

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

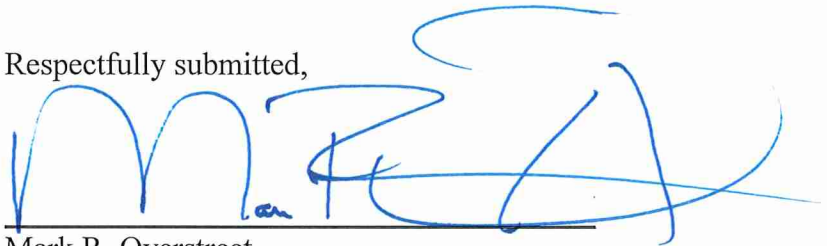
In the Matter of:

Electronic Investigation Of The Service, Rates And     )  
Facilities Of Kentucky Power Company                     )     Case No. 2021-00370

**Kentucky Power Company's Notice Of Filing**  
**Of Status Report Update**

Kentucky Power Company provides notice of filing in this docket of the September 23, 2021 supplemental response to KPSC\_RH\_1\_1 (September 23, 2021 ten-day status report) filed in Case No. 2021-00004.

Respectfully submitted,



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COMPANY

Kentucky Power Company  
KPSC Case No. 2021-00004  
Commission Staff's Rehearing Data Requests  
Dated August 19, 2021  
Page 1 of 2

**DATA REQUEST**

**RH\_1\_1** Explain Kentucky Power and Wheeling Power's plan regarding Mitchell. Provide updated status reports every ten days through the pendency of this proceeding.

**RESPONSE**

Kentucky Power and Wheeling Power currently are implementing plans to ensure the construction of the CCR project to allow the operation of the Mitchell Generating Station through December 31, 2028.

Kentucky Power Company and Wheeling Power Company are reviewing their alternatives regarding the Mitchell Generating Station in light of the July 15, 2021 decision of this Commission, and the August 4, 2021 decision of the Public Service Commission of West Virginia. No decision regarding a plan for the Mitchell Generating Station beyond that described above has been reached by either Company.

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

**September 13, 2021 Update**

Wheeling Power Company and Appalachian Power Company on September 8, 2021 filed with the Public Service Commission of West Virginia their "Petition to Reopen Case and to Take Further Action" in Case No. 20-1040-E-CN. The petition requests the West Virginia Commission to provide certain confirmations, acknowledgements, and commitments regarding, *inter alia*, the Mitchell Generating Station, in light of the inconsistent orders of the Kentucky and West Virginia commissions regarding the proposed ELG work at the Mitchell Generating Station. The petition further requests that the West Virginia Commission provide the confirmations, acknowledgements, and commitments prior to the October 13, 2021 deadline under the ELG Rule for notifying the West Virginia Department of Environmental Protection concerning the ELG modifications at the Mitchell Generating Station. Finally, Wheeling Power and Appalachian Power Company indicated in the petition that there were matters in need of resolution should West Virginia decide to fully fund the ELG investment and maintain the plant in order to preserve an option to run the Mitchell Generating Station past 2028.

A copy of the petition is attached as KPCO\_SR\_KPSC\_RH\_1\_1\_Attachment1.

Kentucky Power Company  
KPSC Case No. 2021-00004  
Commission Staff's Rehearing Data Requests  
Dated August 19, 2021  
Page 2 of 2

The West Virginia commission by order dated September 9, 2021 established a procedural schedule, and provided for a September 24, 2021 evidentiary hearing, in connection with the petition.

A copy of the September 9, 2021 order is attached as KPCO\_SR\_KPSC\_RH\_1\_1\_Attachment2.

Kentucky Power Company and Wheeling Power Company continue to review their alternatives regarding the Mitchell Generating Station pending action by the West Virginia Commission on the petition. Kentucky Power Company also intends to explore these issues and will work to bring the Commission a recommendation on how to handle the Mitchell operating agreement in a new docket for review.

Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding on the status of the West Virginia decision on ELG investment.

**September 23, 2021 Update**

Wheeling Power Company and Appalachian Power Company on September 20, 2021 filed with the Public Service Commission of West Virginia their Reply in support of their "Petition to Reopen Case and to Take Further Action."

A copy of the Reply is attached as KPCO\_SR\_KPSC\_RH\_1\_1\_Attachment3.

