid.

**Retirement of Mitchell Plant:**

If, prior to a Buyout Transaction, an Early Retirement Event (as defined below) occurs, each Owner shall (i) cause each Unit to permanently cease operations on December 31, 2028, or such other date permitted by

Applicable Law as the Operating Committee may determine, and (ii) be responsible for and pay 50% of all Decommissioning Costs.

**“Early Retirement Event”** means the delivery of a written notice by Wheeling Power to Kentucky Power irrevocably committing to permanently cease operations of the Mitchell Plant effective on or, with Kentucky Power consent, prior to December 31, 2028, which notice shall be consistent with Wheeling Power’s current filings at such time with the WVPSC in respect of the Mitchell Plant.

**Working Capital Requirements:**

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.

Each Owner shall provide 50% of any such amount required by the Owners, except as otherwise provided in the Ownership Agreement.

**Investments in Fuel:**

Each Owner shall be responsible for, and own, 50% of the common coal stock piles, fuel oil and consumables.

**Apportionment of Station Costs:**

**Fuel Expense:**

In each calendar month, each Owner’s respective shares of the Mitchell Plant fuel consumed expense shall be proportionate to each Owner’s dispatch of the Mitchell Plant in such month.

**Operations, Maintenance Expense:**

Each Owner’s respective share of the Mitchell Plant steam expenses and emission tons shall be proportionate to each Owner’s dispatch of the Mitchell Plant in such month.

Administrative and General Expenses 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.

Each Owner shall be individually responsible for any fees, costs or other charges in respect of, or which are attributable to, the sale or transmission of the capacity or energy associated with its Ownership Interest.

**Replacements, Additions, Improvements or Upgrades:**

The cost of any replacement, addition, improvement or upgrade of 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.

For items 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:

--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.

--ELG Capital Expenditures shall be allocated exclusively to, and paid for exclusively by, Wheeling Power and CCR Capital Expenditures shall be allocated 50% to (and paid for by) each Owner, provided that the determination of which costs are ELG Capital Expenditures and which are CCR Capital Expenditures shall be determined by a Technical Expert to be retained by the Operating Committee.

--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, Wheeling Power.

--If the Operating Committee determines that a capital item (other than an ELG Upgrade) has a Depreciable Life that extends beyond December 31, 2028, then (i) Kentucky Power 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) Wheeling Power shall be responsible for the remaining amount of such capital expenditure not allocated to Kentucky Power pursuant to the foregoing clause (i).

--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 the O&M Agreement.

**Early Retirement and Decommissioning:**

In the event of an Early Retirement Event, 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.

As used herein:

**“Decommissioning Costs”** means 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.

**“ELG Capital Expenditures”** means all capital expenditures associated with implementation of the ELG Upgrades.

**“ELG Rule”** means 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”** means any improvements or upgrades to the Mitchell Plant to enable Wheeling Power to comply with the ELG Rule.

**Operating Committee and Capital Budget:**

Each Owner shall name one representative to the Operating Committee and all decisions of such committee shall be made on a unanimous basis, including in connection with changes to the Capital Budget, provided that an Owner’s representative shall have the right to amend the Capital Budget to include any capital expenditures for which such Owner shall be allocated greater than 75% of the costs up to an aggregate amount of that does not exceed \$3 million per year allocated to the other Owner. If the Operating Committee cannot agree upon the Depreciable Life of a capital item or the allocation of the expenditure between the Owners (including determining which capital expenditures are ELG Capital Expenditures and which are CCR Capital Expenditures), the matter shall be resolved pursuant to certain Technical Dispute procedures in the Ownership Agreement.

**Emission Allowances:**

Prior to the earlier of any Buyout Transaction or December 31, 2028 (or earlier retirement of the Mitchell Plant), to the extent that Emission Allowances are required for operation, 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 the Mitchell Plant.

**Buyout Transaction:**

Wheeling Power and Kentucky Power have committed to undertake a Buyout Transaction pursuant to which Wheeling Power shall purchase Kentucky Power’s Ownership Interest in the Mitchell Plant on or prior to December 31, 2028 unless an Early Retirement Event occurs.

The purchase price to be paid by Wheeling Power for Kentucky Power's Ownership Interest in the Mitchell Plant shall an amount determined as follows:

(i) an amount mutually agreed by the Owners and approved by each of the WVPSC and the KPSC or,

(ii) if no such amount is agreed by the Owners prior to June 30, 2027, an amount equal to

(A) the Adjusted Fair Market Value of the Kentucky Power Ownership Interest as of the closing date of the consummation of the Buyout Transaction (with Fair Market Value determined through an appraisal process utilizing the average of the determinations of up to three nationally or regionally recognized appraisal firms), minus

(B) 50% of the estimated Decommissioning Costs (as determined through an appraisal process utilizing the average of the determinations of up to three nationally or regionally recognized appraisal firms) for retirement of the Mitchell Plant as if such Decommissioning were to commence as of the date of transfer of the Kentucky Power Ownership Interest to Wheeling Power, plus

(C) the weighted-average cost of Kentucky Power's investment in the common coal pile for the Mitchell Plant.

Adjusted Fair Market Value means any positive amount (if any, and zero otherwise) equal to the Fair Market Value of the Kentucky Power Ownership Interest minus the CapEx Adjustment. The CapEx Adjustment means (a) 50% of any capital expenditures (or portion thereof), including ELG Capital Expenditures, to the extent funded by Wheeling Power in an amount in excess of 50% of the total amount thereof on or prior to December 31, 2028, plus (b) an amount equal to the WACC for the amounts included in clause (a), applied to all of such amounts using the then-applicable WACC from the dates of funding through the closing date of the consummation of the Buyout Transaction. Certain components of the purchase price for the interests shall be subject to a customary closing estimation and post-closing true-up mechanism to be set forth in the purchase agreement to be entered into by the parties for the sale of the Kentucky Power Ownership Interest.

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*The foregoing is intended to summarize certain basic terms of the Ownership Agreement. It is not intended to be a definitive description of all of the terms of the Ownership Agreement.*

Company Exhibit 2

**SUMMARY OF PRINCIPAL TERMS OF PROPOSED  
MITCHELL PLANT OPERATIONS AND MAINTENANCE AGREEMENT**

*This summary outlines certain of the principal terms of the proposed Mitchell Plant Operations and Maintenance Agreement (the "O&M Agreement") by and between Kentucky Power Company ("Kentucky Power") and Wheeling Power Company ("Wheeling Power" and together with Kentucky Power, each an "Owner" and together the "Owners"). Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the O&M Agreement.*

- Operation of Mitchell Plant:** Operator shall perform, using former employees of Kentucky Power that work at the Mitchell Power Generation Facility (the "**Facility**", as further defined in the O&M Agreement) and that will be transferred to Wheeling Power, the Services in its capacity as an independent contractor and as principal on its own behalf as an Owner. The Owners retain the ultimate authority and obligation to determine whether and to what extent the Facility operates, and Operator shall not cause the Facility to generate power except as expressly directed to do so by the Owners.
- Provision of Services:** Operator shall operate and maintain the Facility and perform such other duties as directed by the Owners, including performing and, as applicable, contracting for the benefit of the Owners with suppliers and service providers to perform, the Services and shall be responsible for the day-to-day operation and maintenance of the Facility.
- Procurement:** Operator shall sign contracts and purchase orders for goods and services to be delivered to the Facility in the name of Operator as agent for the Owners (e.g., coal supply contracts).
- Standards of Performance of the Services:** Operator shall perform the Services in accordance with (i) the Manuals, (ii) the applicable Budget and Plan, (iii) Applicable Laws, (iv) Prudent Operation and Maintenance Practices, (v) insurer requirements delivered to Operator by the Owners in writing, (vi) the requirements in the Facility Agreements, (vii) this Agreement and (viii) as directed by the Owners pursuant to the Ownership Agreement.
- Dispatch:** Operator shall use commercially reasonable efforts to comply with any applicable dispatch instructions of the System Operator and, to the extent applicable, the directions of the Operating Committee.
- Licenses and Permits:** Operator shall review all Applicable Laws containing or establishing compliance requirements in connection with the operation and maintenance and Decommissioning of the Facility and shall use commercially reasonable efforts to obtain and maintain, for the benefit of both Owners, all Permits required by Applicable Law for the ownership, operation, maintenance and Decommissioning of the Facility and for Operator's performance of the Services.

Operator (or an Affiliate thereof) shall register with NERC as the "Generator Owner" and "Generator Operator" for the Facility.

**Plans and Budgets:**

No later than 90 days prior to each operating Year, Operator shall deliver to the Operating Committee for the Operating Committee's review, revision if applicable and approval (i) a proposed annual operating budget, (ii) any proposed amendments to the annual capital budget, (iii) an annual operating plan and (iv) a six (6) Year future forecast of operating and capital expenses.

Except as otherwise permitted in response to an Emergency, Operator shall obtain the Operating Committee's written approval (i) for any expenditures resulting in cumulative budget overruns exceeding ten percent (10%) in the aggregate in any Year with respect to either the operating Budget or capital expense Budget, or (ii) for any unbudgeted expenditure or capital project having a projected cost of more than \$100,000.

**Limitations on Authority:**

Operator has no authority to make policies or decisions with respect to the overall operation or maintenance of the Facility, which matters are reserved to the Owners.

Without the consent of the Operating Committee, Operator is prohibited from (i) disposing of assets; (ii) making expenditures except in conformity with this Agreement; (iii) taking any action reserved for the Operating Committee; (iv) taking any action regarding lawsuits and settlements; or (v) pursuing other transactions not permitted under this Agreement.

**Compensation and Payment:**

All Operating Costs shall initially be paid for by Operator (except as otherwise provided in this Agreement) and subsequently invoiced by the Operator monthly in arrears.

The Non-Operator Owner (i.e., Kentucky Power) shall reimburse Operator for its allocated share in accordance with the Ownership Agreement of the fully distributed costs incurred in the provision of Services, including for labor, goods, services, capital expenditures, overhead, cost of capital, Taxes (other than income or franchise taxes), Permits and bonds.

**Term:**

Subject to certain early termination rights, this Agreement shall end on the date of termination of the Ownership Agreement.

**Termination; Transition of Services:**

Subject to limited exceptions, if the Agreement is terminated by a party, the Non-Operator Owner shall have the right to specify a transition period of no longer than 9 months during which Operator shall continue to provide the Services and seek to transition the operator role to a replacement operator.

**Plant Manager Replacement:** Upon (i) commencement of the Termination Transition Period or (ii) the occurrence of a termination for cause, the Non-Operator Owner may designate a qualified individual with significant experience as a project manager or similar senior operating role in respect of the management and operation of large coal-fired generation facilities with similar operating characteristics as the Facility to replace the existing Plant Manager and who shall upon such appointment be the Plant Manager.

**Indemnification:** As a general matter, (i) Operator indemnifies Non-Operator Owner from and against all Liabilities incurred, assessed, sustained or suffered by the Non-Operator Owner to the extent caused by Operator's gross negligence, willful misconduct, actual fraud, willful violation of any Applicable Law, or willful breach of this Agreement and (ii) each Owner, severally with respect to its proportionate share in respect of its Ownership Interest, indemnifies Operator from and against all Liabilities to a third party incurred, assessed, sustained or suffered by or against Operator arising from or relating to Operator's performance of the Services, except to the extent caused by Operator's gross negligence, willful misconduct, actual fraud, willful violation of any Applicable Law, or willful breach of this Agreement.

**Operator's Total Aggregate Liability:** Operator's total aggregate liability under this Agreement shall not exceed the sum of (i) an amount equal to twenty-five percent (25%) of the Operating Costs, but excluding Operating Costs relating to any services, goods, inventory and equipment provided hereunder by third parties other than Operator's Affiliates, incurred pursuant to this Agreement in the prior twelve (12) month period, *plus* (ii) the Non-Operating Owner's fifty percent (50%) share of any insurance proceeds actually received by the Operator or paid on the Operator's behalf with respect to the relevant loss or damages under the insurance policies procured by the Operator.

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*The foregoing is intended to summarize certain basic terms of the O&M Agreement. It is not intended to be a definitive description of all of the terms of the O&M Agreement.*

**VERIFICATION**

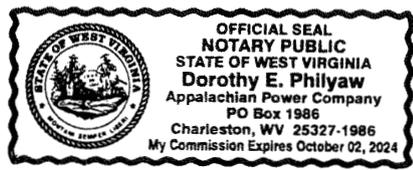
STATE OF West Virginia            )  
  )     to-wit:  
COUNTY OF Kanawha            )

Before me, a Notary Public in and for the aforesaid jurisdiction, personally appeared Randall R. Short, who, being by me first duly sworn, did depose and say that he is Director - Regulatory Services for Appalachian Power Company and Wheeling Power Company, that he has reviewed the foregoing and knows the contents thereof, and that the facts therein stated are true to the best of his information and belief. Subscribed and sworn to before me this 19th day of November, 2021.

*Randall Short*  
\_\_\_\_\_

*Dorothy E. Philyaw*  
\_\_\_\_\_  
Notary Public

(SEAL)



**COMPANY EXHIBIT CTB-D**

**DIRECT TESTIMONY OF  
CHRISTIAN T. BEAM  
ON BEHALF OF APPALACHIAN POWER COMPANY AND  
WHEELING POWER COMPANY  
BEFORE THE PUBLIC SERVICE COMMISSION OF  
WEST VIRGINIA IN CASE NO. 21-\_\_\_\_\_**

1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION.**

2 A. My name is Christian T. Beam. My business address is 500 Lee Street, East, Charleston,  
3 West Virginia, 25301. I am the President and Chief Operating Officer of Appalachian  
4 Power Company ("APCo") and Wheeling Power Company ("WPCo") (collectively "the  
5 Companies"), both operating companies of the American Electric Power Company, Inc.  
6 ("AEP") System.

7 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND  
8 PROFESSIONAL EXPERIENCE.**

9 A. I earned a Bachelor's Degree in Applied Science, with a focus on project  
10 management, from DeVry University. I am a certified Project Management Professional  
11 and completed the AEP Leadership Program at The Ohio State University in 2007.  
12 I have held positions of escalating responsibility at AEP companies since I started with  
13 Ohio Power Company in 1990. I worked first in the Utility Operations department at the  
14 Kammer Plant. In 1997, I moved to the AEP Service Corporation and was named  
15 Outage Project Supervisor for the Regional Service Organization serving the Kammer,  
16 Mitchell, and Cardinal Plants. In 2000, I assumed a new role as Superintendent for the  
17 Regional Service Organization, supporting SWEPCO, and subsequently became Manager  
18 - Region Outage Management in 2002. In 2004, I was named Manager for the Flue Gas  
19 Desulfurization retrofit project at the Mountaineer Plant. I became Manager -  
20 Construction Technology in 2007 and then Director - Construction in 2008. In 2009,

1 I was named the Project Director - Environmental Retrofit Projects. I was named  
2 Managing Director Projects and Construction in November 2010. I assumed the position  
3 of Vice-President - Projects, Controls, and Construction in 2013. In January of 2017, I  
4 was named President and Chief Operating Officer of APCo and WPCo.

5 **Q. PLEASE BRIEFLY DESCRIBE YOUR DUTIES AND RESPONSIBILITIES AS**  
6 **PRESIDENT OF APCO AND WPCO.**

7 A. I oversee all aspects of APCo and WPCo, including their day-to-day operations. My  
8 primary goals are to see that the Companies are operated in a responsible and efficient  
9 manner and to ensure that the Companies' customers receive safe and reliable electric  
10 service at a reasonable price. Of particular relevance to this proceeding, I serve as the  
11 representative of WPCo on the Mitchell Operating Committee.

12 **Q. FOR WHOM ARE YOU TESTIFYING IN THIS PROCEEDING?**

13 A. I am testifying on behalf of APCo and WPCo. APCo and WPCo, although separate  
14 companies, have operated with common rates, as mandated by the Commission, for many  
15 years. APCo is not a party to the subject agreements in this proceeding and is a joint  
16 petitioner solely because of it having common rates with WPCo.

17 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY AS A WITNESS**  
18 **BEFORE ANY REGULATORY COMMISSION?**

19 A. Yes. I filed testimony before the Public Service Commission of West Virginia  
20 ("Commission") in the Companies' 2018 base rate proceeding, Case No. 18-0646-E-42T,  
21 their 2011 ENEC proceeding, Case No. 11-0274-E-PC, and their certificate of  
22 convenience and necessity proceeding, Case No. 20-1040-E-CN. I have also filed  
23 testimony before the Virginia State Corporation Commission in Docket Nos. PUE-2011-  
24 00036, PUR-2020-00015, and PUR-2020-00258, the Arkansas Public Service

1 Commission in Docket No. 12-008-U, and the Public Utility Commission of Texas in  
2 Docket No. 39708 and Docket No. 40443.

3 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

4 A. The purpose of my direct testimony is to: (1) discuss the current Mitchell Plant Operating  
5 Agreement (“Current Mitchell Agreement”); (2) provide overviews of the Orders of the  
6 Public Service Commission of Kentucky (“KPSC”) in Case Nos. 2021-00004 filed by  
7 Kentucky Power Company (“KPCo”) and 2021-00370 initiated by the KPSC, and of this  
8 Commission in Case No. 20-1040-E-CN filed by the Companies<sup>1</sup>; (3) describe the  
9 proposed Mitchell Plant Ownership Agreement and Mitchell Operations and  
10 Maintenance Agreement (collectively the “New Mitchell Agreements”) that were  
11 developed as result of the decisions of the KPSC and this Commission and discuss  
12 WPCo’s involvement in crafting those agreements; (4) explain how the New Mitchell  
13 Agreements are reasonable and in the public interest and comply with the Commission  
14 and KPSC Orders; and (5) introduce the other witness in this case.

15 **Q. ARE YOU SPONSORING ANY EXHIBITS?**

16 A. I am sponsoring the following exhibits, consisting of the Current Mitchell Agreement and  
17 the replacement agreements the Companies are proposing in this matter.

<u>Exhibit</u>	<u>Description</u>
CTB-D1	Mitchell Plant Operating Agreement – FERC Rate Schedule No. 303
CTB-D2	Operations and Maintenance Agreement (Proposed)
CTB-D3	Mitchell Plant Ownership Agreement (Proposed)

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<sup>1</sup> These cases, along with a third case filed with the Virginia State Corporation Commission (“VSCC”), Docket No. PUR-2020-00258, were part of the Companies’ efforts to receive approval for modifications to certain coal-fired electric generating plants subject to federal environmental regulations. However, the decision in the Virginia matter is not relevant to the instant proceeding and, therefore, will not be discussed in detail. APCo, consistent with the VSCC’s order, will be filing a case in Virginia shortly seeking recovery of ELG costs at the Amos and Mountaineer Plants.

1 **Q. PLEASE EXPLAIN THE CURRENT OWNERSHIP AND OPERATION OF**  
2 **MITCHELL PLANT.**

3 A. WPCo and KPCo each own an undivided 50 percent interest in the Mitchell Plant. KPCo  
4 presently operates Mitchell under the FERC-approved Current Mitchell Agreement. The  
5 Commission has previously granted WPCo its consent and approval to enter into the  
6 Current Mitchell Agreement.

7 **Q. PLEASE DESCRIBE THE CURRENT MITCHELL AGREEMENT.**

8 A. Since taking effect on December 31, 2014, the Current Mitchell Agreement, attached as  
9 Exhibit CTB-D1, has governed the operation and maintenance and joint ownership rights  
10 and obligations of WPCo and KPCo regarding the Mitchell Plant. Under the Current  
11 Mitchell Agreement, WPCo and KPCo are each entitled to an equal share of the capacity  
12 and energy of the Mitchell Plant and are responsible for all of the costs of operation,  
13 maintenance, and capital improvements, which are generally apportioned between those  
14 companies based either on their proportionate share of plant dispatch or ownership, in the  
15 case of capital investments. WPCo, KPCo, and American Electric Power Service  
16 Corporation ("AEPSC") each have a representative on the Mitchell Operating  
17 Committee, which approves budgets for the Mitchell Plant and makes major decisions  
18 affecting plant operations. Voting power on the Mitchell Operating Committee is equally  
19 divided between WPCo and KPCo; the AEPSC representative does not have a vote. As I  
20 noted earlier, the Current Mitchell Agreement also appoints KPCo as the operator,  
21 through which most environmental and other permits are held in the name of KPCo on  
22 behalf of both owners.