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

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

Witness: Deryle B. Mattison



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September 20, 2021

**BY ELECTRONIC FILING**

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

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

Dear Ms. Graley:

Please find attached herewith, the **Reply of Appalachian Power Company and Wheeling Power Company**. Please file the attached as appropriate in the above-referenced case. Please note that Exhibit A should be scanned in color for the Commission's electronic docket.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

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

Counsel for Appalachian Power Company  
and Wheeling Power Company

ACB  
cc: service list

{R1616065.1}



**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**CASE NO. 20-1040-E-CN**

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

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

**REPLY OF APPALACHIAN POWER COMPANY  
AND WHEELING POWER COMPANY**

COME NOW Appalachian Power Company (“APCo”) and Wheeling Power Company (“WPCo”) (jointly “the Companies”), in accordance with the procedural schedule set forth by the West Virginia Public Service Commission (“Commission”), and submit this Reply in support of their “Petition to Reopen Case and to Take Further Action.” The Companies hereby reply to the responses filed in opposition to their Petition to Reopen by intervenors West Virginia Energy Users Group (“WVEUG”), Consumer Advocate Division (“CAD”), Sierra Club, and West Virginia Citizens Action Group, Solar United Neighbors, and Energy Efficient West Virginia (“CAG/SUN/EEWV”) (sometimes collectively referred to herein as “Intervenors”).<sup>1</sup> As explained herein, the Companies seek the guidance of the Commission under unique, pressing circumstances, given its August 4, 2021 Order, while the Intervenors downplay the urgency of this matter and

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<sup>1</sup> Additional intervenors in this matter include the West Virginia Coal Association, Inc. (“WVCA”) and the Attorney General for the State of West Virginia. The WVCA filed a response in support of the Companies’ Petition to Reopen, which is referenced herein but is not being replied to. The West Virginia Attorney General did not file a response to the Companies’ Petition to Reopen, nor did the Commission’s Staff.

lobby for a course of action that is fraught with uncertainty and significant risk and is inconsistent with the Commission's Order. In support of their Reply, the Companies state as follows:

**A. The Intervenors Fail to Address the Pitfalls of Filing a Notice of Planned Participation Committing to Retire and then Trying to Reverse Course.**

The Companies have addressed the importance of the October 13, 2021 deadline multiple times in this proceeding: in their initial Application filed in this matter, at hearing and in post-hearing briefing, in their Petition to Reopen, and in the pre-filed testimony submitted with those filings. In an attempt to avoid that deadline, the Intervenors propose a course of action that would have the Companies declare a retirement now and then rely upon a series of unsure events and unproven technology to reverse course sometime in the future to be able to run the subject plants past 2028. There is simply no practical ability for the Companies to do what the Intervenors propose, as discussed below.

To summarize the environmental rules at issue, the Steam Electric Effluent Limitations Guideline ("ELG") rule (not finalized until October 2020) establishes discharge limits that must be achieved "as soon as possible" or, alternatively, permits an affected facility to give notice by October 13, 2021 of its intent to pursue the rule's alternative compliance paths, one of which requires a commitment to retire by end of 2028.<sup>2</sup> The other rule at issue in this matter, the Coal Combustion Residuals ("CCR") rule (not finalized until August 2020), also requires compliance work related to the same waste streams in order for an affected facility to continue operating.

The CCR rule required the Companies to stop using their coal ash ponds by April 11, 2021. The United States Environmental Protection Agency ("EPA") has tolled that compliance date for companies that have submitted extension requests. Because the Companies have no alternative

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<sup>2</sup> The rule alternatively requires a plant to refuel by the end of 2028, but in light of the record of this case and for the sake of brevity, the Companies will simply use the term "retire."

means of handling coal ash wastewater and needed time to develop an alternative, on November 30, 2020, they submitted an extension request with their plan to complete CCR and ELG compliance work at all three plants “as soon as possible.” The EPA has not yet provided a response to the Companies’ extension request (or to any other company that submitted such a request). The Companies’ plan includes converting wet bottom ash handling systems to dry bottom ash handling and closing the coal ash ponds to comply with the CCR rule. This pond closure and dry bottom ash conversion plan also meets a substantial portion of the ELG rule requirements. Filing a Notice of Planned Participation (“NOPP”) by October 13, 2021, as the Intervenors propose, committing to retire all three plants by 2028 in lieu of converting to dry bottom ash handling and installing ELG treatment systems, would be a significant departure from the Companies’ submitted plan and could jeopardize the plants’ ability to comply with CCR, which in turn could require the Companies to stop operating the plants until they could come into compliance, or may even force an earlier retirement.

Although the Commission has approved ELG compliance work at all three plants and cost recovery of West Virginia’s jurisdictional share, there is an inherent conflict among the recent decisions from Kentucky, Virginia, and West Virginia and a resulting uncertainty as to whether the Companies could recover the full, necessary costs of performing that work. It is for that reason the Companies ask the Commission for guidance in their Petition to Reopen. As the Companies have explained, the fast approaching October 13, 2021 deadline is a proverbial fork in the road.

The Intervenors, however, downplay the significance of the October 13, 2021 deadline to the point of calling the urgency of this matter “illusory” and “false.” Sierra Club Response at 5; CAG/SUN/EEWV Response at 6. Despite the Commission’s Order approving ELG work at all three plants, which would allow them to operate past 2028, several Intervenors posit in their

responses (and the others appear to agree) that the best course of action would be for the Companies to file a NOPP with the West Virginia Department of Environmental Protection (“WVDEP”), by October 13, 2021, stating just the opposite, that the Companies plan to retire all three plants by end of 2028. Then, these Intervenor argue, the Companies should obtain extensions of the ELG compliance dates that are in their National Pollutant Discharge Elimination System (“NPDES”) permits, and at some time prior to December 31, 2025, the Companies should withdraw the NOPP for any unit they do not wish to retire. *See, e.g.*, CAG/SUN/EEWV Response at 3-5. Additionally, the timeline proposed as necessary to meet the “as soon as possible” CCR rule compliance dates would have to be amended by the Companies and approved by the EPA. Intervenor misleadingly imply that taking all these actions and receiving all requisite approvals is a simple and guaranteed undertaking; it is not.

The Intervenor’s proposal hinges upon unknown outcomes before federal and state environmental agencies and is fraught with risks and uncertainty. First, the WVDEP is not required to grant the Companies an extension of the current NPDES compliance dates, as explained by Mr. Spitznogle.<sup>3</sup> And the EPA is not required to allow changes to the Companies’ CCR plans, even if WVDEP approves an extension of ELG compliance dates in the NPDES permit. Certain of the Intervenor, in their short-sighted proposal, simply assume that WVDEP will grant extensions of the ELG deadlines to facilitate the delay they propose. They also do not account for the very real possibility that interested parties (perhaps including themselves) would challenge

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<sup>3</sup> “The Companies could ask WVDEP to amend the NPDES permit to extend the ELG compliance date and to allow a retiring plant to operate through the last possible ELG compliance date of December 31, 2025, but the WVDEP is not required to agree to such a modification.” Spitznogle supplemental direct testimony at 4 (emphasis added). By way of explanation, the Companies note that the WVDEP issues and can amend the NPDES permit, which contains the ELG compliance deadlines. But every permit proposed for issuance can be vetoed by the EPA, and the EPA controls the approval needed under the CCR program.



such requests for extension. Furthermore, there is a very real possibility that the EPA would veto an extension of the ELG deadlines because, as noted previously, the ELG rule requires compliance “as soon as possible,” and the ELG deadlines contained in the current versions of the WVDEP permits are the soonest possible compliance dates.

Second, if anything is illusory, it is the Intervenor’s portrayal of both the implications of submitting a NOPP and the relationship between the construction timelines required to implement the necessary CCR and ELG controls (submitted with the Companies’ Application as exhibits to Company witness Brian Sherrick’s direct testimony) and the compliance dates in the WVDEP permits for the plants. The earliest of the proposed ELG compliance dates is May 31, 2022, which is the deadline for the Mountaineer plant to meet the bottom ash transport water (“BATW”) limits of the ELG rule. That is a mere 8 months from now. There is simply no practical ability for the Companies to do what the Intervenor propose - file a NOPP indicating they will retire by end of 2028, get an extension (which is not guaranteed), and then withdraw the NOPP after a lengthy hearing in this matter. The Companies need to continue the work that has already begun in order to meet the fast-approaching ELG compliance dates, the earliest of which is in May 2022.