23 **Q. WHAT IS THE COMPANIES' PROPOSAL REGARDING THE CURRENT**  
24 **MITCHELL AGREEMENT?**

1 A. Although the Current Mitchell Agreement is equitable and has been a reasonable and  
2 appropriate foundation on which WPCo and KPCo have owned, operated, maintained,  
3 and managed the Mitchell Plant since 2014, it is now in the best interests of the  
4 Companies and their customers to terminate the agreement and replace it with the  
5 proposed Mitchell Plant Operations and Maintenance Agreement and the proposed  
6 Mitchell Plant Ownership Agreement attached as Exhibits CTB-D2 and CTB-D3,  
7 respectively. Concurrently with this filing, KPCo is also seeking approval of the New  
8 Mitchell Agreements from the KPSC, and WPCo and KPCo are seeking approval from  
9 the FERC, pursuant to their respective requirements.

10 **Q. WHY ARE THE COMPANIES PROPOSING TO REPLACE THE CURRENT**  
11 **MITCHELL AGREEMENT WITH TWO NEW AGREEMENTS?**

12 A. In short, the Current Mitchell Agreement needs to be replaced because the owners'  
13 interests and plans for future use have changed. An updated agreement is needed to  
14 ensure that the ongoing operations and work done at the Mitchell Plant are appropriately  
15 apportioned and to comply with recent orders from this Commission and the KPSC. The  
16 Current Mitchell Agreement was put in place between WPCo and KPCo as co-owners  
17 when they shared a common long-term strategic plan for the Mitchell Plant, including the  
18 desired retirement dates and planned levels of investment. The recent environmental  
19 compliance decisions from this Commission and the KPSC have led WPCo's and  
20 KPCo's long-term plans related to Mitchell to diverge, necessitating replacement of the  
21 Current Mitchell Agreement.

22 **Q. PLEASE DESCRIBE THE WEST VIRGINIA AND KENTUCKY CERTIFICATE**  
23 **PROCEEDINGS THAT HAVE LED TO THE FILING OF THIS CASE.**

1 A. In Case No. 20-1040-E-CN, the Companies sought a certificate of public convenience  
2 and necessity (“CCN”) and cost recovery from this Commission to make modifications  
3 necessary at the Mitchell, Amos, and Mountaineer coal-fired electric generating plants to  
4 comply with federal environmental regulations: the coal combustion residuals (“CCR”) rule  
5 and the effluent limitation guidelines (“ELG”) rule. On August 4, 2021, the  
6 Commission issued an Order granting a CCN to make the necessary modifications to  
7 comply with both the CCR and ELG rules at all three plants to enable them to operate  
8 through 2040, and also approved a cost recovery surcharge.

9 KPCo filed Case No. 2021-00004 with the KPSC, seeking a certificate of public  
10 convenience and necessity (“CPCN”) to construct equipment at the Mitchell coal-fired  
11 generating plant to comply with the ELG and CCR rules. On July 15, 2021, the KPSC  
12 issued an Order approving a CPCN only for CCR compliance and denying a CPCN to  
13 construct equipment necessary to comply with the ELG rule. This decision (the denial of  
14 a CPCN for the ELG work at Mitchell) differs from this Commission’s approval of a  
15 CCN for all three plants, including the ELG work at Mitchell.

16 **Q. WHAT WAS THE COMPANIES’ REACTION TO THE ORDERS FROM THIS**  
17 **COMMISSION AND THE KPSC?**

18 A. In response to those orders (and the VSCC’s order in Docket No. PUR-2020-00258), the  
19 Companies filed a petition to reopen Case No. 20-1040-E-CN, requesting confirmation  
20 and clarification as to how they should proceed in light of the jurisdictions’ different  
21 decisions for the ELG work. After a hearing on the petition was held, the Commission  
22 issued an Order on October 12, 2021 granting a CCN to make necessary compliance  
23 modifications, including ELG compliance modifications at all three plants, to continue

1 coal-fired generation of electricity beyond 2028. In addressing the different decisions  
2 made by other jurisdictions, the Commission ordered the following:

- 3 • That additional prudent investments and continuing operations costs at the plants  
4 that would not be incurred but for this Commission's order to operate the plants  
5 beyond 2028 should not be the responsibility of Virginia and Kentucky  
6 jurisdictional customers as long as the KPSC and VSCC continue to prohibit their  
7 jurisdictional customers from sharing in the costs and as long as they do not share  
8 in the capacity and energy available from the plants.
- 9 • That due to the decisions of Virginia and Kentucky that would require the plants  
10 to shut down after 2028, APCo and WPCo should not share capacity or energy  
11 from the plants with customers in those states that are not paying for the ELG  
12 compliance costs or for any new capital investment and continuing operations  
13 costs incurred to allow the Companies to operate the plants after 2028 or prevent  
14 downgrades prior to 2028.
- 15 • That the changes in the operating agreement for the Mitchell plant or changes in  
16 the ownership of the Mitchell plant necessary to accommodate the continued  
17 operation of the plant without the involvement of KPCo or Kentucky  
18 jurisdictional customers shall be filed for approval by the Commission.

19 **Q. HAS THE KPSC ISSUED OTHER ORDERS THAT ARE RELEVANT TO THIS**  
20 **CASE?**

21 A. Yes, KPSC also has issued two orders that are important to this case in Case No. 2021-  
22 00370.

1 First, in its order regarding KPCo's application seeking a declaratory order that  
2 WPCo is not required to obtain a certificate of public convenience and necessity from  
3 KPSC to complete ELG work, the KPSC stated the following:

4 The Commission expects Kentucky Power and Wheeling to promptly seek  
5 modifications to the Mitchell operating agreement should Wheeling move  
6 forward with the ELG project, in particular the provisions designating  
7 Kentucky Power the operator of Mitchell and assigning it certain  
8 responsibilities in that role. The Commission further expects Kentucky  
9 Power and Wheeling to promptly seek modifications of environmental  
10 permits related to ELG currently held in Kentucky Power's name. These  
11 modifications will be necessary to ensure Kentucky Power's  
12 representations that neither it nor its customers will bear any of the costs  
13 of Wheeling's ELG project.<sup>2</sup>  
14

15 Second, the KPSC recently found, on its own motion, that KPCo should request KPSC  
16 approval prior to any change to the Current Mitchell Agreement.<sup>3</sup>

17 **Q. WHAT ARE THE COMPANIES SEEKING IN THIS CASE?**

18 A. Consistent with the various directives from this Commission and the KPSC, and pursuant  
19 to W. Va. Code §24-2-12 to the extent required, the Companies are seeking approval of  
20 the New Mitchell Agreements.

21 **Q. PLEASE DESCRIBE YOUR INVOLVEMENT IN THE CRAFTING OF THE  
22 NEW MITCHELL AGREEMENTS.**

23 A. The proposed New Mitchell Agreements were crafted as orders affecting the future of the  
24 Mitchell Plant were issued by this Commission and the KPSC. Following informal  
25 discussions between WPCo and KPCo management, meetings of the Mitchell Operating  
26 Committee were held to discuss necessary changes to the Current Mitchell Agreement  
27 and review new contractual terms required to address those changes and the two

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<sup>2</sup> In the Matter of: Electronic Investigation of the Service, Rates and Facilities of Kentucky Power Company, Case No. 2021-00371, Order at 9 (Ky. P.S.C. Oct. 8, 2021).

<sup>3</sup> Case No. 2021-00371, Order at 1-2 (Oct. 28, 2021).

1 commissions' orders related to Mitchell. I participated in Operating Committee meetings  
2 on behalf WPCo and provided input and feedback on both of the New Mitchell  
3 Agreements as they were drafted.

4 **Q. PLEASE SUMMARIZE THE PRIMARY CHANGES REFLECTED IN THE NEW**  
5 **MITCHELL AGREEMENTS THAT WERE MADE TO COMPORT WITH THE**  
6 **COMMISSION ORDERS YOU DESCRIBED.**

7 A. The New Mitchell Agreements reflect three principal categories of changes needed to  
8 comply with the orders of this commission and the KPSC:

9 1. Section 1.5 of the proposed Mitchell Plant Ownership Agreement makes  
10 WPCo the operator of the Mitchell Plant. This change is appropriate given the KPSC's  
11 October 8, 2021 Order in Case No. 2021-00371 and the fact that WPCo will be  
12 responsible for ELG compliance work necessary for WPCo to operate the Mitchell Plant  
13 beyond 2028. WPCo's obligations as the operator would be governed by the proposed  
14 Mitchell Plant Operation and Maintenance Agreement. As Company witness Kerns  
15 discusses in greater detail, day-to-day operations will not be affected by the change in  
16 operator pursuant to the New Mitchell Agreements, and current Mitchell Plant employees  
17 will remain on-site to continue the safe and reliable operation of the Mitchell Plant.

18 2. The new Mitchell Plant Ownership Agreement also addresses the  
19 allocation of costs, consistent with this Commission's directives, necessary to enable  
20 KPCo to comply with CCR rules, for WPCo to comply with both the CCR and ELG rules  
21 at the Mitchell Plant, and for WPCo to make other capital improvements related to  
22 potential post-2028 operations.

23 • Section 6.7(b) of the proposed Mitchell Plant Ownership Agreement  
24 provides that capital expenditures for CCR and ELG compliance projects

1 will be analyzed by a technical expert who will recommend an allocation  
2 of those costs to WPCo and KPCo. KPCo will pay half the costs that the  
3 technical expert identifies as enabling it to comply with the CCR rules at  
4 the Mitchell Plant, and WPCo will pay the other half of those costs and all  
5 costs that are identified as enabling WPCo to comply with the ELG rules  
6 at the Mitchell Plant.

- 7 • Section 6.4 of the proposed Mitchell Plant Ownership Agreement  
8 addresses cost allocation for other capital expenditures. Capital  
9 expenditures for assets that go into service after 2028 will be allocated  
10 entirely to WPCo (Section 6.7(c)). Capital expenditures for assets that go  
11 into service before 2028 and have a depreciable life beyond 2028 will be  
12 allocated ratably such that KPCo pays only its half of the capital costs for  
13 the assets up to the end of 2028 (Section 6.7(d)). WPCo will pay the  
14 remaining capital costs of those projects, including all of the post-2028  
15 costs. All other capital expenditures will be allocated 50% to each owner  
16 (Section 6.7(e)), the same as under the Current Mitchell Agreement.
- 17 • Section 1.8 of the proposed Mitchell Plant Ownership Agreement provides  
18 that if either owner of the Mitchell Plant funds more than 50% of any  
19 capital expenditure, such as would occur under the sections mentioned  
20 above, then the resulting capital addition will be owned by the two  
21 companies and reflected in their books and records in proportion to the  
22 respective amounts they each funded. Under Section 7.1 of the proposed  
23 Mitchell Plant Ownership Agreement, the voting rights of KPCo and

1 WPCo remain 50/50 even if one owner has more capital invested in the  
2 Mitchell Plant than the other owner.

3 • Per Section 6.4(d) of the proposed Mitchell Plant Ownership Agreement  
4 provides that operation and maintenance expenses attributable to ELG  
5 upgrades will be allocated exclusively to and paid by WPCo. Other O&M  
6 expenses are generally allocated proportionately under Section 6.4 to each  
7 owner's dispatch of the Mitchell Plant, the same as under the Current  
8 Mitchell Agreement.

9 3. Section 9.6 of the new Mitchell Plant Ownership Agreement addresses the  
10 potential transfer of KPCo's 50% interest in the Mitchell Plant to WPCo should WPCo  
11 continue operating the Plant beyond 2028. Because the KPSC did not approve ELG costs  
12 in the Kentucky CCR/ELG Case, and as a result did not intend for KPCo to pay for the  
13 Mitchell Plant's operations past 2028, the option to acquire ownership of the Mitchell  
14 Plant will allow WPCo in the future to obtain ownership of the entire Mitchell Plant if  
15 WPCo decides to continue to operate the Mitchell Plant beyond 2028.

16 **Q. HOW WOULD THE TRANSFER OPTION SET FORTH IN SECTION 9.6 OF**  
17 **THE MITCHELL PLANT OWNERSHIP AGREEMENT BE IMPLEMENTED?**

18 A. Overall, Section 9.6 defines the process for valuation and transfer of KPCo's 50%  
19 interest in Mitchell Plant if the Plant is not retired earlier and WPCo operates the plant  
20 beyond 2028. Under this transfer option, the process to value KPCo's interest will begin  
21 in 2026. My understanding is that WPCo and KPCo can either agree on a price that is  
22 approved by their respective regulators or initiate a process to determine a fair market  
23 value price for KPCo's Mitchell Plant interests, which would then be paid by WPCo if  
24 the transfer is consummated after receiving any necessary regulatory approvals from

1 regulators. Section 9.6 provides a procedural mechanism through which the current  
2 owners could elect to exercise that transfer option in the future. WPCo is not seeking  
3 approval of such a transfer in this case.

4 **Q. ARE THE PROPOSED CHANGES IN THE NEW MITCHELL AGREEMENTS**  
5 **DRIVEN BY AEP'S ANNOUNCED SALE OF KPCO?**

6 A. No, they are not. As I explained earlier, the need for and terms of the New Mitchell  
7 Agreements are a direct result of the previously-described orders of this Commission and  
8 the KPSC. Those orders necessitate replacement of the Current Mitchell Agreement with  
9 the New Mitchell Agreements to ensure that future investment in and operation of the  
10 Mitchell Plant are undertaken consistent with each company's ownership and  
11 participation with respect to the Mitchell Plant, as well as to ensure that costs are  
12 appropriately allocated and assigned between Mitchell's owners. In short, the changes  
13 reflected in the proposed New Mitchell Agreements are necessary regardless of the  
14 identity of KPCo's corporate parent.<sup>4</sup>

15 **Q. WILL THE PROPOSED NEW MITCHELL AGREEMENTS APPROPRIATELY**  
16 **GOVERN THE MITCHELL PLANT RELATIONSHIP BETWEEN WPCO AND**  
17 **LIBERTY IN THE EVENT OF LIBERTY'S PURCHASE OF KPCO?**

18 A. Yes. The New Mitchell Agreements are appropriate to govern the relationship regarding  
19 the Mitchell Plant whether or not the ownership of the KPCo changes, as they address the  
20 requirements of this Commission and the KPSC.

21 **Q. ARE THE NEW MITCHELL AGREEMENTS REASONABLE AND IN THE**  
22 **PUBLIC INTEREST?**

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<sup>4</sup> Nonetheless, I understand that KPCo's proposed acquirer, Liberty Utilities Co., has agreed to and accepted the terms of the New Mitchell Agreements as part of the sale transaction.

1 A. Yes. The terms and conditions of the agreements are reasonable. The New Mitchell  
2 Agreements benefit the Companies and their West Virginia customers by providing  
3 transparency, clarity, and certainty regarding Mitchell's continued operations,  
4 environmental compliance, cost allocation, and ownership. They implement the terms of  
5 the Commissions' recent orders regarding cost allocation at Mitchell, provide a process  
6 through which WPCo can acquire full ownership of Mitchell in accordance with this  
7 Commission's Orders, in exchange for fair market value at the time of such a transfer,  
8 and allow for WPCo to continue operations after 2028. In sum, the proposed agreements  
9 offer benefits to both WPCo and KPCo and do not give either company any undue  
10 advantage over the other, nor do they adversely affect the public in West Virginia. West  
11 Virginia customers of the Companies will be assured of adequate and reliable power  
12 supplies at reasonable prices.

13 **Q. DO THE RESPECTIVE COMMISSION ORDERS IMPACT THE TIMING**  
14 **SOUGHT FOR APPROVAL OF THE REQUEST IN THIS CASE FOR THE NEW**  
15 **MITCHELL AGREEMENTS?**

16 A. Yes. It is important that approval of the New Mitchell Agreements and the associated  
17 transfer of operations of the Mitchell Plant to WPCo be timely to fulfill the items in this  
18 Commission's and the KPSC's orders. To comply with those orders, operations must be  
19 transferred to WPCo so that the permits can be updated in its name, equipment and  
20 materials procured and paid for by WPCo and then appropriately billed to KPCo using  
21 the cost allocation methods in the New Mitchell Agreements, and physical ELG work  
22 performed by WPCo can begin. For those reasons, the Company is requesting an order  
23 by February 17, 2022 to ensure the timely transfer of the permits, ordering of equipment  
24 and materials, and that the physical ELG work itself can be completed by WPCo by the

1 necessary permit deadlines. Therefore, timely review and approval by this Commission  
2 is needed by that date to allow for the updated permitting to be requested prior to the  
3 construction start date necessary to meet those permit deadlines.

4 **Q. WHAT OTHER WITNESSES WILL BE OFFERING TESTIMONY IN SUPPORT**  
5 **OF THE COMPANIES' FILING, AND WHAT IS THE GENERAL SUBJECT**  
6 **MATTER OF THEIR TESTIMONY?**

7 A. In addition to my testimony, the Companies are also offering the Direct Testimony of  
8 Timothy C. Kerns.

9 Company witness Kerns testifies regarding the operational impacts of the New  
10 Mitchell Agreements and WPCo's capability to operate the Mitchell Plant.

11 **Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?**

12 A. Yes, it does.

**RATE SCHEDULE NO. 303**

**MITCHELL PLANT OPERATING AGREEMENT**

**KENTUCKY POWER COMPANY**

**WHEELING POWER COMPANY**

**and**

**AMERICAN ELECTRIC POWER SERVICE CORPORATION, AS AGENT**

**Tariff Submitter: Kentucky Power Company**  
**FERC Program Name: FERC FPA Electric Tariff**  
**Tariff Title: KPCo Rate Schedules and Service Agreement Tariffs**  
**Tariff Proposed Effective Date: 12/31/2014**  
**Tariff Record Title: Mitchell Plant Operating Agreement**  
**Option Code: A**  
**Record Content Description: Rate Schedule No. 303**

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, this 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 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

##### FUNCTIONS OF KPCO AND AGENT

- 1.1 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 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, KPCo shall furnish to WPCo a statement setting forth the dollar amounts associated with the operation 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 KPCo shall be responsible for the day to day operation and maintenance of the Mitchell Plant. 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 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 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 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 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, 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, 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 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 allocated fifty percent (50%) to each Owner for months that are prior to this Agreement.

(c) In 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.