Sierra Club incorrectly asserts that a company that submits and then withdraws a NOPP gains “significant advantages” because it then has “until December 31, 2028 to meet its ELG limits.... Delaying compliance until 2028, would allow the Companies and the Commission to better understand and evaluate the limits that will be applicable....” Sierra Club Response at 5-6. Withdrawing the NOPP would require participation in the voluntary incentives program (“VIP”), which imposes more stringent limits but has a 2028 compliance date for flue gas desulfurization (“FGD”) wastewater only; the Companies would still have to meet the current BATW limits by the earlier BATW compliance dates. Sierra Club glosses over that crucial point, as well as the fact

that the membrane technology necessary to meet VIP limits is unproven at utility scale or under coal power plant conditions. In fact, there exist today only pilot scale demonstrations of the technology in the US and no commercial operating data to provide assurances it can perform reliably or achieve removal levels required in the VIP.

Furthermore, given the integrated nature of the CCR and ELG projects, the Companies cannot simply perform CCR work and leave ELG in limbo. The compliance plan and accompanying extension request that is pending before EPA, and that allows the plants to continue to operate, requires the plants to install dry bottom ash handling and to close the existing ash ponds as a means of complying with both CCR and ELG. If the ELG component is taken out of the equation, the plan for CCR compliance no longer works and the Companies would need to submit a different plan to EPA for approval – which is not guaranteed to be granted and, even if granted, is subject to challenge. If the revised plan is not approved by EPA, the plant may have to be idled until the CCR compliant pond is completed.

Lastly, the Intervenor's proposal that the Companies commit to retire plants, and then immediately work towards reversing that course, undermines the EPA's procedural directives and instantly runs counter to the Commission's August 4, 2021 Order. Surely the EPA did not expect, and cannot be expected to condone, such gaming of their own rules. To explain, EPA could not have intended for companies to file a NOPP exercising an option to retire simply as a way to delay compliance and attain additional optionality. This is supported by the fact that the ELG Rule requires a company that submits a NOPP to also submit supporting information such as integrated resource plans or other documentation demonstrating a commitment to retire, and annual reports demonstrating progress towards compliance milestones, thus indicating that the company is actually pursuing the compliance option in question. 40 CFR 423.19(f)(2)-(4). Additionally, EPA

has stated that a company that opts into one of the alternative compliance paths through the submission of a NOPP and then, due to a change in circumstances, transfers into one of the other alternative compliance paths, should not be able to “circumvent otherwise applicable deadlines” by doing so.<sup>4</sup> Yet that is exactly what Intervenors suggest the Companies should do—file a NOPP committing to retire, and then withdraw that NOPP and seek to establish ELG compliance dates later than those that the Companies and WVDEP have already determined are “as soon as possible.” The ELG deadlines cannot be circumvented as easily or as assuredly as Intervenors suggest.

To recap, the Intervenors’ proposal – filing and then withdrawing a NOPP – requires the Companies to navigate a gauntlet of environmental regulatory hurdles, as summarized below, most of which have no precedent under the CCR and ELG rules that were only finalized last year.

Filing the NOPP requires the Companies to amend their pending CCR extension requests to change the CCR compliance option from dry bottom ash conversion and pond closure to construction of a new CCR compliant pond. Doing so carries the following risks:

- The CCR rule’s April 11, 2021 deadline to close noncompliant ash ponds is tolled pending EPA approval of the pending CCR rule extension request. Changing the request at this late date jeopardizes the protection of this tolling provision, which in turn jeopardizes the Companies’ ability to continue to operate the plants until a CCR compliant pond can be constructed.
- Under the CCR rule’s provisions for seeking an extension of the April 11, 2021 date, construction of the proposed compliance solution must occur “as soon as possible”; any change to the proposed plan for compliance that changes the proposed

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<sup>4</sup> In the ELG Preamble, EPA noted: “a plant seeking to transfer between the ELG rule provisions must demonstrate compliance with all requirements of both the provision transferred from and the provision transferred to, and continue to meet requirements that were applicable if that applicability date has passed. This ensures that a plant does not miss or circumvent otherwise applicable deadlines or cease operating equipment already installed, operated, and maintained to comply with deadlines that have passed” 85 FR 64650, 64708 (Oct. 13, 2020) (emphasis added).

timeline for compliance increases the risk of disapproval by EPA or challenge by interested parties.

Filing the NOPP and later withdrawing it requires the Companies to amend their NPDES permits and to request that WVDEP extend their BATW compliance dates. Withdrawing a NOPP carries these additional risks:

- WVDEP may decline to extend BATW compliance dates, as it has already determined that the 2022/2023 dates in existing or proposed permits represent the “as soon as possible” compliance deadline.
- Even if WVDEP agrees to extend the BATW compliance dates, those dates can only be extended through December 31, 2025 at the latest.
  - Assuming WVDEP extends the BATW compliance dates for a plant, depending on when that final permit is issued, the Companies may need to idle the plant during construction to install the ELG compliance technologies. For example, a permit that is issued in late 2025 will require that the plant be idled through much of 2026, at a minimum, to allow for the installation of dry bottom ash handling.
- If WVDEP agrees to extend the BATW compliance dates, EPA may veto an extension of the deadlines because the ELG rule requires compliance “as soon as possible” and the ELG deadlines in the current versions of the WVDEP permits are the soonest possible compliance dates.
- If WVDEP agrees to extend the BATW compliance dates, that decision will be subject to appeal by interested parties, and the outcome of any such appeal would be uncertain.
- Withdrawing a NOPP requires participation in the VIP for FGD wastewater; this technology has not been proven in this context and may not provide sufficient pollution control to meet the more stringent ELG limits under the VIP.

To the extent the Intervenor’s proposal is even available to the Companies, it is certainly fraught with risks and uncertainties. To assist the Commission in understanding the true “fork in the road” that the October 13, 2021 deadline is, the Companies include herewith, as Exhibit A, a flow chart illustrating the complexities and pitfalls of the Intervenor’s proposal. The Companies’ witness, Gary Spitznogle, will be available at the September 24, 2021 hearing for questioning regarding these issues and the exhibit. The Companies urge the Commission not to view this



matter in a vacuum, as Intervenors have, and ask the Commission to recognize that there truly is an urgency and need for the guidance requested by the Companies.

**B. The Intervenors' Due Process Arguments Ignore the Pressing, Exigent Circumstances of this Matter and the Well-Developed Record Already Before the Commission.**

The Intervenors complain that the Commission granting the Companies' requested relief would deprive them of due process. It is important to recognize exactly what is being requested by the Companies and how it relates to the Order already provided. The Companies request the following:

1. A ruling from the Commission that it wants the Companies to proceed with the ELG projects at all three plants, including on KPCo's undivided 50% interest in the Mitchell plant, notwithstanding the new cost estimates, or if not at all plants, then on which plants or units;
2. An acknowledgement from the Commission that additional investments and O&M expenses at the plants will be needed prior to 2028, and will be the responsibility of West Virginia customers, if the plants are to operate beyond 2028;
3. A commitment from the Commission that it will continue to authorize recovery of the costs described in items 1 and 2 above, so long as they are reasonable and prudently incurred, once the Companies incur such costs at the Commission's direction; and
4. Instruction from the Commission that WPCo propose a plan in a future docket that recognizes the changes needed to deal with the issues resulting from any directive from this Commission to perform the ELG work at Mitchell.

Petition to Reopen at 5. The Companies are seeking only a level of assurance that allows them to make a decision by October 13, 2021 regarding the integrated CCR and ELG work at the three plants. The requested relief, itself, highlights the fluid nature of the situation; not to mention, the possibility of the Virginia State Corporation Commission approving ELG investments in a later proceeding. The Companies are seeking guidance from the Commission in light of the inherent

conflict among the Kentucky, Virginia, and West Virginia decisions; they are not trying to pull the rug out from underneath the Intervenors.

The Intervenors' arguments that this matter should not proceed on the current schedule wholly ignores the exigent circumstances described above and the information already contained in the extensively litigated record of this case. The Companies do not seek to deny the parties an opportunity to be heard. The path the Companies seek is an attempt to recognize their opportunity for input within the available timing. This is achieved by reopening this case with its developed record on many of the same issues and the addition of further testimony for the consideration of the Commission and other parties.

Just as the CCR/ELG compliance options described above should not be viewed in a vacuum, neither should due process. See *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972) (“[D]ue process is flexible and calls for such procedural protections as the particular situation demands.”); *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748, 6 L.Ed.2d 1230 (1961) (“‘Due process,’ unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.”). The Commission recognized the possibility of “changes in ownership or allocation of costs and output of any of the three Plants” and that “the Companies should present the nature and effect of such changes to the Commission in an appropriate proceeding.” Aug. 4, 2021 Order at 18. None of the Intervenors appealed, sought reconsideration, or otherwise objected to the Commission’s directive/invitation.

As the Intervenors make clear in their responses, they know full well the costs of performing CCR and ELG modifications at all three plants. And they cannot deny the impact of the conflicting decisions and the imminence of the October 13, 2021 deadline. The Companies’ Supplemental Direct Testimony submitted with their Petition to Reopen did not present any novel

information meant to surprise or catch the other parties off guard, it was a continuation of the same issues with salient updates that impacted the outcome after the hearing in this matter was complete.