6.6 Each Owner shall bear the cost of all taxes attributable to its 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 KPCCo 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%.
- 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 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

COMPANY EXHIBIT CTB-D1  
Page 16 of 25

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 10<sup>th</sup> 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.
- 7.10 At least 90 days before the start of each operating year, 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 FERC approval or acceptance for filing, the Effective Date of this Agreement shall be December 31, 2014.
- 8.2 Subject to 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 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:

COMPANY EXHIBIT CTB-D1  
Page 20 of 25

KENTUCKY POWER COMPANY

Gregory G. Pauley

President & COO

Attn: \_\_\_\_\_

Phone: (502) 696-7007

Facsimile: (502) 696-7006

Email: ggpauley@aep.com

WHEELING POWER COMPANY

Charles R. Patton

President

Attn: \_\_\_\_\_

Phone: (304) 348-4152

Facsimile: (304) 348-4198

Email: crpatton@aep.com

AMERICAN ELECTRIC POWER SERVICE  
CORPORATION

Mark C. McCullough

Executive Vice President – Generation

Attn: \_\_\_\_\_

Phone: (614) 716-2400

Facsimile: (614) 716-1331

Email: mcmccullough@aep.com

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 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 the 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 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: \_\_\_\_\_  
Gregory G. Pauley

Title: President & COO

WHEELING POWER COMPANY

By: \_\_\_\_\_  
Charles R. Patton

Title: President

AMERICAN ELECTRIC POWER SERVICE CORPORATION

By: \_\_\_\_\_  
Mark C. McCullough

Title: Executive Vice President - Generation

**OPERATIONS AND MAINTENANCE AGREEMENT**

by and between

**KENTUCKY POWER COMPANY, as the Non-Operator Owner**

and

**WHEELING POWER COMPANY, as the Operator**

Dated as of

[ ]

**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE I - AGREEMENT .....	1
1.1 Agreement .....	1
1.2 Relationship of the Parties .....	1
1.3 Entire Agreement .....	2
ARTICLE II - DEFINITIONS.....	2
ARTICLE III - RESPONSIBILITIES OF OPERATOR.....	8
3.1 Provision of Services. ....	8
3.2 Procurement. ....	8
3.3 Standards for Performance of the Services. ....	9
3.4 Dispatch. ....	9
3.5 Licenses and Permits.....	10
3.6 Personnel Matters.....	11
3.7 No Liens or Encumbrances.....	11
3.8 Emergency Action. ....	11
ARTICLE IV - OBLIGATIONS, RIGHTS AND REPRESENTATIVES OF EACH OWNER.....	11
4.1 General.....	11
4.2 Information. ....	12
4.3 Access to Facility.....	12
4.4 Instructions, Approvals, etc. ....	12
ARTICLE V - REPRESENTATIVES, BUDGETS AND REPORTS .....	12
5.1 Representatives of Operator.....	12
5.2 Representatives of Owner; Operating Committee. ....	12
5.3 Plans and Budgets. ....	13
5.4 Availability of Operating Data and Records.....	13
5.5 Litigation and Permit Lapses. ....	14
5.6 Other Information. ....	14
5.7 Records Maintenance and Retention. ....	14
ARTICLE VI - LIMITATIONS ON AUTHORITY .....	14
6.1 Limitations on Authority.....	14

ARTICLE VII - COMPENSATION AND PAYMENT .....	15
7.1 General.....	15
7.2 Costs.....	15
7.3 Cost Audit.....	16
7.4 Late Payment Rate.....	17
ARTICLE VIII - TERM .....	17
8.1 Term.....	17
8.2 Termination by the Non-Operator Owner for Cause.....	17
8.3 Termination by Operator.....	17
8.4 Transfer of Facility Custody.....	18
8.5 Services Upon Termination.....	18
8.6 Plant Manager Replacement.....	19
ARTICLE IX - INSURANCE .....	19
9.1 Operator Insurance Requirements.....	19
9.2 Form and Content .....	20
ARTICLE X - INDEMNIFICATION .....	20
10.1 Operator Indemnification.....	20
10.2 Owner Indemnification.....	20
10.3 Environmental Indemnification.....	21
ARTICLE XI - LIABILITIES OF THE PARTIES .....	22
11.1 Limitations of Liability.....	22
11.2 Operator's Total Aggregate Liability.....	22
11.3 No Warranties or Guarantees.....	23
ARTICLE XII - CONFIDENTIALITY .....	23
12.1 General.....	23
12.2 Exceptions.....	24
12.3 Required Disclosure.....	24
ARTICLE XIII - TITLE, DOCUMENTS AND DATA.....	24
13.1 Materials and Equipment.....	24
13.2 Documents.....	24
13.3 Proprietary Information.....	25
ARTICLE XIV - MISCELLANEOUS PROVISIONS .....	25
14.1 Assignment.....	25

14.2 Effect of Bankruptcy..... 25  
14.3 Access. .... 25  
14.4 Subcontractors; Subagents. .... 25  
14.5 Not for Benefit of Third Parties. .... 26  
14.6 Force Majeure. .... 26  
14.7 Dispute Resolution..... 27  
14.8 Amendments. .... 27  
14.9 Survival..... 27  
14.10 No Waiver..... 27  
14.11 Notices. .... 28  
14.12 Representations and Warranties..... 28  
14.13 Additional Representation and Warranty by Operator. .... 29  
14.14 Counterparts..... 29  
14.15 Governing Law; Venue; Waiver of Jury Trial..... 29  
14.16 Interpretation..... 30  
14.17 Severability. .... 30  
14.18 Cooperation in Financing..... 30

APPENDIX A – SCOPE OF SERVICES  
APPENDIX B – INITIAL BUDGET AND PLAN  
APPENDIX C – OPERATING COSTS WORKSHEET/SAMPLE INVOICE

## MITCHELL PLANT OPERATIONS AND MAINTENANCE AGREEMENT

This OPERATIONS AND MAINTENANCE AGREEMENT (this "Agreement"), dated as of [ ] (the "Effective Date"), is entered by and between WHEELING POWER COMPANY, a West Virginia corporation (in its capacity as the operator of the Facility, "Operator" and in its capacity as an owner of the Facility, "WPCo") and KENTUCKY POWER COMPANY, a Kentucky corporation qualified as a foreign corporation in West Virginia (in its capacity as an owner of the Facility, the "Non-Operator Owner" and, together with WPCo, each an "Owner" and, together, the "Owners").

### RECITALS

1. Owners each own an undivided Ownership Interest in the Facility (these and other capitalized terms are defined in Article II).
2. On the date hereof, WPCo and the Non-Operator Owner have entered into that certain Mitchell Plant Ownership Agreement, setting forth the respective rights, duties and obligations of the Owners with respect to each other and the Facility in their capacities as the Owners thereof (the "Ownership Agreement").
3. Pursuant to the Ownership Agreement, WPCo has agreed to manage the day-to-day operations and maintenance of the Facility as Operator pursuant to the terms of this Agreement.
4. Operator and the Non-Operator Owner desire to execute this Agreement to set forth the respective rights, duties and obligations of WPCo, in its capacity as Operator of the Facility, and the Non-Operator Owner, in its capacity as an Owner of an undivided interest as a co-tenant in the Facility.

NOW, THEREFORE, in consideration of the foregoing premises, and of the mutual covenants, undertakings and conditions set forth below, the Parties agree as follows:

### ARTICLE I - AGREEMENT

1.1 Agreement. This Agreement consists of the recitals, and the terms and conditions set forth in this Agreement, as well as the appendices that are referenced in the table of contents and attached to this Agreement.

1.2 Relationship of the Parties. Operator shall perform the Services in its capacity as an independent contractor of the Owners and as principal on its own behalf as an Owner. Subject to any limitations set forth in this Agreement and the Ownership Agreement, the Owners delegate to Operator, and Operator accepts from the Owners, the responsibility of providing the Services at the Facility. The Owners and Operator agree that the scope of delegation is strictly limited to the matters set forth in this Agreement and the Ownership Agreement. Without limiting the generality of the foregoing, the Owners retain the ultimate authority and obligation to determine whether and to what extent the Facility operates, and Operator shall not cause the Facility to generate power except as expressly directed to do so by the Owners or any dispatching authority specified by the Owners in accordance with the Ownership Agreement. For the avoidance of doubt, any provision

of this Agreement requiring the delegation of authority, direction, consent or authorization with respect to the Owners shall mean the delegation, direction, consent or authorization of both Owners (or the Operating Committee) in accordance with the Ownership Agreement (except to the extent the Ownership Agreement gives exclusive authority to the Non-Operator Owner thereunder, in which case such delegation of authority, direction, consent or authorization with respect to the Owners shall mean exclusively the delegation, direction, consent or authorization of the Non-Operator Owner).

1.3 Entire Agreement. This Agreement, together with the Ownership Agreement, contains the entire agreement between the Parties with respect to Operator's provision of Services at the Facility and supersedes all prior negotiations, undertakings and agreements.

## ARTICLE II - 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, capitalized terms have the meanings specified in this Article II. The singular includes the plural, as the context requires. The terms "includes" and "including" mean "including, but not limited to." The terms "ensure" and "reasonable efforts" will not be construed as a guarantee, but will imply only a duty to use reasonable efforts and care, consistent with Prudent Operation and Maintenance Practices, and will include reasonable expenditures of money and at least such efforts as Operator would undertake for its own assets, services or maintenance, or for services provided to an Affiliate. "Gross negligence" will not be construed as simple or ordinary negligence, it being the intent of the Parties to preserve a distinction between errors made inadvertently while attempting to perform with due care and actions taken with a knowing disregard for a foreseeable risk. "Day" (regardless of capitalization) shall mean a calendar day, unless specifically designated as a Business Day. "Month" (regardless of capitalization) shall mean a calendar month. References to articles, sections and appendices mean the articles and sections of, and appendices to, this Agreement, except where expressly stated otherwise.

"AEP" shall mean American Electric Power Company, Inc., a New York corporation and an Affiliate of WPCo.

"AEpsc" shall mean American Electric Power Service Corporation, a New York corporation and an Affiliate of WPCo.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly, controls, is controlled by, or is under common control with such Person. 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, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise. The Non-Operator Owner shall not be deemed an Affiliate of the Operator.

"Agreement" has the meaning set forth in the preamble to this Agreement.

"Applicable Law" means 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 Facility asset or the Facility, as applicable.

“Bankruptcy” means a situation in which (i) a Person files a voluntary petition in bankruptcy or is adjudicated as bankrupt or insolvent, or files any petition or answer or consent seeking any reorganization, arrangement, moratorium, composition, readjustment, liquidation, dissolution or similar relief for itself under the present or future applicable United States federal, state or other statute or law relative to bankruptcy, insolvency or other relief for debtors, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, conservator or liquidator of such Person or of all or any substantial part of its properties (the term “acquiesce,” as used in this definition, includes the failure to file a petition or motion to vacate or discharge any order, judgment or decree within fifteen (15) days after entry of such order, judgment or decree); (ii) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against any Person seeking a reorganization, arrangement, moratorium, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States federal bankruptcy act, or any other present or future Applicable Law relating to bankruptcy, insolvency or other relief for debtors, and such Person acquiesces and such decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or a trustee, receiver, conservator or liquidator of such Person is appointed with the consent or acquiescence of such Person and such appointment remains unvacated and unstayed for an aggregate of sixty (60) days, whether or not consecutive; (iii) a Person admits in writing its inability to pay its debts as they mature; (iv) a Person gives notice, to any Governmental Authority of insolvency or pending insolvency, or suspension or pending suspension of operations; or (v) a Person makes a general assignment for the benefit of creditors or takes any other similar action for the protection or benefit of creditors (other than in the ordinary course of such party’s business).

“Budget” means an annual operating budget and annual capital budget adopted or amended pursuant to the Ownership Agreement.

“Business Day” means any day other than (i) a Saturday or Sunday or (ii) a day on which banks in West Virginia or Ohio are required or permitted to be closed.

“Claims” means any and all claims, assertions, demands, suits, investigations, inquiries, and proceedings.

“Confidential Information” means, with respect to each Party, all written or oral information of a proprietary, intellectual or similar nature, relating to the business, projects, operations, activities or affairs of a Party and its Affiliates, whether of a technical or financial nature or otherwise (including environmental assessment reports, financial information, business plans and proposals, ideas, concepts, trade secrets, know-how, processes, pricing of services or products, and other technical or business information, whether concerning this Agreement, each Party’s respective businesses or otherwise) that has not been publicly disclosed and that the receiving Party acquires directly or indirectly from the disclosing Party.

“Cost Allocation Manual” means the Cost Allocation Manual of Operator and its Affiliates, as may be amended from time to time, as filed with FERC and, to the extent required, the WVPSC.

“Decommission” or “Decommissioning” shall mean the retirement, dismantlement and permanent removal of the generating units and other property, plant, and equipment comprising the Facility, including any common facilities associated with each generating unit that are to be permanently removed from service, the restoration of the 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 Work” shall mean all work reasonably necessary or undertaken to Decommission the Facility, 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 Facility in accordance with Applicable Law.

“Dollars” means United States Dollars, the lawful currency of the United States of America.

“Due Date” means, with respect to any Operator invoice, the date that is thirty (30) days following the date on which Operator submits the invoice to the Non-Operator Owner in accordance with Article VII. If such date does not fall on a Business Day, then the Due Date shall be the first Business Day after such date.

“Effective Date” means the date set forth in the preamble to this Agreement.

“Emergency” has the meaning set forth in Section 3.8.

“Encumbrance” means (i) any mortgage, 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; (ii) 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; and (iii) any agreement to create any of the foregoing or allow any of the foregoing to exist.

“Environmental Law” means any Applicable Law pertaining to (i) the regulation or protection of employee health or safety, public health or safety, or the indoor or outdoor environment; (ii) the conservation, management, development, control or use of land, natural resources, or wildlife; (iii) the protection or use of surface water or ground water; (iv) the management, manufacture, possession, presence, use, generation, treatment, storage, disposal, transportation, or handling of, or exposure to any Hazardous Material; or (v) pollution (including release of any hazardous substance to air, land, surface water and ground water), including the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), the Clean Water Act (33 U.S.C. §§ 7401 et seq.), the Clean Air Act, as amended (42 U.S.C. §§ 7401 et seq.), the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.), the

Uranium Mill Tailings Radiation Control Act (42 U.S.C. §§ 7901 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.), all as now or hereafter amended or supplemented, and any regulations promulgated thereunder, and any other similar federal, state, or local statutes, rules and regulations.

“Environmental Liability” has the meaning set forth in Section 10.3.1.

“Facility” means the Mitchell Power Generation Facility consisting of two (2) coal-fired generating units, each having a nominal nameplate capacity of 800 megawatts, and associated plant, equipment and real estate, located in Moundsville, West Virginia, and includes all electrical or thermal devices, and related structures and connections that are located at the Site and used for the production of power and the transportation and handling of fuel for the benefit of the Owners, but excluding the real property and operation known as the Conner Run Fly Ash Impoundment and Dam.

“Facility Agreements” means this Agreement, the Ownership Agreement, all applicable interconnection agreements, fuel supply agreements, coal ash, gypsum and other combustion byproduct disposal or sales agreements, all applicable equipment maintenance agreements in effect or entered into, and as amended, supplemented or modified, from time to time by the Operator or the Owners relating to the Facility, all equipment contracts with regard to warranties and equipment design and specifications, and any other agreement reasonably designated by the Owners as a “Facility Agreement.”

“Facility Equipment” has the meaning set forth in Section 13.1.

“Facility Personnel” means those individuals who are employed by Operator or its Affiliates to perform services in respect of the Facility under this Agreement.

“Force Majeure Event” has the meaning set forth in Section 14.6.1.

“Governmental Approval” means any consent, license, approval, exemption, Permit, “no objection certificate” or other authorization of whatever nature that is required to be granted by any Governmental Authority or any third party with respect to the siting, construction, operation, service and maintenance of the Facility in accordance with this Agreement, or otherwise necessary to enable an Owner or Operator to exercise its rights, or observe or perform its obligations, under this Agreement.

“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, bureau or agency, or any political or other subdivision, department or branch of the foregoing, including any independent system operator, regional transmission organization or electric reliability organization.

“Hazardous Materials” means (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, 1,4 Dioxane, per-and polyfluoroalkyl substances, and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls; (b) any chemicals, materials or substances that are now or hereafter become defined as or included in the definition of “hazardous

substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under Applicable Law; or (c) any other chemical, material, substance or waste declared to be or regulated as hazardous, toxic or polluting material by any Governmental Authority, exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority.

“Late Payment Rate” means a rate of interest per annum equal to the lesser of (i) the “prime” rate of interest per annum for corporate loans as published in The Wall Street Journal under “Money Rates” as such rate may be in effect from time to time during the period the delinquent amount remains outstanding plus four (4) percentage points (4%) per annum or (ii) the maximum rate of interest permitted by Applicable Law.

“Lender” means any entity or entities providing financing or refinancing to an Owner under any financing agreements in connection with the construction or permanent financing for the Facility, and their permitted successors and assigns.

“Liabilities” means, collectively, any and all Claims, damages, judgments, losses, obligations, liabilities, actions and causes of action, fees (including reasonable attorneys’ fees and disbursements), costs (including court costs), expenses, penalties, fines and sanctions.

“Manuals” means Facility Equipment manuals, system descriptions, system operating instructions, equipment maintenance instructions and pertinent design documentation created by the Persons that constructed the Facility or manufactured its equipment, and the operation and maintenance procedures and Facility systems descriptions, training, safety, chemistry and environmental manuals, together with the documents and schedules described in such manuals.

“NERC” means the North American Electric Reliability Corporation.

“Non-Operator Owner” has the meaning set forth in the preamble to this Agreement.

“Non-Operator Owner Indemnitees” has the meaning set forth in Section 10.1.

“Operating Committee” means the “Operating Committee” as composed from time to time pursuant to and defined in the Ownership Agreement.

“Operating Costs” has the meaning set forth in Section 7.2.1.

“Operator” has the meaning set forth in the preamble to this Agreement.

“Operator Indemnitees” has the meaning set forth in Section 10.2.

“Operator Proprietary Information” has the meaning set forth in Section 13.3.

“Owner” has the meaning set forth in the preamble to this Agreement.

“Ownership Agreement” has the meaning set forth in the recitals to this Agreement.

“Ownership Interest” has the meaning set forth in the Ownership Agreement.

“Party” means a party to this Agreement and “Parties” means, collectively, the parties to this Agreement, unless the context clearly requires a different construction.

“Permit” means any permit, license, consent, approval or certificate that is required or used for the operation or maintenance of the Facility or the performance of any Service and includes Permits required under Environmental Laws.

“Person” means any Party, individual, partnership, corporation, association, limited liability company, business trust, government or political subdivision thereof, governmental agency or other entity.

“Plan” means an annual operating plan adopted or amended pursuant to Section 5.3.

“Plant Manager” means the production/plant manager for the Facility selected in accordance with Section 3.6, Section 8.5 or Section 8.6.

“Project Manager” means the individual appointed in accordance with Section 5.1.

“Prudent Operation and Maintenance Practices” means those practices, methods and acts generally employed in the power generation industry with respect to facilities of similar type, fuel characteristics and geographical location as the Facility, that at the particular time in question, in the exercise of reasonable judgment in light of the facts known at the time the decision in question was being made, would have been expected to accomplish the desired result of such decision consistent with the goals established in a Budget and Plan, and the requirements of Applicable Law, System Operators, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy and expedition. With respect to Operator, Prudent Operation and Maintenance Practices are not limited to the optimum practices, methods or acts to the exclusion of all others, but rather include a spectrum of possible practices, methods or acts commonly employed in the coal-fired power generation industry, including taking reasonable actions to provide a sufficient number of Persons who are available and adequately trained to provide Services at the Facility, and timely perform preventive, routine, and non-routine maintenance and repairs, as exemplified and generally described in Appendix A, subject, in all cases, to the Operator’s duties and the limitations on Operator’s authority, as set forth in this Agreement and the Ownership Agreement.

“Qualified Replacement Operator” shall mean a Person that:

(i) has operated for a period of at least three (3) years, and continues to operate, coal and/or natural gas power generation facilities with an aggregate electricity output of at least one thousand (1,000) megawatts and at least one of those facilities is a coal power generation facility with an aggregate electricity output of at least three hundred (300) megawatts (or has engaged a third party to operate the Facility who satisfies such operation standards); and

(ii) either has (a) a credit rating of “BBB-” or higher by S&P Global Ratings and “Baa3” or higher by Moody’s Investor Service or (b) a tangible net worth of at least \$500,000,000 (or has a direct or indirect parent who satisfies such financial standards).

“Services” has the meaning set forth in Section 3.1.

“Site” means the land on which the Facility is situated.

“Standards of Performance” means the standards for Operator’s performance of the Services set forth in Section 3.3.