The argument that the reopening of this case is too far removed from the content of the proceedings belies the record. Not only did the Companies address the importance of the October 13, 2021 NOPP deadline as discussed above, Mr. Spitznogle was cross-examined on the subject extensively during the evidentiary hearing. *See* June 8, 2021 Tr. at 88-90, 106-107. The Intervenors have presented lengthy legal arguments in their responses that West Virginia customers should not be responsible for 100% of ELG costs and will have the benefit of an evidentiary hearing to further develop and present those arguments to the Commission. The Companies have asked for guidance in their Petition to Reopen, not for a new surcharge to be effective immediately; the rate impacts can be addressed in a future proceeding. To say the Petition to Reopen should be denied on procedural grounds not only ignores the pressing, exigent circumstances of this matter, but elevates form over substance.<sup>5</sup> The deadlines discussed herein are real and the Companies need to act expeditiously if the Commission wishes for them to preserve the option to run the plants past 2028. These are the facts that confront the parties and this docket is the opportunity to provide input and continue the discussion on the central matter at issue.

The scope of the Companies' request is a continuation of the issues at the heart of this case. The Commission should recognize the scope of the requested relief and the impending deadlines to determine the proper due process. The Petition to Reopen should not be dismissed outright just

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<sup>5</sup> The Intervenors also cite to the Companies' own recent due process arguments in Case No. 21-0339-E-ENEC. That case is distinguishable, however, because the challenged "evidence" in the ENEC case was truly not known to the parties prior to the hearing, there was no further hearing scheduled to consider it, and it was relied upon solely for some of the Commission's conclusions without any challenge by brief or otherwise.

so more written discovery can be conducted in an already well-developed case, especially not when the parties are being afforded an evidentiary hearing on said petition.

**C. The Intervenors Ignore the Various Interests that the Commission Must Weigh in Rendering its Decisions.**

The Commission noted in its Order granting the Companies' Application that it is "charged with the responsibility for appraising and balancing the interests of current and future utility service customers, the general interests of the state's economy and the interests of the utilities subject to its jurisdiction in its deliberations and decisions." W. Va. Code § 24-1-1(b). The Commission further noted that, when weighing these interests, it must "[p]rovide the availability of adequate, economical and reliable utility services throughout the state" and "[e]ncourage the well-planned development of utility resources in a manner consistent with state needs and in ways consistent with the productive use of the state's energy resources, such as coal" among other considerations. W. Va. Code § 24-1-1(a)(2) and (3). Based on the "extensive record" before it, the Commission found "that the upgrades at all three power Plants are prudent, cost effective, and in the best interest of the current and future utility customers, the State's economy, and the interests of the Companies." Aug. 4, 2021 Order at 18.

The Intervenors have lost sight of the forest for the trees in accusing the Companies of trying to foist unjust and unreasonable rates on their customers. It should not be ignored that the Commission already balanced the appropriate interests and granted the Companies' application for both CCR and ELG work at all three plants. But the Intervenors pay no attention to the economic benefits outlined by the Commission of the continued operation of the plants to the local



and state economies or to the loss of capacity in the event of retirement.<sup>6</sup> Certain of them have made clear they want the Companies to commit to retiring the plants in 2028, communicating that commitment by October 13, 2021, and possibly later reversing that commitment. The Companies have acknowledged the fact that operating the plants past 2028, consistent with the Commission's Order and in light of the orders of Virginia and Kentucky, will require that ELG costs and other incremental costs be allocated to West Virginia customers 100 percent (at least at the present time), which would inevitably cause an increase in rates. To effectuate the direction and optionality sought by the Commission, action is needed. Using the existing docket is the best manner to recognize the direction provided by the Commission; therefore, the Companies ask the Commission whether, under the current circumstances, it still stands by that direction given in its August 4, 2021 Order and its attendant consequences, or whether it wishes to instruct the Companies to follow a different course. This is not an unjust or unreasonable request.

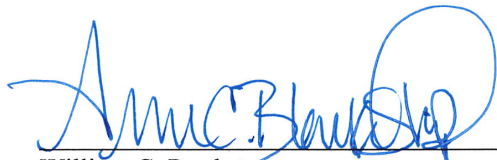
### CONCLUSION

WHEREFORE, for the reasons stated herein and in their Petition to Reopen, the Companies respectfully request that the Commission grant their requested relief.