“System Operator” means any Person or regional transmission organization, such as PJM Interconnection, L.L.C., supervising the collective transmission or generation facilities of the power region in which the Facility is located that is charged with coordination of market transactions, system-wide transmission planning and network reliability.

“Term” means the initial term together with any extensions.

“Termination Transition Period” has the meaning set forth in Section 8.5.1.

“WPCo” has the meaning set forth in the preamble to this Agreement.

“Year” means the calendar year. With respect to the Year in which the Effective Date occurs, a Year will be deemed to begin on the Effective Date and end on December 31<sup>st</sup> of such Year. If this Agreement terminates, the final Year will be deemed to end on the date that termination occurs.

### ARTICLE III - RESPONSIBILITIES OF OPERATOR

3.1 Provision of Services. Operator shall operate and maintain the Facility and perform other duties as set forth in this Agreement and as directed by the Owners pursuant to the Ownership Agreement, including performing and, as applicable, contracting for the benefit of the Owners with suppliers and service providers to perform, the services set forth on Appendix A (collectively, the “Services”) and agrees to be responsible for the day-to-day operation and maintenance of the Facility.

#### 3.2 Procurement.

3.2.1 Operator shall sign contracts and purchase orders for goods and services to be delivered to the Facility in the name of Operator as agent for the Owners, and shall not contract in the name of the Non-Operator Owner without the Non-Operator Owner’s prior written consent. Operator acknowledges that such contracts and purchase orders are for the benefit of the Owners and the Facility. Operator shall endeavor to negotiate with vendors from standard terms and conditions, including reasonable warranties for the benefit of the Owners.

3.2.2 The Non-Operator Owner shall use commercially reasonable efforts to obtain, promptly following the Effective Date, any and all consents of third parties required to assign, transfer or convey to Operator any contracts or purchase orders for goods and services (including fuel supply and transportation) to be delivered to or used by the Facility that are in the name of the Non-Operator Owner as a result of the Non-Operator Owner having served as the Operator prior to the Effective Date, which are reasonably required to be transferred to Operator for the performance of the Services. To the extent that, notwithstanding its commercially

reasonable efforts, the Non-Operator Owner is unable to obtain any such required consent effective as of the Effective Date, and as a result thereof Operator shall be prevented by such third party from receiving the rights and benefits with respect to any such contract or purchase order intended to be transferred hereunder, or if any attempted assignment would adversely affect the rights of the Non-Operator Owner thereunder so that Operator would not in fact receive all such rights or the Non-Operator Owner would forfeit or otherwise lose the benefit of rights that the Non-Operator Owner is entitled to retain, the Non-Operator Owner and Operator shall cooperate to implement any lawful and commercially reasonable arrangement as the Non-Operator Owner and Operator shall agree, under which Operator would, to the extent practicable, obtain the claims, rights and benefits under such contract or purchase order and assume the burdens and obligations with respect thereto, including by the Non-Operator Owner subcontracting, sublicensing, subleasing, delegating or granting a limited power of attorney or similar appointment as agent to Operator to administer such contracts or purchase orders; provided, however, that the Non-Operator Owner and WPCo shall each bear its respective share of the costs and expenses under any such contract or purchase order in accordance with this Agreement and the Ownership Agreement. The Non-Operator Owner and Operator shall continue to cooperate to assign, transfer or convey to Operator any such contract or purchase order that remain held by the Non-Operator Owner and to otherwise arrange for Operator to directly contract with the applicable third party for any renewal contract or purchase upon the expiration or termination of any such contract or purchase order.

3.3 Standards for Performance of the Services. Operator shall perform the Services in accordance with (i) the Manuals, (ii) the applicable Budget and Plan, (iii) Applicable Laws, (iv) Prudent Operation and Maintenance Practices, (v) insurer requirements delivered to Operator by the Owners in writing, (vi) the requirements in the Facility Agreements (vii) this Agreement; and (viii) as directed by the Owners pursuant to the Ownership Agreement. Subject to the other provisions of this Agreement, Operator shall perform the Services and other obligations under this Agreement in a manner consistent with the Operating Committee's directions. The Parties acknowledge and agree that, subject to Operator's compliance with the Standards of Performance, Operator shall have no liability for acting or refraining to act in accordance with the directions of the Operating Committee, except to the extent caused by Operator's gross negligence, willful misconduct, fraud, willful violation of any Applicable Law, willful breach of this Agreement or the Ownership Agreement or other willful misconduct.

3.4 Dispatch. Operator shall use commercially reasonable efforts to comply with any applicable dispatch instructions of the System Operator and, to the extent applicable, the directions of the Operating Committee or other Person identified by an Owner in writing to Operator as being authorized to provide dispatch instructions made in accordance with the Ownership Agreement. Operator shall give the Operating Committee notice as soon as practicable of any inability of the Facility to make the requisite deliveries of energy, capacity or ancillary services and of Operator's plan to restore operation of the Facility. In the case of any interruption, curtailment or reduction in (i) supplies of fuel or (ii) acceptance of energy, capacity or ancillary services by the System Operator or in the case of any other dispatch constraint imposed on the Facility, Operator shall notify the Non-Operator Owner as soon as practicable. Upon removal of the constraint, Operator shall use its commercially reasonable efforts to restore the availability of the Facility for dispatch consistent with applicable dispatch instructions of the System Operator and, to the extent applicable, the directions of the Operating Committee or other Person identified by an Owner in

writing to Operator as being authorized to provide dispatch instructions made in accordance with the Ownership Agreement.

### 3.5 Licenses and Permits.

3.5.1 General. Operator shall review all Applicable Laws containing or establishing compliance requirements in connection with the operation and maintenance and Decommissioning of the Facility and shall use commercially reasonable efforts to obtain and maintain, for the benefit of both Owners, all Permits required by Applicable Law for the ownership, operation, maintenance and Decommissioning of the Facility and for Operator's performance of the Services, and shall (i) from time to time, notify the Operating Committee if Operator believes that a Permit is required by Applicable Law to be obtained by an Owner in its name in order to allow Operator to perform the Services and assist each Owner, at each Owner's written request and such Owner's sole cost and expense, in securing and complying with, as appropriate, all necessary Permits (and renewals of the same) which are required to be in an Owner's name, including those relating to air emissions, boiler operation, water usage, septic system operation, wastewater discharge, chemical and other waste (including Hazardous Materials) storage and disposal, emissions testing and safety, and (ii) initiate and maintain precautions and procedures reasonably necessary to comply with Applicable Laws. Any Permit held solely in the name of Operator shall, to the extent necessary for the other Owner's compliance with Applicable Law in its role as an Owner, be held by Operator for the benefit of both Owners. Any Permit held solely in the name of the Non-Operator Owner shall, to the extent necessary and consistent with Applicable Laws, be made available for the use of the Operator for the benefit of the Owners and, if reasonably necessary to facilitate Operator's operation and maintenance or Decommissioning of the Facility, the Non-Operator Owner shall cooperate with Operator to effect an assignment or other transfer of such Permit to Operator or otherwise submit such Permit modifications or updating information as necessary to reflect the role of Operator with respect to such Permit.

3.5.2 NERC Compliance. Operator (or an Affiliate thereof) shall register with NERC as the "Generator Owner" and "Generator Operator" for the Facility in accordance with 18 C.F.R. § 39.2(c) effective from and after [the Effective Date]<sup>1</sup>. On and after [the Effective Date], Operator shall, or shall cause its applicable Affiliate to, (i) maintain compliance with all NERC reliability standards applicable to the Facility and all NERC rules applicable to Operator as Generator Owner and Generator Operator for the Facility in accordance with 18 C.F.R. § 39.2(b), including any actions related to mitigation and compliance enhancement required or implemented thereunder; (ii) provide notice to the Operating Committee promptly following the determination by Operator of any reportable physical or cyber security incident under the NERC reliability standards or other Applicable Law; (iii) maintain and provide documentation and maintenance records to the Operating Committee regarding any operation, testing, maintenance or faults of any generation protection relays, gen-tie relays or any other equipment necessary to fulfill Operator's or its applicable Affiliate's obligations as the Generator Owner or Generator Operator for the Facility; and (iv) provide to the Non-Operator Owner upon written request any other information, documentation and support reasonably necessary for Operator or its applicable Affiliate to demonstrate compliance with the NERC reliability standards. To the extent that any fine or

<sup>1</sup> **Note:** Subject to modification if registration cannot be effective as of the Effective Date.

sanction is imposed in respect of the performance of Operator's obligations under this Section 3.5.2 pursuant to Section 215(c) of the Federal Power Act, any cost related thereto shall be included as an Operating Cost, to the extent permitted by Applicable Law.

3.6 Personnel Matters. Subject to Sections 8.5 and 8.6, and as otherwise set forth in this Section 3.6, Operator shall be responsible for determining the working hours, rates of compensation and all other matters relating to the employment of Operator's Facility Personnel, including the designation or appointment of the Plant Manager, in its reasonable judgment and in accordance with Non-Operator Owner's and its Affiliates' past practices in the ordinary course of its business during the time it served as operator of the Facility, and shall retain sole authority, control and responsibility with respect to its employment policies. Operator shall submit for the Operating Committee's approval the staffing requirements for the Facility on an annual basis. If Operator intends to select a new Plant Manager, or if the individual serving as Plant Manager ceases to be the Plant Manager, Operator shall provide prompt written notice to the Non-Operator Owner of the selection of a substitute Plant Manager. Facility Personnel shall be qualified and experienced in the duties to which they are assigned. Operator shall, upon the reasonable written request of the Non-Operator Owner, for cause (as documented in reasonable detail in any such written request), use commercially reasonable efforts to, as promptly as practicable under the circumstances and subject to any applicable collective bargaining agreements, remove from the Site and the Facility workforce, the services of any employee or other individual, subject to Operator's confirmation that such cause exists.

3.7 No Liens or Encumbrances. Operator shall use commercially reasonable efforts to keep and maintain the Facility free and clear of all liens and Encumbrances resulting from the failure by Operator to perform the Services or the personal debts and obligations of Operator unrelated to its ownership interest in the Facility.

3.8 Emergency Action. In the event of an emergency affecting the safety, health or protection of, or otherwise endangering, any Person, property or the environment located at or about the Facility (an "Emergency"), Operator shall take prompt action in accordance with Prudent Operation and Maintenance Practices to prevent or mitigate any imminent damage, injury or loss threatened by such Emergency, and shall notify the Non-Operator Owner of such Emergency and Operator's response as soon as practical under the circumstances and in no event later than forty-eight (48) business hours after Operator becomes aware of such event. To the extent Operator procures goods and services as necessary to respond to an Emergency, reasonable and documented out of pocket costs in respect thereof shall be treated as Operating Costs.

#### **ARTICLE IV - OBLIGATIONS, RIGHTS AND REPRESENTATIVES OF EACH OWNER**

4.1 General. Each Owner expressly reserves the exclusive authority to make, and shall make, such business and strategic decisions as it deems appropriate from time to time in reference to the operation and maintenance of the Facility in accordance with the Ownership Agreement. Upon request from Operator, the Non-Operator Owner shall promptly furnish or cause to be furnished to Operator, at the Non-Operator Owner's expense, the information, access, materials, instructions and other items described in this Article IV that are in the possession or control of the Non-Operator Owner and which are reasonably necessary for performance of the Services by

Operator and not otherwise available to Operator. All such items will be made available at such times and in such manner as may be reasonably required for the expeditious and orderly performance of the Services by Operator.

4.2 Information. Subject to the Standards of Performance, Operator shall be entitled to rely upon any information provided by the Non-Operator Owner or any other party to the Facility Agreements in the performance of the Services.

4.3 Access to Facility. Each Owner shall provide Operator and Operator's contractors, vendors, suppliers, employees and agents and Facility Agreement counterparties, to the extent applicable, reasonable access to and use of the Facility and the Site and to such Owner's records and data at the Facility and, in the case of the Non-Operator Owner, reasonably available to the Non-Operator Owner or in the Non-Operator Owner's possession and reasonably necessary for the performance of Services by Operator under this Agreement.

4.4 Instructions, Approvals, etc. Each Owner shall provide or cause to be provided (including through action of the Operating Committee) to Operator all instructions Operator is required to obtain in accordance with this Agreement. Without limiting the provisions of Section 3.2.2, each Owner shall reasonably cooperate to make available or cause to be available to Operator the benefits of all assets (including Permits and contracts relating to the Facility) held in the name of such Owner, as reasonably required for the operation of the Facility. Each Owner shall not direct Operator to take any action inconsistent with Applicable Law or otherwise adversely affecting the safety, health or protection of any person, or property or the environment located at or about the Facility.

#### **ARTICLE V - REPRESENTATIVES, BUDGETS AND REPORTS**

5.1 Representatives of Operator. On or as soon as practical after the Effective Date, Operator shall appoint a Project Manager who shall be authorized to represent Operator with each Owner and the Operating Committee concerning Operator's performance of the Services. The Project Manager may be the same individual as the Plant Manager. Operator shall be responsible for all communications, directions, requests and decisions made by its Project Manager at its direction. Operator shall notify the Non-Operator Owner in writing upon the appointment of its Project Manager, and of any successors. The Project Manager has no authority to modify, amend or terminate this Agreement or, absent written notice by Operator to the contrary, to enter into any other agreement on behalf of Operator other than as provided herein.

5.2 Representatives of Owner; Operating Committee. The Operating Representative of each Owner (pursuant to and as defined in the Ownership Agreement) shall be authorized and empowered to act for and on behalf of such Owner on all matters requiring the consent, approval or other action of an Owner pursuant to this Agreement. Each Owner shall notify Operator and the other Operating Representative in writing upon the appointment of its Operating Representative, and of any successors. Any provision of this Agreement requiring the consent, approval, or similar act of the Operating Committee shall mean the consent, approval, or similar act of the Operating Committee acting in accordance with the terms of the Ownership Agreement.

### 5.3 Plans and Budgets.

#### 5.3.1 Adoption.

5.3.1.1. Budgets. The initial Budget and Plan for the first Year following the Effective Date is attached as Appendix B hereto. No later than ninety (90) days prior to each operating Year, Operator shall deliver to the Operating Committee for the Operating Committee's review, revision if applicable and approval (i) a proposed annual operating budget, (ii) any proposed amendments to the annual capital budget, (iii) an annual operating plan and (iv) a six (6) Year future forecast of operating and capital expenses. Each such proposed budget, plan and forecast shall contain such detail and supporting documentation as reasonably necessary or reasonably requested for the Operating Committee's review, and Operator shall provide all such additional information and supporting documentation as may be reasonably requested by the Operating Committee and as required by the Ownership Agreement. The Operating Committee shall review and provide modifications to each such proposed budget, plan and forecast and Operator shall cooperate to revise each such proposed budget and plan to receive the Operating Committee's approval of same by December 1 of each Year. Each Budget and Plan as approved by the Operating Committee or otherwise deemed implemented pursuant to the Ownership Agreement shall remain in effect in accordance with the Ownership Agreement. Operator and the Non-Operator Owner by mutual agreement may modify the process and procedures set forth in this Section 5.3.1.

5.3.1.2. Amendments. If either the Non-Operator Owner or Operator becomes aware of facts or circumstances that it believes necessitate a change to a Budget or Plan, that Party shall promptly notify the other Party in writing, specifying the impact upon the Budget and the reasons for the change. The Project Manager shall then discuss appropriate amendments to the Budget with the Operating Committee.

5.3.1.3. Failure to Agree. Operator acknowledges that the Owners retain ultimate authority with respect to expenses incurred for the Facility. Accordingly, Operator shall accept each Budget as determined in accordance with the Ownership Agreement. To the extent that the Operating Committee limits funds for Operating Costs, Operator shall be relieved from performing only those specific Services that would result in the incurrence of such non-reimbursable Operating Costs.

5.3.2 Limitations on Variation from Budget. Except as otherwise permitted in response to an Emergency in accordance with Section 3.8, Operator shall obtain the Operating Committee's written approval (i) for any expenditures resulting in cumulative budget overruns exceeding ten percent (10%) in the aggregate in any Year with respect to either the operating Budget or capital expense Budget, or (ii) for any unbudgeted expenditure or capital project having a projected cost of more than \$100,000.

5.4 Availability of Operating Data and Records. Operator shall deliver Facility data recorded, prepared or maintained by Operator to the Operating Committee: (i) as necessary or reasonably requested by an Owner to assist each Owner in complying with requirements of Governmental Authorities, Permits and Facility Agreements; or (ii) upon request by the Non-

Operator Owner, in each case as soon as reasonably practicable but in any event within ten (10) Business Days following such request.

5.5 Litigation and Permit Lapses. Promptly upon obtaining actual knowledge thereof, either Party shall submit prompt written notice to the other Party of the following, to the extent relating to the Facility or the Services or agreements relating to either the Facility or the Services: (i) any litigation, Claims or actions filed, including by, against or with any Governmental Authority; (ii) any actual refusal to grant, renew or extend, or any action filed with respect to the granting, renewal or extension of, any Permit; (iii) all penalties or notices of violation issued or asserted by any Governmental Authority; (iv) any dispute with any Governmental Authority that may affect the Facility in any material respect; and (v) with respect to the matters identified in items (i), (ii), (iii) or (iv), any material threats of such matters. Upon Non-Operator Owner's request, Operator shall provide any documentation related to any of the foregoing.

5.6 Other Information. Operator shall promptly submit to the Non-Operator Owner any material information concerning new or significant aspects of the Facility operations and, upon the Non-Operator Owner's request, shall promptly submit any other information concerning the Facility or the Services.

5.7 Records Maintenance and Retention. Operator shall maintain all records, reports, documents and data, including all data retrievable from an electronic data storage source, for the Facility in accordance with Applicable Law and shall retain and preserve all such records, reports, documents and data created in connection with the operation and maintenance of the Facility, in accordance with Applicable Law, provided that Operator shall notify the Non-Operator Owner in writing at least sixty (60) days prior to the destruction or other disposition of any record, report, document or data. If the Non-Operator Owner gives written notice to Operator prior to the expiration of the 60-day period, Operator shall maintain custody of such material until the earlier of (i) such time as the Non-Operator Owner notifies Operator to dispose of such material and (ii) seven (7) Years. If the Non-Operator Owner does not provide written notice to Operator prior to the expiration of the 60-day period, Operator may destroy or dispose of such material and shall provide the Non-Operator Owner with a certificate confirming such destruction or disposition.

## ARTICLE VI - LIMITATIONS ON AUTHORITY

6.1 Limitations on Authority. Operator has no authority to make policies or decisions with respect to the overall operation or maintenance of the Facility as a commercial enterprise pursuant to the terms of this Agreement. The Owners, acting through the Operating Committee and pursuant to the terms of the Ownership Agreement, shall determine all such matters. Notwithstanding any provision in this Agreement to the contrary, unless previously approved in a Budget and Plan or otherwise approved in writing by the Operating Committee, in connection with Operator's provision of Services hereunder, Operator is prohibited from doing any of the following (and shall not permit any of its agents, Affiliates, or representatives to do any of the following):

6.1.1 Dispose of Assets. Selling, leasing, pledging, mortgaging, granting a security interest in, encumbering, conveying, or making any license, exchange or other transfer or disposition of all or any portion of the Facility, the Site or any other property or assets of the

Owners, including any property or assets purchased by Operator, the cost of which is an Operating Cost;

6.1.2 Make Expenditures. Making any expenditure or acquiring, on an Operating Cost basis, any goods or services from third parties, except in conformity with a Budget or as otherwise permitted under Section 5.3.2 or as authorized by the Operating Committee; provided, however, that in the event of an Emergency, Operator, without approval from the Owners, is authorized to take all reasonable actions in accordance with Prudent Operation and Maintenance Practices to prevent or mitigate such threatened damage, injury or loss in accordance with Section 3.8;

6.1.3 Take Other Actions. Taking or agreeing to take any other action or actions the decision for which is reserved exclusively for the Operating Committee pursuant to the Ownership Agreement; provided, however, that in the event of an Emergency, Operator, without approval from the Operating Committee, is authorized to take all reasonable actions in accordance with Prudent Operation and Maintenance Practices to prevent or mitigate such threatened damage, injury or loss in accordance with Section 3.8;

6.1.4 Act Regarding Lawsuits and Settlements. Settling, compromising, assigning, pledging, transferring, releasing or consenting to the compromise, assignment, pledge, transfer or release of, any material Claim, suit, debt, demand or judgment against or due by any Owner or Operator, the cost of which would be an Operating Cost hereunder, or submitting any such Claim, dispute or controversy to arbitration or judicial process, or stipulating in respect thereof to a judgment, or consent to the same; provided, however, that such prohibition shall not apply to, nor shall it be construed as a release or waiver of, any of Operator's rights or obligations pursuant to this Agreement or any other agreement between the Parties; or

6.1.5 Pursue Transactions. Engaging in any other transaction on behalf of the any Owner that is not permitted under this Agreement.

## ARTICLE VII - COMPENSATION AND PAYMENT

7.1 General. The Non-Operator Owner shall pay Operator, and WPCo shall bear directly in its capacity as an Owner, its allocated share in accordance with the Ownership Agreement of all Operating Costs, all as further described below. All Operating Costs shall initially be paid for by Operator (except as otherwise provided in this Agreement) and subsequently invoiced monthly in arrears as more fully set forth in this Article VII.

### 7.2 Costs.

7.2.1 Operating Costs. Subject to the Ownership Agreement and the limitations on expenditures set forth elsewhere in this Agreement (including Section 5.3), the Non-Operator Owner shall reimburse Operator for its allocated share in accordance with the Ownership Agreement of the fully distributed costs incurred (whether paid or accrued) in the provision of Services (which shall be allocated consistent with Non-Operator Owner's and its Affiliates past practices in the ordinary course of business during the time it served as operator of the Facility and in any event in accordance with the Cost Allocation Manual with respect to costs incurred by Affiliates of Operator), including for labor, goods, services, capital expenditures, overhead, cost

of capital, Taxes (other than income or franchise taxes), Permits and bonds (the "Operating Costs"), in each case invoiced in a manner consistent with the example invoice worksheets attached hereto as Appendix C, which shall include such costs with respect to: (i) equipment, material, supplies and other consumables, spare parts, replacement components, tools, office equipment, computer equipment, software, information technology and supplies acquired for use at the Facility; (ii) fuel supply and transportation; (iii) costs associated with special training of Facility Personnel and associated travel and living expenses; (iv) amounts paid under subcontracts, purchase orders and agreements; (v) fees for Permits required to be held by Operator; (vi) community relations and labor relations activities; and (vii) Operator's cost of Facility Personnel (and the allocable portion of other employees of Operator and its Affiliates attributable to performing the Services) wages, salaries, overtime, employee bonus, customary or required severance payments, unemployment insurance, long-term disability insurance, short term disability payments, sick leave, payroll taxes imposed on wages and benefits, worker's compensation costs and holidays, vacations, group medical, dental and life insurance, defined contribution retirement plans and other employee benefits; (viii) costs of third-party advisors, consultants, attorneys, accountants and contractors retained and managed by Operator in support of, and allocable to, the Services; (ix) a reasonably allocable portion of the cost of the insurance maintained by Operator in accordance with Section 9.1 on account of its Operator role; (x) reasonable costs incurred in response to an Emergency; and (xi) any other activity that Operator is required or expressly requested in writing by the Owners to perform under this Agreement for the benefit of the Facility or that is approved in a Budget or by the Operating Committee pursuant to the terms of this Agreement.

7.2.2 Invoicing. On or before the twenty-fifth (25<sup>th</sup>) day of each calendar month during the Term, Operator shall submit invoices to the Non-Operator Owner in form and substance reasonably similar to that attached hereto as Appendix C for Operating Costs incurred during the preceding calendar month (as well as any such costs for any prior period that were not previously invoiced). If any contract or purchase order intended to be assigned, transferred or conveyed to Operator remains held by the Non-Operator Owner as described in Section 3.2.2 and the Non-Operator Owner directly pays costs thereunder for the benefit of the Owners, the invoice submitted by Operator shall net WPCo's allocated share in accordance with the Ownership Agreement of any such costs paid by the Non-Operator Owner for the benefit of the Owners. The Non-Operator Owner shall make payment to Operator of its allocated share in accordance with the Ownership Agreement of the invoiced amount no later than the Due Date. For the avoidance of doubt, WPCo, in its capacity as an Owner, shall bear directly its allocated share in accordance with the Ownership Agreement of such Operating Costs.

7.3 Cost Audit. The Non-Operator Owner shall be entitled to conduct an audit, or to delegate a representative to audit, at its sole cost and expense and review of Operator's books and records with respect to all Operating Costs and performance of the Services together with any supporting documentation for a period of one (1) Year from and after the date of the audited payment. If, pursuant to such audit and review, it is agreed that any amount previously paid by Operator or by an Owner was not properly incurred as an Operating Cost or an adjustment of any such cost is required, Operator shall credit to the Non-Operator Owner or Operator, as applicable, its allocated share in accordance with the Ownership Agreement of such amount in the next succeeding invoice or promptly paid in cash if there shall not be further invoices issued.

7.4 Late Payment Rate. To the extent a Party fails to pay any amount required to be paid under this Agreement by the Due Date, the unpaid amount shall accrue interest each day at the Late Payment Rate from the Due Date until such amount (plus accrued interest) is paid by the applicable Party in full. In the event any paid amounts are disputed by a Party in good faith and such dispute is resolved (including if applicable in accordance with the procedures set forth in Section 14.7) in the favor of such Party, then the applicable other Party shall repay to such Party such overpaid amount plus interest thereon accrued each day at the Late Payment Rate from payment by such Party until such amount (plus accrued interest) is repaid in full to such Party by the applicable other Party.

#### ARTICLE VIII - TERM

8.1 Term. The Term of this Agreement shall commence on the Effective Date and, subject to approval or acceptance of termination by FERC or other Governmental Authority to the extent required, shall end on the date of termination of the Ownership Agreement (the "Term"). Notwithstanding the foregoing, this Agreement and the Term is subject to earlier termination pursuant to Sections 8.2 and 8.3.

8.2 Termination by the Non-Operator Owner for Cause. The Non-Operator Owner shall be permitted to terminate this Agreement upon written notice to Operator if any of the following events occur: (i) the Bankruptcy of Operator; (ii) a payment default by Operator (other than a disputed payment) that Operator fails to cure within ten (10) Business Days after Operator has received written notice of such default; (iii) Operator incurs liability to the Owners equal to the liability limit set forth in Section 11.2 for any two Years during the Term (provided that written notice of termination must be delivered to Operator no later than ninety (90) days after the end of the second of such two Years), or (iv) a material default by Operator in the performance of its obligations under this Agreement, including any default that has, or is reasonably expected to have, a material adverse effect on the operations, maintenance or performance of the Facility and Operator has failed to cure such default within sixty (60) days of written notice of such failure; provided, that if it is not possible to cure such breach within sixty (60) days of receipt of such notice of failure, Operator (A) fails to commence to cure the breach within such sixty (60) day period, (B) thereafter fails to continue diligent efforts to complete the cure as soon as reasonably possible, or (C) fails to complete the cure within ninety (90) days of receipt of such notice of failure. In addition, Non-Operator Owner shall have the option to terminate this Agreement for convenience upon ninety (90) days written notice to Operator delivered no later than ninety (90) days after the occurrence of any transfer, assignment, sale or other disposition (including any transfers, assignments, sales or other dispositions in connection with a foreclosure or an exercise of remedies by the Financing Parties) that results in WPCo's Ownership Interest no longer being owned directly or indirectly by AEP or an Affiliate thereof, except in the case of an transfer, assignment, sale or other disposition to a successor Operator that is a Qualified Replacement Operator in compliance with the terms of this Agreement and the Ownership Agreement.

8.3 Termination by Operator. Operator shall be permitted to terminate this Agreement upon written notice to the Non-Operator Owner if any of the following events occur: (i) a payment default by the Non-Operator Owner (other than a disputed payment) that is not cured within thirty (30) days after the Due Date for any invoice; (ii) the Bankruptcy of the Non-Operator Owner; or (ii) a default by the Non-Operator Owner of any other obligation under this Agreement that has a

material adverse effect on Operator's ability to perform the Services and that the Non-Operator Owner has failed to cure or make substantial progress in the reasonable opinion of Operator toward curing within ninety (90) days of written notice by Operator to the Non-Operator Owner of such failure. As soon as practicable after all cost information is gathered following termination, Operator shall invoice the Non-Operator Owner for its allocated share in accordance with the Ownership Agreement for Services rendered by Operator through the termination date, including all Operating Costs incurred through the date of termination but not paid.

8.4 Transfer of Facility Custody. Upon expiration or termination of this Agreement, Operator shall leave at the Facility all documents and records, tools, supplies, spare parts, safety equipment, Manuals, and any other items furnished on an Operating Cost basis, all of which shall remain the property of the Owners without additional charge. Operator shall execute all documents and take all other reasonable steps as may be reasonably requested by the Non-Operator Owner to assign to and vest in a replacement provider of Services all of its pro-rata rights, benefits, interests and title in connection with any subcontracts Operator executed in its own name for the benefit of the Facility and the Owners.

8.5 Services Upon Termination.

8.5.1 Upon notice of termination of this Agreement by either Operator or the Non-Operator Owner, unless the Non-Operator Owner is then in payment default such that Operator would have the right to terminate this Agreement pursuant to Section 8.3(i), the Non-Operator Owner shall have the right to specify a period of transition of no longer than nine (9) months (the "Termination Transition Period") during which Operator shall: (i) continue to provide Services at the Facility in accordance with this Agreement; (ii) cooperate with the Non-Operator Owner in planning and implementing a transition to any replacement provider of Services; (iii) use its commercially reasonable efforts to minimize disruption of Facility operations in connection with such transition activities; (iv) make all requisite regulatory filings as promptly upon commencement of the Termination Transition Period, subject to cooperation of the Parties; (v) transfer all Permits, licenses, registrations, approvals and contracts to the Non-Operator Owner or such replacement operator, in each case, as requested by the Non-Operator Owner; and (vi) take all actions incidental thereto and as reasonably requested by the Non-Operator Owner. The provisions of Article VII shall continue to apply during the Termination Transition Period. To facilitate employee transfer, Operator shall permit the replacement service provider and the Non-Operator Owner to interview such Facility Personnel for potential positions with such replacement operator in a manner and at times that do not interfere with Operator's responsibility to perform the Services. If Operator or one of its Affiliates continues to own a portion of the Facility, Operator shall, or shall cause its Affiliates to, reasonably cooperate to allow a successor operator to operate the Facility after the termination of this Agreement, including by granting access rights and executing other instruments as may be reasonably requested by the Non-Operator Owner and any replacement operator.

8.5.2 Any modifications to the ownership and operation of the Facility, including any termination of this Agreement, shall be subject to any required regulatory or administrative filings and approvals.

8.6 Plant Manager Replacement. Upon (i) commencement of the Termination Transition Period or (ii) the occurrence of any of the conditions described in Section 8.2, the Non-Operator Owner may designate a qualified individual with significant experience as a project manager or similar senior operating role in respect of the management and operation of large coal-fired generation facilities with similar operating characteristics as the Facility to replace the existing Plant Manager and who shall upon such appointment be the Plant Manager.

## ARTICLE IX - INSURANCE

### 9.1 Operator Insurance Requirements.

9.1.1 Commencing with the performance of the Services hereunder, and continuing until the termination of this Agreement, Operator (and any tier subcontractors) shall maintain or cause to be maintained occurrence form (if written on a claims-made policy form, be maintained with a retroactive date that is prior to this Agreement Effective Date for a period of at least three (3) Years following the last Year in which such policy provides coverage under the terms of this Agreement) insurance policies as follows: (i) Workers' Compensation in accordance with the statutory requirements of the state in which the Services are performed and Employer's Liability Insurance of not less than one million Dollars (\$1,000,000) each accident/employee/disease; (ii) Commercial General Liability Insurance having a limit of at least one million Dollars (\$1,000,000) per occurrence/two million Dollars (\$2,000,000) in the aggregate for contractual liability, personal injury, bodily injury to or death of Persons, and/or loss of use or damage to property, including but not limited to products and completed operations liability (which shall continue for at least three (3) Years after completion), premises and operations liability and explosion, collapse, and underground hazard coverage; (iii) Commercial/Business Automobile Liability Insurance (including owned (if any), non-owned or hired autos) having a limit of at least one million Dollars (\$1,000,000) each accident for bodily injury, death, property damage and contractual liability and no fellow employee exclusion; (iv) Umbrella/Excess Liability insurance with limits of at least twenty-four million Dollars (\$24,000,000) per occurrence and follow form of the underlying Employer's Liability, Commercial General Liability and Auto Liability insurance, and provide at least the same scope of coverages thereunder; (v) coverage for sudden/accidental occurrences for bodily injury, property damage, environmental damage, cleanup costs and defense with a minimum of one million Dollars (\$1,000,000) per occurrence; and (vi) "all-risk" or its equivalent property insurance providing coverage risks of physical damage to the Facility or Facility Equipment in an amount in accordance with Good Utility Practice.

9.1.2 Unless otherwise determined by the Operating Committee that the Operator should purchase capacity insurance on behalf of both Owners, Operator (including in its capacity as an Owner) and Non-Operator Owner may each procure individually, in proportion to their Ownership Interests, PJM Interconnection, L.L.C. capacity performance insurance on terms and conditions, and placed with insurance companies, reasonably acceptable to the Operator or such Owner, as applicable. Operator shall make such certifications relating to the operation, maintenance and condition of the Facility from time to time during the Term as may be reasonably necessary in connection with the procurement or maintenance of such insurance coverage by Operator and the Non-Operator Owner and any other insurance policies of either Owner that may relate to coverage pertaining to or affecting an Owner's Ownership Interest.

9.2 Form and Content. All insurance policies provided and maintained by Operator and each subcontractor shall: (i) except with respect to insurance policies issued by any "captive" insurer of Operator or its Affiliates, be underwritten by insurers that are rated A.M. Best "A- VII" or higher; (ii) specifically include the Non-Operator Owner and its directors, officers, employees, affiliates, subcontractors, and joint owners of any facilities as additional insureds for their liability arising out of the acts or omissions of Operator, including for completed operations, with respect to Operator's acts, omissions, services, products or operations, whether in whole or in part, excluding, however, for Workers' Compensation/Employer's Liability insurance, Pollution Legal Liability insurance, and "all-risk" property insurance; (iii) be endorsed to provide, where permitted by law, waiver of any rights of subrogation against an Owner and its directors, officers, employees, affiliates and subcontractors, and joint owners of any facilities; (iv) provide that such policies and additional insured provisions are primary with respect to the acts, omissions, services, products or operations of Operator or its subcontractors, to the extent of Operator's negligence, (v) contain standard separation of insured and severability of interest provisions except with respect to the limits of the insurer's liability; and (vi) not have any cross-liability exclusion, or any similar exclusion that excludes coverage for Claims brought by additional insureds under the policy against another insured under the policy; Any deductibles or retentions shall be the sole responsibility of Operator and its subcontractors. Evidence of such coverage shall be provided in the form of Operator's certificate of insurance furnished to the Non-Operator Owner prior to the Effective Date, upon any policy replacement or renewal and upon the Non-Operator Owner's request. Operator shall provide at least thirty (30) days' prior written notice to the Non-Operator Owner prior to cancellation of any policy (or ten (10) days' notice in the case of non-payment of premium).

## ARTICLE X - INDEMNIFICATION

10.1 Operator Indemnification. Subject to the limitations of liability in Section 11.1, Operator shall indemnify and hold harmless the Non-Operator Owner and its Affiliates, and their respective officers, directors, employees, managers, members, agents and representatives (collectively, the "Non-Operator Owner Indemnitees"), from and against, and no Non-Operator Owner Indemnitee shall be responsible for any and all Liabilities incurred, assessed, sustained or suffered by any Non-Operator Owner Indemnitee to the extent caused by Operator's gross negligence, willful misconduct, actual fraud, willful violation of any Applicable Law, or willful breach of this Agreement. Any Liabilities paid by Operator pursuant to its indemnity obligation under this Section 10.1 shall in no event be considered Operating Costs hereunder.

10.2 Owner Indemnification. Subject to the limitations of liability in Section 11.1, each Owner shall, severally with respect to its proportionate share in respect of its Ownership Interest and not jointly, indemnify and hold harmless Operator and its Affiliates, and their respective officers, directors, employees, agents and representatives (collectively, the "Operator Indemnitees"), from and against, and no Operator Indemnitee shall have responsibility for, any and all Liabilities to a third party incurred, assessed, sustained or suffered by or against any Operator Indemnitee arising from or relating to Operator's performance of the Services under this Agreement, except to the extent caused by Operator's gross negligence, willful misconduct, actual fraud, willful violation of any Applicable Law, or willful breach of this Agreement; provided, however, that the Liabilities for which Non-Operator Owner is obligated to indemnify any Operator Indemnitees under this Section 10.2 shall not in any event include any Liabilities for

which WPCo is obligated to indemnify Non-Operator Owner (and/or its Affiliates) in any agreement among the Owners (and/or their Affiliates) and AEP (and/or its Affiliates), including pertaining to the allocation of emission limitations associated with the Facility. For the avoidance of doubt, WPCo, in its capacity as an Owner of the Facility, shall bear directly its proportionate share of Liabilities under this Section 10.2 in respect of its Ownership Interest.

### 10.3 Environmental Indemnification.

10.3.1 Owner Indemnity for Environmental Liabilities. Subject to the limitations of liability in Section 11.1, and without in any way limiting the provisions of Section 10.3.2, each Owner shall, severally with respect to its proportionate share in respect of its Ownership Interest and not jointly, indemnify and hold harmless the Operator Indemnitees, from and against, and no Operator Indemnitees shall have responsibility for, any and all Liabilities, including all civil and criminal fines or penalties and other costs and expenses incurred, assessed, sustained or suffered by or against any Operator Indemnitees, as applicable, as a result of or in connection with any matters governed by Environmental Laws directly or indirectly related to or arising out of (i) the design, permitting or construction of the Facility or the condition of the Site, and any adjacent parcels; (ii) the operation, maintenance, ownership, control or use of the Facility or otherwise related to the Facility; and (iii) the offsite transportation, treatment or disposal of all wastes generated at the Facility and any properties included within or adjacent to the Site, whether occurring before or after the Effective Date (collectively, "Environmental Liabilities"), including any Environmental Liabilities arising out of the actual or alleged existence, generation, use, emission, collection, treatment, storage, transportation, disposal, recovery, removal, release, discharge or dispersal of Hazardous Materials, but excluding Operator Environmental Liabilities; provided, however, that the Environmental Liabilities for which any Owner is obligated to indemnify any Operator Indemnitees under this Section 10.3.1 shall not in any event include any Operator Environmental Liabilities for which Operator is liable under Section 10.3.2. For the avoidance of doubt, WPCo, in its capacity as an Owner of the Facility, shall bear its proportionate share of Environmental Liabilities under this Section 10.3.2 in respect of its Ownership Interest.

10.3.2 Operator Indemnity for Environmental Liabilities. Subject to the provisions of Section 10.1 and the limitations of liability in Section 11.1, Operator shall indemnify and hold harmless the Non-Operator Owner Indemnitees from and against, and no Non-Operator Owner Indemnitee shall be responsible hereunder for any Liabilities, including any civil and criminal fines or penalties and other costs and expenses incurred, assessed, sustained or suffered by or against any Person as a result of or in connection with any breach or violation of or any other matters governed by Environmental Laws to the extent caused by the gross negligence, willful misconduct, actual fraud, willful violation of any Applicable Law or willful breach of this Agreement by Operator or arising out of the existence, generation, use, emission, collection, treatment, storage, transportation, disposal, recovery, removal, release, discharge or dispersal of Hazardous Materials brought on Site by Operator or its Affiliates or agents on or after the Effective Date (the "Operator Environmental Liabilities"). Operator understands and agrees that any Operator Environmental Liabilities paid by Operator pursuant to this Section 10.3.2 shall not be Operating Costs hereunder.