Respectfully submitted,

**APPALACHIAN POWER COMPANY  
WHEELING POWER COMPANY**

By Counsel



William C. Porth (WV State Bar #2943)  
Anne C. Blankenship (WV State Bar #9044)  
Jonathon C. Stanley (WV State Bar #13470)

<sup>6</sup> In contrast, the WVCA, in its response, acknowledged the various benefits afforded by continuing to operate the plants and the "very urgent time constraints imposed on the Companies by federal regulations" that are driving their request for relief. WVCA Response at 2-4.

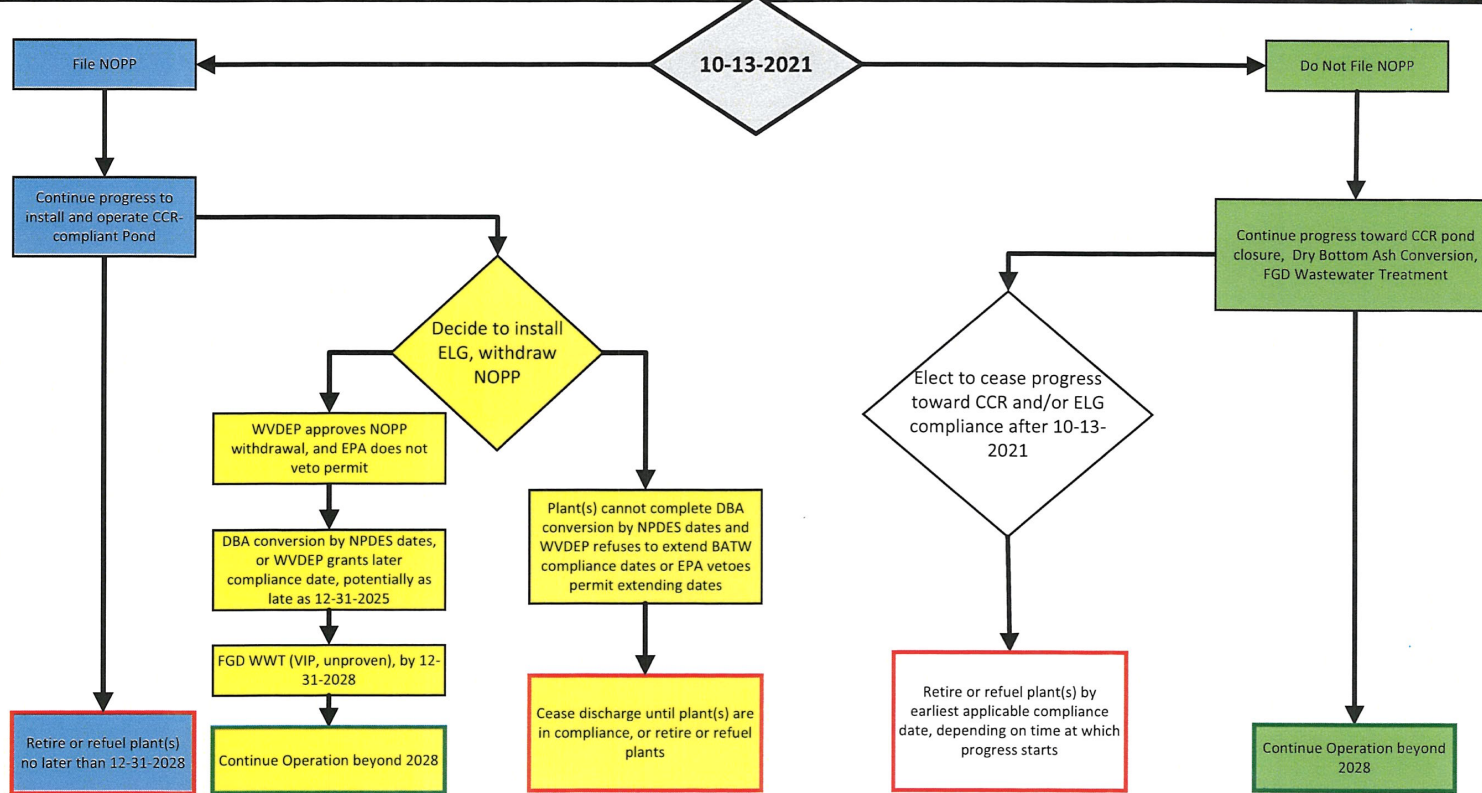
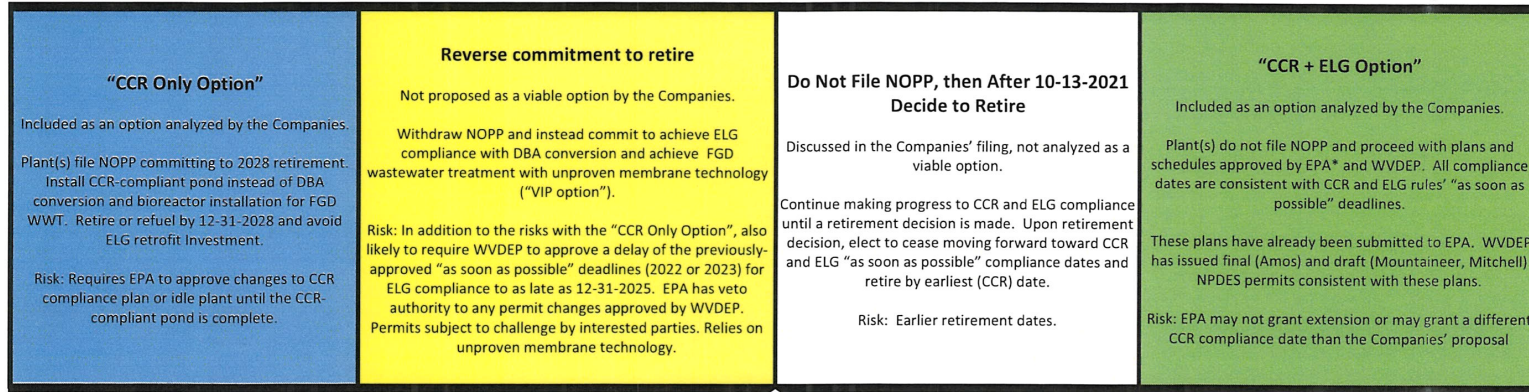
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Counsel for Appalachian Power Company  
and Wheeling Power Company