10.3.3 Governmental Actions. During the Term, Operator shall use commercially reasonable efforts to cooperate with and assist the Owners with their acquisition of data and information, and preparation and filing with appropriate Governmental Authorities of any notices,

plans, submissions, or other materials and information necessary for compliance by the Owners with applicable Environmental Laws and the requirements of any Permits related to the Facility. All such environmental reports shall be submitted by, and in the names of, both Owners. All reasonable and documented costs associated therewith, including the reasonable costs of any outside consultants, legal services, Governmental Authority charges, sampling and remedial work shall be paid by the Owners as an Operating Cost, and the Non-Operator Owner shall reimburse WPCo to the extent of the Non-Operator Owner's pro rata share, unless such costs are incurred arising out of or associated with Operator Environmental Liabilities that are subject to Operator's indemnity obligation pursuant to Section 10.3.2 hereof. Nothing contained herein shall be construed as requiring Operator to take any corrective action with respect to Environmental Liabilities unless (x) affirmatively and expressly directed in writing to so do by the Operating Committee and appropriate funding is made available, or (y) affirmatively and expressly directed to do so by a Governmental Authority, in order to comply with any Environmental Law, in which case the cost of any corrective actions so undertaken shall be deemed an Environmental Liability subject to Section 10.3.1 hereof (if not otherwise reimbursed as an Operating Cost hereunder), unless such Environmental Liability arises out of or is associated with Operator Environmental Liabilities subject to Operator's indemnity obligation pursuant to Section 10.3.2 hereof.

#### ARTICLE XI - LIABILITIES OF THE PARTIES

11.1 Limitations of Liability. Notwithstanding any provision in this Agreement that may be susceptible to contrary interpretation, neither the Parties nor any Non-Operator Owner Indemnitees or Operator Indemnitees shall be liable for consequential or indirect loss or damage, including loss of profit, cost of capital, loss of goodwill, increased Operating Costs, or any special or incidental damages; provided, however, that notwithstanding the foregoing, in no event will the foregoing limitations of liability be applied to limit the extent of the liability of either Party to the other for or with respect to any Claims of third parties or to the extent arising from gross negligence, actual fraud, willful violation of Applicable Law or willful breach of this Agreement. The Parties further agree that the waivers and disclaimers of liability, indemnities, releases from liability and limitations of liability expressed in this Agreement shall survive termination or expiration of this Agreement, and shall apply in all circumstances, whether in contract, equity, tort or otherwise, regardless of the fault, negligence (in whole or in part), strict liability, breach of contract or breach of warranty of the Party indemnified, released or whose liabilities are limited, and shall extend to the Non-Operator Owner Indemnitees and Operator Indemnitees.

11.2 Operator's Total Aggregate Liability. Except to the extent that a Non-Operator Owner Indemnitee suffers Liabilities that are caused by, result from or arise out of Operator's or its Affiliates' breach of Article XIII or its gross negligence, actual fraud, willful violation of Applicable Law or willful breach of this Agreement, or willful misconduct (including in connection with any Services), the total liability of Operator to the Non-Operating Owner for all Liabilities arising out of, connected with or resulting from any events occurring or claims made in connection with this Agreement, whether based in contract, warranty, tort, strict liability or otherwise, shall not exceed, in the aggregate, the sum of (i) an amount equal to twenty-five percent (25%) of the Operating Costs, but excluding Operating Costs relating to any services, goods, inventory and equipment provided hereunder by third parties other than Operator's Affiliates, incurred pursuant to this Agreement in the prior twelve (12) month period, *plus* (ii) the Non-Operating Owner's fifty percent (50%) share of any insurance proceeds actually received by the

Operator or paid on the Operator's behalf with respect to the relevant loss or damages under the insurance policies procured by the Operator pursuant to Section 9.1.

11.3 No Warranties or Guarantees.

11.3.1 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES OR GUARANTEES TO THE OTHER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, AND BOTH PARTIES DISCLAIM AND WAIVE ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY OF NON-INFRINGEMENT.

11.3.2 OPERATOR IS ACTING AS AGENT OR OTHERWISE AS A RESELLER WITH RESPECT TO ALL SERVICES, GOODS, INVENTORY AND EQUIPMENT PROVIDED HEREUNDER BY THIRD PARTIES OTHER THAN OPERATOR'S AFFILIATES, AND, AS SUCH, DOES NOT PROVIDE ANY WARRANTY FOR SUCH THIRD PARTY SERVICES, GOODS, INVENTORY OR EQUIPMENT PROVIDED HEREUNDER. ALL SUCH THIRD PARTY SERVICES, GOODS, INVENTORY AND EQUIPMENT ARE PROVIDED AS IS, WHERE IS, WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY OF NON-INFRINGEMENT UNLESS CAUSED BY THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT, ACTUAL FRAUD, WILLFUL VIOLATION OF ANY APPLICABLE LAW OR WILLFUL BREACH OF THIS AGREEMENT BY OPERATOR OR ITS AFFILIATES. THE SOLE REMEDY IN CONNECTION WITH ANY DEFECTS IN OR FAILURES OF SUCH THIRD PARTY SERVICES, GOODS, INVENTORY OR EQUIPMENT (WHETHER A CLAIM FOR SUCH DEFECT ARISES UNDER CONTRACT, TORT, STRICT LIABILITY, STATUTE, OR ANY OTHER LEGAL OR EQUITABLE THEORY OR PRINCIPLE INCLUDING NEGLIGENCE) SHALL BE TO SEEK RECOURSE EXCLUSIVELY FROM THE COUNTERPARTIES TO THE THIRD PARTY CONTRACTS, UNLESS THE DEFECT OR FAILURE WAS CAUSED BY THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT, ACTUAL FRAUD, WILLFUL VIOLATION OF ANY APPLICABLE LAW OR WILLFUL BREACH OF THIS AGREEMENT BY OPERATOR OR ITS AFFILIATES.

**ARTICLE XII - CONFIDENTIALITY**

12.1 General. During the Term, and for the later of three (3) Years after the termination of this Agreement or five (5) Years after receipt of the applicable Confidential Information, each Party shall hold in confidence any Confidential Information supplied by or on behalf of the other Party. Each receiving Party further agrees to require its contractors, vendors, suppliers and employees, agents or prospective purchasers to preserve the confidentiality of Confidential Information. The receiving Party may make necessary disclosures to third parties directly engaged in the operation, ownership or financing of the Facility if such third parties are under an obligation to receive and hold such Confidential Information in confidence.

12.2 Exceptions. The provisions of this Article XII do not apply to information within one or more of the following categories:

12.2.1 Public Domain. Information that was in the public domain prior to the receiving Party's receipt or that subsequently becomes part of the public domain by publication or otherwise, except by the receiving Party's or its Affiliate's wrongful act.

12.2.2 Prior Receipt. Information that the receiving Party can demonstrate was in its possession prior to receipt thereof from the disclosing Party so long as such possession did not result from a violation of a confidentiality obligation.

12.2.3 Third Party Delivery. Information received from a third party having no obligation of secrecy with respect thereto.

12.2.4 Permitted Disclosures. Information disclosed by an Owner to Lenders or prospective Lenders, equity investors or prospective equity investors, prospective purchasers, consultants, attorneys, accountants and other designated agents in each case on a confidential, need-to-know-basis.

12.2.5 Regulatory Filings. Information required to be disclosed by an Owner in connection with any required regulatory or administrative filings.

12.3 Required Disclosure. Notwithstanding the forgoing, any receiving Party required by law, rule, regulation, subpoena or order, or in the course of regulatory, administrative or judicial proceedings, to disclose Confidential Information that is otherwise required to be maintained in confidence pursuant to this Article XII, may make disclosure notwithstanding the provisions of this Article XII. Prior to doing so, the receiving Party, promptly upon learning of the requirement, shall notify the disclosing Party of the requirement and cooperate to the maximum extent practicable to minimize the disclosure of Confidential Information. Any receiving Party disclosing Confidential Information pursuant to this Section 12.3 shall use commercially reasonable efforts, at the disclosing Party's cost, to obtain proprietary or confidential treatment of Confidential Information by the third party to whom the information will be disclosed, and to the extent such remedies are available, shall use commercially reasonable efforts to seek protective orders limiting the dissemination and use of Confidential Information. Nothing in this Agreement is intended to prevent the disclosing Party from appearing in any proceedings and objecting to the disclosure.

### **ARTICLE XIII - TITLE, DOCUMENTS AND DATA**

13.1 Materials and Equipment. Operator shall use commercially reasonable efforts to cause title to all materials, equipment, supplies, consumables, spare parts and other items purchased or obtained by Operator on an Operating Cost basis ("Facility Equipment") to pass directly from the vendor or supplier to, and vest in, each Owner to the extent of such Owner's Ownership Interest. Operator shall have no title or other claim to such items other than in its capacity as an Owner of the Facility.

13.2 Documents. All Manuals, operational data, Facility drawings, Operator reports and records and other materials and documents (both paper and electronic) created by Operator, its Affiliates or their respective employees, representatives or contractors in connection with

performance of the Services are the property of each Owner to the extent of its Ownership Interest in the Facility. All such materials and documents shall be available for review by the Non-Operator Owner at all reasonable times during development and promptly upon completion. All such materials and documents required to be submitted for the approval of the Operating Committee shall be prepared and processed in accordance with the requirements and specifications set forth herein. However, the Operating Committee's approval of materials and documents submitted by Operator shall not relieve Operator of its responsibility to perform its obligations under this Agreement.

13.3 Proprietary Information. Where materials or documents prepared or developed by Operator or its Affiliates, or their respective employees, representatives or contractors, contain proprietary or technical information, systems, techniques or know-how previously developed by them or acquired by them from third parties (the "Operator Proprietary Information"), the Non-Operator Owner shall have an irrevocable license to use such Operator Proprietary Information to the extent necessary for the operation or maintenance of the Facility at no additional cost to the Non-Operator Owner.

#### ARTICLE XIV - MISCELLANEOUS PROVISIONS

14.1 Assignment. This Agreement shall not be assignable, in whole or in part, by a Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that this Agreement may be (i) collaterally assigned by an Owner without such consent to a Lender in connection with such Lender's financing of such Owner's Ownership Interest and (ii) assigned by an Owner (in whole but not in part) without such consent to the transferee of its Ownership Interest, whether by merger, division, sale of equity interest, or otherwise, in each case, solely to the extent that such transfer of its Ownership Interest is in accordance with the Ownership Agreement. Any assignment pursuant to this Section 14.1 shall not relieve the assigning Party of any of its obligations under this Agreement that arose prior to the date of such assignment. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties.

14.2 Effect of Bankruptcy. The Parties intend that, in the event of a Bankruptcy, payments required under this Agreement shall be deemed to be administrative expenses as defined in 11 U.S.C. §503.

14.3 Access. The Non-Operator Owner and Lenders and their agents and representatives shall have access to the Facility, all Facility operations and any documents, materials and records and accounts relating to the Facility operations for purposes of inspection and review. Upon the request of the Non-Operator Owner and its agents and representatives, Operator shall provide such Persons with access to all data and logs Operator maintains regarding the Facility. During any inspection or review of the Facility, the Non-Operator Owner and Lenders and their agents and representatives shall comply with all of Operator's safety and security procedures, and shall conduct inspections and reviews in such a manner as to cause minimum interference with Operator's activities. Operator also shall cooperate with the Non-Operator Owner in allowing its agents and representatives access to the Facility.

14.4 Subcontractors; Subagents.

14.4.1 Operator shall have the right to hire third-party subcontractors or to acquire rights from third parties to provide all or part of any Services hereunder without the prior consent of the Operating Committee. The cost of such third-party Services or acquisition of such rights shall be Operating Costs in accordance with Section 7.2.1. Operator, for the benefit of the Owners, shall use commercially reasonable efforts to obtain from all subcontractors and suppliers, including any subcontractors and suppliers who are Affiliates of Operator, customary guarantees and warranties to the extent available with respect to the equipment, goods, services or other work provided or performed by such subcontractor and supplier. Notwithstanding the foregoing or anything to the contrary, Operator shall not, without the prior written approval of Non-Operator Owner, such approval not to be unreasonably withheld, conditioned or delayed, procure or enter into any agreement with any third-party subcontractor with respect to the Services with a cost included in the Operating Costs in excess of \$500,000 in any Year. Each agreement with a third-party subcontractor shall reflect costs that are on an arm's-length basis and no greater in any material respect than Operator could reasonably provide on Operator's own (or through its Affiliates) without material hardship.

14.4.2 Operator may delegate any obligations hereunder to one or more Affiliates, or designate one or more Affiliates as subagents for the performance of its obligations, and, to the extent such Affiliate performs or acts as subagent with respect to any obligation of Operator hereunder, such Affiliate shall enjoy the rights and benefits of Operator pursuant to this Agreement (including, for the avoidance of doubt, Article X and Article XI hereof). Notwithstanding the foregoing, Operator shall not, without the prior written approval of Non-Operator Owner, such approval not to be unreasonably withheld, conditioned, or delayed, procure or enter into any agreement with any of its Affiliates (other than for Facility Personnel to perform the Services) (i) with a committed value in excess of \$500,000 or (ii) that may not be cancelled by or at the request of Non-Operator Owner upon no more than ninety (90) days' notice without penalty. Each agreement with an Affiliate of Operator, other than for Facility Personnel to perform the Services, shall reflect costs that are no greater in any material respect than Operator could obtain on an arm's-length basis with a bona fide third party at such time. Notwithstanding anything to the contrary in this Agreement, Operator shall be permitted to delegate any of its rights, duties and obligations under this Agreement and the Ownership Agreement to AEPSC without the consent of Non-Operator Owner, subject to Section 14.4.3.

14.4.3 If one or more Affiliates perform Services as subagents or subcontractors hereunder, Service Provider shall remain liable for such Affiliate's obligations hereunder and for any breach by such Affiliate of the terms of this Agreement (to the same extent as if such breach was committed by Service Provider).

14.5 Not for Benefit of Third Parties. Except where a contrary intention is expressly stated, this Agreement and each provision hereof are for the exclusive benefit of the Parties that executed this Agreement and not for the benefit of any third party.

14.6 Force Majeure.

14.6.1 Events Constituting Force Majeure. A "Force Majeure Event" is any event that (i) restricts or prevents performance under this Agreement, (ii) is not within the reasonable control of the Party affected or caused by the fault or negligence of the affected Party and

(iii) cannot be overcome or avoided by the exercise of due care. Force Majeure Events include the following, so long as in each case the requirements of the foregoing clauses (i), (ii) and (iii) are satisfied, failure of a Party to perform due to drought, flood, earthquake, storm, fire, lightning, tornado or other unusually severe storm or environmental conditions, epidemic, war (whether declared or undeclared), terrorism (whether domestic or foreign, state-sponsored or otherwise), revolution, insurrection, riot, civil disturbances, protests, sabotage (but not including any sabotage involving personnel of Operator), work stoppages (*i.e.*, strikes) (but not including any work stoppages or strikes involving any personnel of Operator, whether on-site or off-site), accident or curtailment of supply, unavailability of construction materials or replacement equipment beyond the affected Party's control, inability to obtain and maintain Permits from any Governmental Authority for the Facility, other acts or omissions of any Governmental Authority, including any form of compulsory government acquisition or condemnation of all or part of the Facility (including a "taking"), restraint by court order, changes in Applicable Law that affect performance under this Agreement, other acts of Governmental Authorities including in response to any of the foregoing. Except for the obligation of each Party to make payments of amounts owed to the other Party, each Party is excused from performance and will not be considered to be in default in respect to any obligation if and to the extent that performance of such obligation is prevented by a Force Majeure Event. Neither Party shall be relieved of its obligations under this Agreement solely because of increased costs or other adverse economic consequences that may be incurred through the performance of such obligations.

14.6.2 Notice. If a Party's ability to perform its obligations under this Agreement is affected by a Force Majeure Event, the Party claiming such inability shall (i) promptly notify the other Party of the Force Majeure Event, its cause, its anticipated duration and any action being taken to avoid or minimize its effect and confirm the same in writing within three (3) Business Days of its discovery, (ii) promptly supply such available information about the Force Majeure Event and its cause as reasonably may be requested by the other Party and (iii) work diligently to remove the cause of the Force Majeure Event or to lessen its effect.

14.6.3 Scope. The suspension of performance arising from a Force Majeure Event shall be of no greater scope and no longer duration than necessary. The excused Party shall use its reasonable best efforts to remedy its inability to perform.

14.7 Dispute Resolution. Any and all disputes shall be resolved pursuant to the dispute resolution procedures set forth in the Ownership Agreement.

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

14.9 Survival. Notwithstanding any provisions to the contrary, the obligations set forth in Article VII and Article VIII, Article X, Article XI and Article XII, Article XIV the limitations on liabilities set forth in Article XI will survive, in full force, the expiration or termination of this Agreement.

14.10 No Waiver. No delay, waiver or omission by the Non-Operator Owner or Operator to exercise any right or power arising from any breach or default by the Non-Operator Owner or Operator with respect to any of the terms, provisions or covenants of this Agreement shall be

construed to be a waiver by the Non-Operator Owner or Operator of any subsequent breach or default of the same or other terms, provisions or covenants on the part of the Non-Operator Owner or Operator.

14.11 Notices. Any written notice required or permitted under this Agreement shall be deemed to have been duly given on the date of receipt, and shall be either delivered personally to the Party to whom notice is given, or mailed to the Party to whom notice is to be given, by facsimile, courier service or first-class registered or certified mail, return receipt requested, postage prepaid, and addressed to the addressee at the address indicated below, or at the most recent address specified by written notice given in the manner provided in this Section 14.11:

If to Operator:

[ ]  
[ ]  
[ ]

If to the Non-Operator Owner:

[ ]  
[ ]  
[ ]

14.12 Representations and Warranties. Each Party represents and warrants to the other Party that, as of the date hereof:

14.12.1 Existence. It is duly organized and validly existing under the laws of the state of its organization and has all requisite power and authority to own its property and assets and conduct its business as presently conducted or proposed to be conducted under this Agreement.

14.12.2 Authority. It has the power and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

14.12.3 Validity. It has taken all necessary action to authorize its execution, delivery and performance of this Agreement, and this Agreement constitutes the valid, legal and binding obligation of such Party enforceable against it in accordance with its terms, except as such enforcement may be limited by Bankruptcy, insolvency, moratorium or similar laws affecting the rights of creditors or by general equitable principles (whether considered in a proceeding in equity or at law).

14.12.4 No Conflict. Neither the execution or delivery of this Agreement, the performance by such Party of its obligations in connection with the transactions contemplated hereby, nor the fulfillment of the terms and conditions hereof, conflicts with or violates any provision of its constituting documents.

14.12.5 No Consent. No consent or approval (including any Permit that such warranting Party is required to obtain) is required from any third party (including any

Governmental Authority) for either the valid execution and delivery of this Agreement, or the performance by such Party of its obligations under this Agreement, except such as have been duly obtained or will be obtained in the ordinary course of business.

14.12.6 No Breach. None of the execution or delivery of this Agreement, the performance by such Party of its obligations in connection with the transactions contemplated hereby, or the fulfillment of the terms and conditions hereof either conflicts with, violates or results in a breach in any material respect of, any Applicable Law currently in effect, or conflicts with, violates or results in a breach of, or constitutes a default under or results in the imposition or creation of, any lien or Encumbrance under any material agreement or instrument to which it is a party or by which it or any of its properties or assets are bound.