Dated: September 20, 2021



\* The Companies submitted plans to comply with the CCR and ELG rules in November 2020. These plans continue to be under review by the EPA, and the relevant compliance dates have been tolled as a result.

Acronym	Definition
CCR	Coal Combustion Residuals Rule
BATW	Bottom Ash Transport Water
ELG	Effluent Limitation Guidelines Rule
NOPP	Notice of Planned Participation - a retirement or refuel (cease coal operations) notice under the ELG Rule
DBA	Dry Bottom Ash
FGD	Flue Gas Desulfurization
WWT	Wastewater Treatment
EPA	United States Environmental Protection Agency
WVDEP	West Virginia Department of Environmental Protection
VIP	Voluntary Incentive Program - alternative ELG compliance option based on unproven technology
NPDES	National Pollution Discharge Elimination System
BATW Compliance Dates	Amos Plant: 12-31-2022
	Mitchell Plant: 6-30-2023
	Mountaineer Plant: 5-31-2022
FGD Blowdown Compliance Dates	Amos Plant: 12-31-2023
	Mitchell Plant: 3-31-2025
	Mountaineer Plant: 6-30-2023



**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**CASE NO. 20-1040-E-CN**

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

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

**CERTIFICATE OF SERVICE**

I, Anne C. Blankenship, counsel for Appalachian Power Company and Wheeling Power Company, hereby certify that true copies of the foregoing filing were provided electronically on this 20<sup>th</sup> day of September 2021, addressed to the following:

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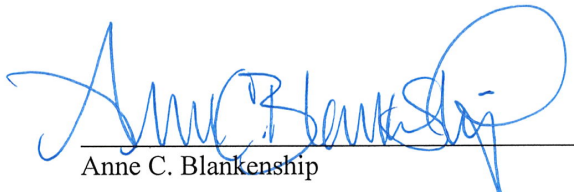
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\_\_\_\_\_  
Anne C. Blankenship

VERIFICATION

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

*Brett Mattison*

Brett Mattison

Commonwealth of Kentucky )  
)  
County of Boyd )

Case No. 2021-00004

Subscribed and sworn before me, a Notary Public, by Brett Mattison this 22<sup>ND</sup> day of September, 2021.

*Scott F. Bishop*  
\_\_\_\_\_  
Notary Public

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

My Commission Expires June 24, 2025

Notary ID Number: KYNP 32110