14.12.7 No Material Claims. It is not a party to any legal, administrative, arbitral or other proceeding, investigation or controversy pending or threatened that would adversely affect such Party's ability to perform its obligations under this Agreement.

14.13 Additional Representation and Warranty by Operator. Operator further represents and warrants to the Non-Operator Owner that it has, or has obtained through the retention of a qualified operations and maintenance service provider, substantial expertise and experience in the operation and maintenance of comparable power generation facilities and it, or its applicable subcontractor, is fully qualified to provide such services at the Facility in accordance with the terms of this Agreement.

14.14 Counterparts. The Parties may execute this Agreement in counterparts that, when signed by each of the Parties, constitute one and the same instrument. Thereafter, each counterpart shall be deemed an original instrument as against any Party who has signed it. Delivery of an executed counterpart of this Agreement by facsimile or electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

14.15 Governing Law; Venue; Waiver of Jury Trial. 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 Party hereby agrees that any Action arising out of or relating to this Agreement brought by a Party (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 Parties 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 Facility or any Facility 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 PARTY 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.

14.16 Interpretation. Titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, describe or otherwise affect the scope or meaning of this Agreement or the intent of any provision hereof. All exhibits and appendices attached hereto are considered a part hereof as though fully set forth herein. This Agreement was jointly drafted and negotiated by the Parties. In the event of a dispute, this Agreement shall not be construed against either Party based upon its drafting.

14.17 Severability. If any provision of this Agreement, or the application of any such provision to any Person or circumstance, is held invalid by any court or other forum of competent jurisdiction, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid, shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner materially adverse to a Party. Upon any such determination of invalidity, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that this Agreement is consummated as originally contemplated to the greatest extent possible.

14.18 Cooperation in Financing. Operator shall execute and deliver any customary and reasonable agreement and consent to assignment, together with an opinion of counsel at Non-Operator Owner's expense, as may be reasonably requested by Non-Operator Owner in connection with any financing of the Facility. Operator shall promptly respond to reasonable requests, including requests for management presentations, by Non-Operator Owner and any of its Lenders or their representatives, in each case at Non-Operator Owner's sole cost and expense, for information regarding the Operator and its performance of its duties hereunder and the operation, maintenance and administration of the Facility. Operator agrees to use commercially reasonable efforts to cooperate with any of Non-Operator Owner's Lenders and their representatives and to provide such Lenders and representatives with reasonable access to and tours of the Facility (including review of documents, materials, records and accounts), in each case at Non-Operator Owner's sole cost and expense.

*[Signature page follows.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

**KENTUCKY POWER COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

**WHEELING POWER COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

**APPENDIX A – SCOPE OF SERVICES**

<b>Task Name</b>	<b>Description</b>
<b>Routine Services</b>	Provide operational services as reasonably necessary for electrical power generation.
<b>Detailed Programs</b>	Implement Operator human resources program. Implement Operator-drafted, Owner-approved programs in safety, administration, maintenance, and training. Implement Facility's existing programs in operating, maintenance, chemistry, NERC and environmental compliance (or, at the Operating Committee's request, develop or enhance such programs at actual cost and implement). Ensure compliance with NERC requirements, Environmental Law, Applicable Law, and all Permits.
<b>Routine Maintenance</b>	<p>Perform routine and preventive maintenance actions on all Facility systems and equipment in accordance with vendor instructions and the maintenance plan for the Facility. This program includes:</p> <p><b>Service Checks</b> – Conduct visual equipment inspections and log significant parameters such as pressures, temperatures, and flow rates. Trend and analyze this information as appropriate.</p> <p><b>Routine and Fixed Interval Maintenance</b> –Identify preventive maintenance requirements. Schedule and assign routine maintenance during Facility operation, planned outages, and forced or unscheduled outages.</p>
<b>Predictive Maintenance Program</b>	As appropriate, conduct/oversee predictive maintenance within the cost-effective capability of the Facility Personnel. For those maintenance requirements that are not cost-effective for the Facility Personnel, oversee predictive maintenance services provided by vendors.
<b>Major Maintenance and Repairs</b>	In coordination with and support of the Facility Agreements and generation plan, arrange for scheduled inspections and overhauls on major equipment. Retain vendors for the benefit of the Owners for unscheduled major repairs as required and manage and oversee repairs and modifications.
<b>Capital Improvements</b>	Conduct/oversee all capital improvements. As appropriate, retain vendors for the benefit of the Owners to design, construct and implement capital improvements.
<b>Facility Outages</b>	Use commercially reasonable efforts to manage all Facility outages (planned, unscheduled, forced) to optimize outage duration and impact on production:

Task Name	Description
	<p><b>Task Assignment</b> – Identify and schedule all maintenance that requires a Facility outage or equipment to be taken out of service.</p> <p><b>Work Schedule</b> – Develop and implement a schedule to track material outage preparations, work and testing, including corrective maintenance actions, contractor work and scheduled preventive maintenance. Conduct preparations to support this plan, including ordering and receiving required spare parts.</p>
<b>Assistance to the Non-Operator Owner and Operating Committee</b>	Provide assistance to the Non-Operator Owner and the Operating Committee, as reasonably requested with the execution of the Non-Operator Owner's and the Operating committee's duties relative to operation of the Facility.
<b>Facility Administration</b>	<p>Conduct administration to meet Operator requirements and Owners' goals, including:</p> <p><b>Budgets</b> – Prepare annual Budgets and submit them for Operating Committee approval in accordance with the Ownership Agreement and this Agreement. Following approval, manage operations and expenditures to comply with each Budget. Generate budget variance reports, as required.</p> <p><b>Procurement</b> – Establish and implement a purchasing system. Procure, for the benefit of the Owners, including negotiations and contracting, for all materials, equipment, chemicals, supplies, services, parts, and other miscellaneous items required for the provision of the Services. Pay all invoices in a timely manner. Provide credit support as required by third parties for the operation of the Facility, including contract counterparties and Governmental Authorities. Minimize Owner costs as much as feasible.</p> <p><b>Inventory Control</b> – Implement a cost-effective inventory control system designed to ensure that spare parts, materials, and supplies are properly stored and accounted for and that adequate supplies are available at all times to support the provision of the Services.</p> <p><b>Personnel Matters</b> – In compliance with Operator programs and policies, manage all payroll and employee relations, labor relations, and independent contractor issues, as required. These tasks include: employment; compensation and benefits; initial training; and employee and independent contractor relations. Provide reasonable support to recruit, hire, transfer, or otherwise acquire and retain qualified Facility Personnel to maintain the staffing levels and skill mix required for successful long-term provision of the Services.</p> <p><b>Community Relations</b> – In coordination with and with the approval of the Operating Committee, conduct a community relations program</p>

Task Name	Description
	to establish the Facility and its employees as “good citizens” in the local community.  <b>Regulatory</b> – Perform all duties set forth in Section 7.8 of the Ownership Agreement with respect to Emission Allowances (as defined therein).
<b>Work Assignment</b>	Assign work to either Facility Personnel or vendors as cost-effective and appropriate based on overall guidance from the Operating Committee. Normally, Facility Personnel conduct preventive maintenance and actions requiring a high degree of Facility knowledge and vendors perform tasks needing equipment or expertise that are not cost-effective to maintain at the Facility. Vendors also perform tasks that make sense to minimize outage time and costs.
<b>Buildings and Grounds</b>	Arrange for janitorial, garbage pickup and landscape services and maintain all access roads, office buildings, and other structures in reasonable repair.
<b>Reports</b>	Prepare and submit operation and maintenance service reports as requested relative to performance, including environmental compliance records, maintenance and repair status, Facility operating data, and any other information reasonably requested by the Operating Committee or the Non-Operator Owner.
<b>Security</b>	Implement or arrange for implementation of security measures in accordance with the Operating Committee-approved Facility security plan.
<b>Safety</b>	Continue to implement Corporate and Plant Level Safety Programs including on-site visits and discussions at the facility.
<b>PJM Capacity Analysis</b>	Analysis and plant level information to PJM as part of PJM’s FRR or RPM Capacity Market requirements
<b>Information Systems</b>	Manage the Facility’s information technology infrastructure, including phone systems, internet connectivity, hardware and software. Implement or arrange for implementation of cybersecurity policies and procedures in compliance with NERC requirements and Applicable Law, in accordance with the Operating Committee-approved Facility cybersecurity plan.
<b>Training Program</b>	Implement a continuing program of training designed to orient new Facility Personnel, refresh/cross-train existing Facility Personnel, qualify/re-qualify Facility Personnel, and keep all Facility Personnel aware of Operating Committee -approved Facility safety

<b>Task Name</b>	<b>Description</b>
	requirements and emergency procedures. This program includes specialty skills training.
<b>Drawing/Manual Maintenance</b>	Maintain the Facility library and update the Manuals and vendor service manuals. Update (or arrange for updating) Facility drawings to reflect changes to the as-built configuration. In addition to document management, maintain physical Facility configuration control.
<b>Fuel Purchasing and Handling</b>	<ul style="list-style-type: none"> <li>• Procure coal, reagents, fuel oil supply or transportation service agreements as needed to operate the Facility and establish and maintain reserves of coal in common stock piles of such quality and in such quantities as the Operating Committee shall determine</li> <li>• Contract administration for Fuel supply contracts along with legal review.</li> <li>• Third Party Settlements of fuel related supply and inventory tracking in ComTrac system</li> <li>• Joint Books Accounting to prepare information for billing among co-owners per agreement</li> <li>• Analysis of fuel related costs for data requests from regulatory bodies or joint owner</li> <li>• Provide 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 the Facility during each month.</li> <li>• Receive coal and provide fuel handling</li> <li>• Fuel coordinator functions to review fuel quality with third party suppliers at coal or limestone facilities.</li> <li>• Administer and reconcile volumes of all fuel with suppliers</li> <li>• Administer and comply with the requirements set forth in the Facility's fuel agreements, including quality testing and invoice review and approval</li> <li>• Administer and comply with the requirements set forth in the Facility's coal ash, gypsum and combustion byproduct disposal and sales agreements, including invoice review and approval</li> </ul>

Task Name	Description
<b>Day Ahead and Real Time Market Operations</b>	<ul style="list-style-type: none"> <li>• Unit Generation Dispatch – Monitor signals and take direction from PJM for generating units. Relay these directions, commitments and settings to the Unit Operators and Controls. Relay information on real time unit conditions to Transmission Owner (TO) and PJM.</li> <li>• GADS Reporting – Create GADS events as they are scheduled or occur. Submit monthly event reporting as required by NERC and PJM.</li> <li>• Outage Support and Communications to PJM – Relay outage/curtailment information from plant personnel to PJM. Schedule maintenance and planned outages/curtailments, and maintain updates as they arise.</li> <li>• Unit Characteristic Updates to PJM – Provide any relevant configuration updates related to generating units to PJM that may occur.</li> <li>• Telemetry – Maintain current real time telemetry to/from the plant, PJM and Market Operations control center.</li> </ul>
<b>Administration of Contracts</b>	<ul style="list-style-type: none"> <li>• Administer, perform and enforce all contractual obligations and arrangements, including all warranties applicable thereto, entered into by Operator for the benefit of the Owners with respect to the Facility</li> <li>• Act as agent on behalf of the Non-Operating Owner with respect to the administration, performance and enforcement of any contracts or purchase orders (including fuel supply or transportation contracts) with respect to the Facility that are in the name of the Non-Operator Owner as a result of the Non-Operator Owner having served as the Operator prior to the Effective Date</li> </ul>
<b>Insurance</b>	<ul style="list-style-type: none"> <li>• Procure on behalf of each Owner such property and other insurance policies as required by the insurance program established by the Operating Committee in accordance with the Ownership Agreement.</li> </ul>

<b>Task Name</b>	<b>Description</b>
<b>Decommissioning</b>	<ul style="list-style-type: none"><li>• Manage and contract with vendors and other parties to perform Decommissioning Work. This includes the management of required regulatory filings, permitting, engineering assessments, and the contracting for demolition and or liability transfers. Upon mutual agreement between Operator and the Operating Committee, Operator may conduct all or a portion of the Facility and/or Site Decommissioning from its and its Affiliates resources.</li></ul>

**APPENDIX B – INITIAL BUDGET AND PLAN**

[To be attached as of the Effective Date]

**APPENDIX C – OPERATING COSTS WORKSHEET/SAMPLE INVOICE**

[See attached.]



PAGE 1

INVOICE # xxx-xxxxxxx

Month of Billing

PAYMENT DUE BY: Date Due

Kentucky Power Company  
 Attn: xxxx  
 Address  
 City, State Zip Code

Dear xxxx:

**This is the billing report for Actual charges for the month of Month of billing for the Mitchell Generating Plant. Please include the invoice number above on your wire transfer to the receiving bank listed on that report. If you have any questions please call: xxxx at xxx-xxx-xxx or E-mail to xxx@aep.com**

Operating & Maintenance Agreement as Operator Article VII, Section 2:	Amount
i. KPCO'S Actual cost of coal inventory receipts of Mitchell Power Plant.	\$3,914,522.89
ii. KPCO'S Actual cost of coal handling inventory receipts of Mitchell Power Plant.	\$249,855.00
iii. KPCO'S Actual cost of fuel oil inventory receipts of Mitchell Power Plant.	\$12,185.50
iv. KPCO'S Actual cost of Limestone inventory receipts of Mitchell Power Plant.	\$55,080.45
v. KPCO'S Actual cost of Urea inventory receipts of Mitchell Power Plant.	\$19,351.35
vi. KPCO's share of total cost of operation of Mitchell Power Plant.	\$227,744.80
vii. KPCO's share of total cost of maintenance of Mitchell Power Plant.	\$295,700.00
viii. KPCO's share of total cost of fuel handling/fly ash of Mitchell Power Plant.	\$50,000.00
ix. KPCO's share of A&G expenses.	\$145,000.00
x. KPCO's share of Other Operating Costs.	\$0.00
<b>Total Operating Expenses</b>	<b>\$4,969,439.98</b>
KPCo's share of Capital Expenditures	\$100,000.00
Storeroom Inventory Activity	\$150,000.00
<b>TOTAL AMOUNT DUE WHEELING POWER COMPANY</b>	<b>\$5,219,439.98</b>

Wiring Instructions	Name on Acct:	Wheeling Power Co
	Bank:	Bank
	Acct:	Acct
	ABA:	ABA
	Ref:	Invoice #, xxx-xxxxxxx

COMPANY EXHIBIT CTB-D3  
Page 1 of 34

[RATE SCHEDULE NO. 303]

MITCHELL PLANT OWNERSHIP AGREEMENT

KENTUCKY POWER COMPANY

and

WHEELING POWER COMPANY

ARTICLE ONE OWNERSHIP AND OPERATIONS..... 2  
ARTICLE TWO APPORTIONMENT OF CAPACITY AND ENERGY ..... 3  
ARTICLE THREE REPLACEMENTS, ADDITIONS, AND RETIREMENTS ..... 4  
ARTICLE FOUR WORKING CAPITAL REQUIREMENTS ..... 4  
ARTICLE FIVE INVESTMENT IN FUEL ..... 5  
ARTICLE SIX APPORTIONMENT OF STATION COSTS..... 6  
ARTICLE SEVEN OPERATING COMMITTEE AND OPERATIONS..... 9  
ARTICLE EIGHT EFFECTIVE DATE AND TERM ..... 13  
ARTICLE NINE TRANSFERS ..... 14  
ARTICLE TEN DEFAULTS AND REMEDIES ..... 17  
ARTICLE ELEVEN LIMITATION OF LIABILITY ..... 19  
ARTICLE TWELVE DISPUTE RESOLUTION..... 19  
ARTICLE THIRTEEN GENERAL ..... 21  
ARTICLE FOURTEEN DEFINITIONS ..... 24

Exhibit A – Capital Budget, Initial Budgets and Forecast  
Exhibit B – Form of Monthly Sample Report

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");

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"); and

WHEREAS, on and subject to the terms and conditions of this Agreement, the Owners have committed to undertake a Buyout Transaction (as hereinafter defined), pursuant to which WPCo shall purchase KPCo's Ownership Interest on or prior to December 31, 2028, unless an Early Retirement Event (as hereinafter defined) occurs.

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.

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 In the event that, prior to execution and delivery of the Mitchell Interest Purchase Agreement, an Early Retirement Event occurs, each Owner shall (a) cause each Unit to permanently cease operations on December 31, 2028, or such other date permitted by Applicable Law as the Operating Committee may determine, (b) be responsible for, and shall timely pay, 50% of all Decommissioning Costs, (c) cooperate in good faith and take all actions reasonably necessary to facilitate the Decommissioning Work, 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 Decommissioning and (d) 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.

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 (subject to adjustment of the Buyout Price in accordance with Section 9.6) 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 In the event of an Early Retirement Event, 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; provided that nothing in this Section 6.8 shall affect the inclusion of Decommissioning Costs in the calculation of the Buyout Price pursuant to Section 9.6.

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) 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 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 and 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 an Early Retirement Event occurs, 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, KPCC 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 or (b) the consummation of the Buyout Transaction contemplated by Section 9.6 (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 Subject to Section 9.6, 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 reasonably likely to prohibit or otherwise restrict or condition the Buyout Transaction contemplated by Section 9.6. 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, (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 as contemplated by Section 9.6.

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 the Mitchell Interest Purchase Agreement.

9.6 Buyout Transaction. Unless an Early Retirement Event occurs, the Owners shall enter into the Mitchell Interest Purchase Agreement pursuant to which KPSCo shall sell, transfer and assign to WPCo, and WPCo shall purchase and assume from KPSCo, all of KPSCo's Ownership Interest (the "KPSCo Interest") (including its interest in the underlying land, common facilities, barge unloading and gypsum conveyor facilities, and inventory and spare parts with respect to the Mitchell Plant), with the closing of such transaction to occur on December 31, 2028 (or such earlier date as may be mutually agreed by the Owners), subject to and in accordance with the provisions of this Section 9.6. The transactions contemplated by this Section 9.6 shall be referred to herein collectively as the "Buyout Transaction."

(a) Buyout Price. The purchase price for the KPSCo Interest shall be (i) an amount mutually agreed by the Owners and approved by each of the WVPSC and the KPSC or, (ii) if no such amount is agreed by the Owners prior to June 30, 2027, an amount equal to (A) the Adjusted Fair Market Value of the KPSCo Interest as of the closing date of the consummation of the Buyout Transaction, minus (B) the Decommissioning Costs Amount, plus (C) the Coal Inventory Adjustment (such aggregate amount, the "Buyout Price"). The Coal Inventory Adjustment and the CapEx Adjustment shall be subject to a customary closing estimation and post-closing true-up mechanism to be set forth in the Mitchell Interest Purchase Agreement.

(b) Determination of Fair Market Value. Not later than June 30, 2026, the Owners shall commence discussions to determine mutually agreed amounts for the Fair Market Value for the KPSCo Interest and the Decommissioning Costs Amount. Unless prior to June 30, 2027, (i) the Fair Market Value for the KPSCo Interest (or other alternative Buyout Price) has been mutually agreed by the Owners pursuant to this Section 9.6 or (ii) an Early Retirement Event has occurred, then not later than July 31, 2027, each Owner shall deliver a written notice to the other Owner appointing a nationally or regionally recognized appraisal firm, which is not an Affiliate of

either Owner, with experience valuing coal-fired electric generating facilities that are comparable in size and scope to the Mitchell Plant (“Appraiser”), the costs and expenses of which shall be borne by the Owner appointing such Appraiser. Each of the Appraisers selected by WPCo and KPCo, respectively, shall work together to select a third Appraiser within fifteen (15) days of selection of the first two Appraisers or, if such first two Appraisers fail to agree upon the appointment of a third Appraiser, such appointment shall be made by the American Arbitration Association, or any successor organization thereto. The costs and expenses of the third Appraiser shall be borne equally by the Owners. Each Owner shall cooperate with each Appraiser and timely provide information and access to the Mitchell Plant facilities (including, subject to any confidentiality restrictions, contracts and financial information) and personnel as may be reasonably needed to complete its appraisal. The Fair Market Value of the KPCo Interest shall be calculated by the Appraisers as of December 31, 2028 (or such earlier date of the anticipated closing of the Buyout Transaction), assuming that the Units would permanently cease operations as of December 31, 2040 (or such earlier anticipated date as may have been filed by WPCo with the WVPSC) but without taking into account any Decommissioning Costs or the value of the common coal pile. Each Appraiser shall prepare a detailed written appraisal of the Fair Market Value of the KPCo Interest within sixty (60) days after the selection of such third Appraiser and provide its valuation reports to each of the Owners. If the Fair Market Value determined by one of the three Appraisers deviates from the Fair Market Value determination of the middle Appraiser by more than twice the amount by which the Fair Market Value determination of the other Appraiser deviates from the Fair Market Value determination of the middle Appraiser, then the Fair Market Value determination of such Appraiser shall be excluded, the remaining two Fair Market Value determinations shall be averaged, and such average shall be the Fair Market Value, which shall be binding and conclusive on the Owners; otherwise the average of all three Fair Market Value determinations shall be the Fair Market Value, which shall be binding and conclusive on the Owners.

(c) Determination of Decommissioning Costs Amount. Unless prior to June 30, 2027, (i) the Decommissioning Costs Amount (or other alternative Buyout Price) has been mutually agreed by the Owners pursuant to this Section 9.6 or (ii) an Early Retirement Event has occurred, then not later than July 15, 2027, each Owner shall deliver a written notice to the other Owner appointing a nationally or regionally recognized engineering or consulting firm, which is not an Affiliate of either Owner, with experience decommissioning (or arranging decommissioning liability transfer arrangements for) coal-fired electric generating facilities that are comparable in size and scope to the Mitchell Plant (“Qualified Firm”), the costs and expenses of which shall be borne by the Owner appointing such Qualified Firm. Each of the Qualified Firms selected by WPCo and KPCo, respectively, shall work together to select a third Qualified Firm within fifteen (15) days of selection of the first two Qualified Firms or, if such first two Qualified Firms fail to agree upon the appointment of a third Qualified Firm, such appointment shall be made by the American Arbitration Association, or any successor organization thereto. The costs and expenses of the third Qualified Firm shall be borne equally by the Owners. Each Owner shall cooperate with each Qualified Firm and timely provide information and access to the Mitchell Plant facilities (including, subject to any confidentiality restrictions, contracts and financial information) and personnel as may be reasonably needed to complete its determination. The Decommissioning Costs Amount shall be calculated by the Qualified Firms as of December 31, 2028 (or such earlier date of the anticipated closing of the Buyout Transaction), assuming for purposes of such determination (A) the Units would permanently cease operations, and Decommissioning of the

Mitchell Plant would commence, as of such date, (B) the Mitchell Plant facilities would be dismantled and removed from the Mitchell Plant site, (C) the Mitchell Plant site would be remediated to a legally permissible industrial use standard, (D) all legal obligations and commitments to Governmental Authorities in connection with the Decommissioning of the Mitchell Plant would be appropriately addressed and satisfied, and (E) such additional or alternative assumptions as the Operating Committee may determine. Each Qualified Firm shall prepare a detailed written determination of the Decommissioning Costs Amount within ninety (90) days after the selection of such third Qualified Firm and provide its determination reports to each of the Owners. If the Decommissioning Costs Amount determined by one of the three Qualified Firms deviates from the Decommissioning Costs Amount determination of the middle Qualified Firm by more than twice the amount by which the Decommissioning Costs Amount determination of the other Qualified Firm deviates from the Decommissioning Costs Amount determination of the middle Qualified Firm, then the determination of such Qualified Firm shall be excluded, the remaining two Decommissioning Costs Amount determinations shall be averaged, and such average shall be the Decommissioning Costs Amount, which shall be binding and conclusive on the Owners; otherwise the average of all three Decommissioning Costs Amount determinations shall be the Decommissioning Costs Amount, which shall be binding and conclusive on the Owners.

(d) Buyout Procedures. Unless an Early Retirement Event has occurred, the Owners shall cooperate in good faith to negotiate and execute the Mitchell Interest Purchase Agreement not later than December 31, 2027, including completing any applicable disclosure schedules and exhibits, consistent with the terms and conditions described in this Section 9.6, so that any applicable regulatory or other approvals shall be timely obtained so as to allow the Buyout Transaction to be consummated on or prior to December 31, 2028.

#### 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 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.

#### ARTICLE TWELVE DISPUTE RESOLUTION

12.1 If either Owner believes that a dispute (including a Technical 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 is unable to reach agreement on the resolution of a dispute not constituting a Technical 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 is unable to 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 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 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 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 is subject to the regulatory authority of any State or Federal agency having jurisdiction.

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 KPSCo, 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.

"Adjusted Fair Market Value" means any positive amount (if any, and zero otherwise) equal to (A) the Fair Market Value, minus (B) the CapEx Adjustment.

"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.

“Appraiser” shall have the meaning given to such term in Section 9.6(b).

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

“Buyout Price” shall have the meaning given to such term in Section 9.6(a).

“Buyout Transaction” shall have the meaning given to such term in Section 9.6.

“CapEx Adjustment” shall mean (a) 50% of any capital expenditures (or portion thereof), including ELG Capital Expenditures, to the extent funded by WPCo in an amount in excess of 50% of the total amount thereof on or prior to December 31, 2028, plus (b) an amount equal to the WACC for the amounts included in clause (a), applied to all of such amounts using the then-applicable WACC from the dates of funding through the closing date of the consummation of the Buyout Transaction.

“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 KPCCo (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 KPCCo and WPCo to comply with the CCR Rule.

“Coal Inventory Adjustment” shall mean the weighted-average cost of KPCCo’s investment in the common coal pile for the Mitchell Plant.

“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.

"Decommissioning Costs Amount" shall mean an amount equal to 50% of all Decommissioning Costs, as determined by and adjusted in accordance with the procedures and calculation criteria and factors set forth in the Section 9.6(c).

"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.

"Early Retirement Event" shall mean the delivery of a written notice by WPCo to KPCo irrevocably committing to permanently cease operations of the Mitchell Plant effective on or, with KPCo consent, prior to December 31, 2028, which notice shall be consistent with WPCo's current filings at such time with the WVPSC in respect of the Mitchell Plant.

"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.

“Fair Market Value” shall mean, with respect to the KPCo Interest as of any date, an amount (which may be a positive or a negative number) equal to 50% of the cash price obtainable in an arm’s-length sale of the entirety of the Mitchell Plant between an informed and willing buyer and seller, in each case under no compulsion to buy or sell, as the case may be, as determined by and adjusted in accordance with the procedures and valuation criteria and factors set forth in Section 9.6(b).

“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.

“HSR Act” shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

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

“KPCo Interest” shall have the meaning given to such term in Section 9.6.

“KPSC” shall mean the Kentucky Public Service Commission.

“Mitchell Interest Purchase Agreement” shall mean an asset purchase agreement between KPCo and WPCo to implement the Buyout Transaction at the Buyout Price, consistent with Section 9.6 and on a non-recourse basis to KPCo, subject to an indemnity expiring on December 31, 2050 by KPCo for the benefit of WPCo, with a cap of \$15 million, for unknown contingent liabilities with respect to items arising from KPCo’s 50% Ownership Interest prior to the date of the

closing of the Buyout Transaction and not estimated or otherwise factored in the calculation of Fair Market Value or the Decommissioning Costs Amount.

“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.

“Qualified Firm” shall have the meaning given to such term in Section 9.6(c).

“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.

“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.]*

COMPANY EXHIBIT CTB-D3  
Page 32 of 34

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:

COMPANY EXHIBIT CTB-D3  
Page 33 of 34

**Exhibit A**

**Capital Budget, Initial Budgets and Forecast**

[To Be Attached as of the Effective Date.]

COMPANY EXHIBIT CTB-D3  
Page 34 of 34

**Exhibit B**

**Form of Monthly Sample Report**

[To Be Attached as of the Effective Date.]

COMPANY EXHIBIT TCK-D

**DIRECT TESTIMONY OF  
TIMOTHY C. KERNS  
ON BEHALF OF APPALACHIAN POWER COMPANY AND  
WHEELING POWER COMPANY  
BEFORE THE PUBLIC SERVICE COMMISSION OF  
WEST VIRGINIA IN CASE NO. 21-\_\_\_\_\_**

1 **Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.**

2 A. My name is Timothy C. Kerns and my business address is Rockport Generating Station,  
3 2791 N. US Highway 231, Rockport, IN 47635. I am Vice President Generating Assets  
4 for Indiana Michigan Power Company ("I&M") and Kentucky Power Company  
5 ("Kentucky Power"). I&M and Kentucky Power are wholly-owned subsidiaries of  
6 American Electric Power Company, Inc. ("AEP").

7 **Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**  
8 **BUSINESS EXPERIENCE.**

9 A. I hold a Bachelor of Science in Mechanical Engineering Degree from West Virginia  
10 Institute of Technology and have been employed with AEP for 32 years. I have worked  
11 at various power plants across the AEP system as a Performance Engineer, a  
12 Maintenance Engineer, and a Plant Manager. From 2001 to 2005, I was the Regional  
13 Services Organization Manager responsible for providing maintenance-related services to  
14 AEP's Fossil, Hydro, and Nuclear generating facilities owned by various AEP affiliates.  
15 I have also held the positions of Regional Engineering Manager and Regional Outage  
16 Manager. I was promoted to my current position with American Electric Power Service  
17 Corporation ("AEPSC") in October 2020. AEPSC supplies engineering, financing,  
18 accounting, and planning and advisory services to the subsidiaries of AEP.

1 **Q. PLEASE BRIEFLY DESCRIBE YOUR DUTIES AND RESPONSIBILITIES AS**  
2 **VICE PRESIDENT GENERATING ASSETS FOR KENTUCKY POWER AND**  
3 **I&M.**

4 A. I am responsible for the safe, reliable, and economic operation of the fossil-fueled  
5 generating assets owned or operated by Kentucky Power and I&M. Specifically, I plan,  
6 organize, coordinate, direct, and control plant activities, including the operations,  
7 maintenance, engineering, and construction of the plant facilities. I also oversee plant  
8 budgets and interface with other AEP functional groups such as accounting, regulatory,  
9 and commercial operations to ensure the needs of the generating plants are met.  
10 Additionally, I am responsible for the decommissioning, demolition, and disposition of  
11 generating assets owned or operated by Kentucky Power and I&M.

12 In my capacity as Vice President Generating Assets for Kentucky Power, I have  
13 direct oversight over the operation and management of the Mitchell Plant (also referred to  
14 as "the Plant").

15 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN ANY REGULATORY**  
16 **PROCEEDINGS?**

17 A. Yes. I have submitted testimony on behalf of Kentucky Power Company before the  
18 Public Service Commission of Kentucky ("KPSC") in Case No. 2020-00174. I have also  
19 submitted testimony on behalf of I&M before the Indiana Utility Regulatory Commission  
20 ("IURC") in Cause Nos. 45546, 44967, 44511, and 45235, and before the Michigan  
21 Public Service Commission ("MPSC") in Cause Nos. U-18370, U-20070, and U-20359.

22 **Q. FOR WHOM ARE YOU TESTIFYING IN THIS PROCEEDING?**

23 A. I am testifying on behalf of both Appalachian Power Company ("APCo") and Wheeling  
24 Power Company ("Wheeling Power" or "WPCo") (together, the "Companies").

1 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

2 A. The purpose of my testimony is to describe the Mitchell Plant and to explain that the  
3 proposed change to make Wheeling Power the Operator of the Mitchell Plant will not  
4 impact the Plant's day-to-day operations. I will also describe Wheeling Power's ability  
5 to safely and reliably operate the Mitchell Plant going forward.

6 **Q. PLEASE DESCRIBE THE MITCHELL GENERATING PLANT.**

7 A. The Mitchell Plant is located approximately 12 miles south of Moundsville, West  
8 Virginia on the Ohio River. Kentucky Power owns an undivided 50% interest in the  
9 Mitchell Plant; the other 50% interest is owned by Wheeling Power, an affiliate of  
10 Kentucky Power. The plant comprises two super-critical pulverized coal-fired base-load  
11 generating units. Mitchell Unit 1 has a capacity of 770 MW and Mitchell Unit 2 has a  
12 capacity of 790 MW for a total capacity of 1,560 MW. Both units were placed in service  
13 in 1971. Each unit is equipped with an electrostatic precipitator for control of particulate  
14 matter, a flue gas desulfurization system for sulfur dioxide control, and selective catalytic  
15 reduction technology and low-NO<sub>x</sub> burners for control of nitrogen oxide (NO<sub>x</sub>)  
16 emissions. Both units also utilize a dry fly ash handling system.

17 **Q. IS THE MITCHELL PLANT CURRENTLY EXPECTED TO OPERATE**  
18 **BEYOND DECEMBER 31, 2028?**

19 A. Yes. December 31, 2028, is the latest possible date the Mitchell Plant can operate without  
20 performing ELG retrofits. However, the plant will be able to operate past December 31,  
21 2028, only as a result of decisions by the Public Service Commission of West Virginia  
22 ("Commission"). As ordered by this Commission, Wheeling Power is required to  
23 perform retrofits to comply with both the Coal Combustion Residuals Rule (the "CCR  
24 Rule") and the Effluent Limitation Guidelines (the "ELG Rule") to enable Wheeling

1 Power to run the plant past 2028. Company witness Beam discusses the KPSC's  
2 decisions and this Commission's relevant Orders in more detail.

3 **Q. PLEASE GENERALLY DESCRIBE KENTUCKY POWER'S ROLE AS**  
4 **OPERATOR UNDER THE CURRENT MITCHELL PLANT OPERATING**  
5 **AGREEMENT.**

6 A. Kentucky Power is the Operator of the Mitchell Plant under the Current Mitchell Plant  
7 Operating Agreement ("Current Mitchell Agreement"). The Current Mitchell Agreement  
8 governs the operation and maintenance of the Mitchell Plant, the cost sharing of O&M  
9 and capital investments between Kentucky Power and Wheeling Power as the owners of  
10 the Plant, and the Plant's Operating Committee. The Operating Committee, among other  
11 things, reviews and approves budgets, procedures and systems for dispatch and unit  
12 commitment, makes decisions on capital projects including unit upgrades and  
13 repowering, establishes billing procedures, and approves material contracts. The  
14 Operating Committee consists of three members: voting representatives from both  
15 Kentucky Power (Brett Mattison, its President and Chief Operating Officer) and  
16 Wheeling Power (Christian Beam, its President and Chief Operating Officer) and a non-  
17 voting representative of AEPSC. I am the member of the Operating Committee on behalf  
18 of AEPSC.

19 As described in greater detail by Company witness Beam, due to the differing  
20 decisions reached by the KPSC and this Commission regarding ELG-related investments,  
21 it is necessary to replace the Operating Agreement to reflect future operations of and  
22 investment in the Mitchell Plant. Company witness Beam describes in greater detail the  
23 previously-approved Current Mitchell Agreement and the two new proposed agreements

1 (collectively the “New Mitchell Agreements”) that are the subject of the Companies’  
2 Petition.

3 **Q. AS THE VICE PRESIDENT GENERATING ASSETS FOR KENTUCKY**  
4 **POWER, WHAT HAS BEEN YOUR INVOLVEMENT IN THE OPERATION OF**  
5 **THE MITCHELL PLANT?**

6 A. With Kentucky Power having been the Mitchell Plant’s Operator, I have overall  
7 responsibility for the operation and maintenance of the Plant in my capacity as Kentucky  
8 Power’s Vice-President Generating Assets. I am familiar with the day-to-day operation  
9 of the Mitchell Plant as a result of my responsibilities in the oversight of Plant personnel  
10 in connection with the safe, reliable, and economic operation of the Plant. In this regard,  
11 my responsibilities include interacting on a regular basis with the Mitchell Plant manager,  
12 who reports directly to me, as well as with other Plant personnel in connection with both  
13 day-to-day and longer term Plant activities.

14 In addition, as a non-voting member of Mitchell Plant Operating Committee, I  
15 regularly review and approve budgets, review investments, and help plan the safe and  
16 reliable operation of that facility.

17 **Q. HAVE YOU REVIEWED AND ARE YOU FAMILIAR WITH THE PROPOSED**  
18 **MITCHELL PLANT OPERATION AND MAINTENANCE AGREEMENT AND**  
19 **THE PROPOSED MITCHELL PLANT OWNERSHIP AGREEMENT?**

20 A. Yes. I have reviewed the proposed Mitchell Plant Operations and Maintenance  
21 Agreement, which describes the duties of the Mitchell Plant Operator. I have also  
22 reviewed the Mitchell Plant Ownership Agreement generally, including specifically the  
23 provisions most related to Mitchell Plant day-to-day operations, which include Section  
24 1.5 (appointing Wheeling Power the Operator of the Mitchell Plant), Section 5.1

1 (regarding fuel procurement by the Operator), and Sections 6.1 and 6.3 (regarding  
2 monthly determination of O&M expenses by the Operator).

3 **Q. WILL THE CHANGE TO MAKE WHEELING POWER THE OPERATOR OF**  
4 **THE MITCHELL PLANT IMPACT THE PLANT'S FUTURE OPERATION OR**  
5 **ASSOCIATED COST?**

6 A. No. Wheeling Power will become the Operator of the Mitchell Plant, and all Plant  
7 employees will become employees of Wheeling Power. I will continue to have overall  
8 managerial responsibility for the Mitchell Plant, as I do now, and the plant manager will  
9 continue to report to me. Instead of charging Kentucky Power for the time I spend  
10 managing Mitchell, as I do now as an AEPSC employee, I will charge that time to  
11 Wheeling Power, which will bill Kentucky Power for its appropriate share of those costs  
12 under the New Mitchell Agreements.

13 In addition, with Wheeling Power becoming the Operator of the Mitchell Plant,  
14 the Plant will continue to receive support services from AEPSC, the same service  
15 corporation that provides technical support to the Plant today and will continue to do so  
16 as long as the Plant remains in service. As a result, as the Plant continues to operate in  
17 the future, it will be managed and planned by the same employees responsible for that  
18 work today, with the same support at the corporate level that exists today from AEPSC.  
19 Consequently, I do not anticipate any changes in the operation of the Plant, or the  
20 associated costs, as a result of Wheeling Power becoming the Operator of the Mitchell  
21 Plant.

22 **Q. WILL THE CHANGE TO MAKE WHEELING POWER THE OPERATOR OF**  
23 **THE MITCHELL PLANT NEGATIVELY AFFECT THE PLANT'S**  
24 **OPERATION?**

1 A. No. To reiterate, the Plant will be operated and maintained by the same employees that  
2 do so today. I would not anticipate any negative impacts on the Plant's operation as a  
3 result of Wheeling Power becoming the Operator of the Mitchell Plant.

4 **Q. WILL WHEELING POWER BE CAPABLE OF OBTAINING**  
5 **ENVIRONMENTAL AND OTHER PERMITS FOR THE MITCHELL PLANT,**  
6 **INCLUDING FOR THE ELG PROJECT?**

7 A. Yes. In particular, I expect that Wheeling Power will be able to promptly seek  
8 modifications of environmental permits related to the ELG Project currently held in  
9 Kentucky Power's name to transfer those to the name of Wheeling Power and to hold any  
10 subsequent permits related to that project in its name. This expectation is based on my  
11 understanding of Wheeling Power's ability to operate the Mitchell Plant and the support  
12 that Wheeling Power will receive from the AEPSC Environmental Services organization.

13 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

A. Yes, it does.