Kentucky Power Company
KPSC Case No. 2021-00370
AG-KIUC's Second Set of Data Requests
Dated January 16, 2024

DATA REQUEST

AG-KIUC 2_1 Refer to the response to AG-KIUC 1-1(a)-(c). Confirm that the Company's responses to KIUC 1-1(a) and (b) provide "all" evidence and other information that was requested. If that is not correct, then provide "all" other information missing for a complete and accurate response. If the Company has no additional evidence and/or other information responsive to the requests, then so state.

RESPONSE

The Company objects to this request on the basis that it is argumentative, overly broad, unduly burdensome, and not reasonably calculated to the discovery of admissible evidence. Subject to and without waiving these objections, please see the Company's initial and supplemental response to AG-KIUC 1-1. Based on the Company's understanding of the request in AG-KIUC 1-1, it has produced all relevant information it has been able to identify at this time. The Company further reserves the right to supplement this response to the extent it identifies additional responsive information in the future.

Witness: Brian K. West

Witness: Alex E. Vaughan

Preparer: Counsel (as to the objections)

DATA REQUEST

AG-KIUC 2_2 Refer to the table included in the response to AG-KIUC 1-2.

a. Provide a similar table for Rockport 1 and 2 and Big Sandy 1.

b. Provide capacity factor (NCF) and equivalent availability (EAF) information available from EEI and/or other industry sources for each year 2016-2022 for generating units comparable to Big Sandy 1, Rockport 1 and 2, and Mitchell 1 and 2 individually and in the aggregate for comparable generating units. Provide this information in live Excel format with all formulas intact.

RESPONSE

a. The Company objects to this request to the extent it requires information and documents that are not in the Company's possession, custody, or control. Without waiving this objection, the Company states as follows:

Please see KPCO_R_AG_KIUC_2_2_Attachment1 for the information requested for Big Sandy 1. The Company does not own, maintain, or operate the Rockport generating units; rather, the Company merely purchased a portion of those units' output through a FERC-approved unit purchase agreement through December 7, 2022.

b. The Company objects to this request on the basis that it is vague, ambiguous, overly broad, and unduly burdensome; the term "comparable generating units" is overly broad, vague, and ambiguous. Power generating units of widely different characteristics are, on some basis, comparable to any other unit if the output can be offered within the context of power markets interconnected through transmission facilities. The Company further objects to the extent the information requested is either not known by the Company or not within the Company's custody and control.

Without waiving these objections, the Company states as follows:

Please refer to KPCO_R_AG_KIUC_2_2_Attachment2 for aggregated NERC fossil coal fired units in the range of 800-999 MW and aggregated PJM coal units for the requested information. The Company does not have information about generating units that it does not own, operate, and maintain, and, therefore, the ability to make a comparison to the Company's generating units is very limited.

Please refer to KPCO_R_AG_KIUC_2_2_Attachment3 for aggregated NERC fossil gas units in the range of 200-299 MW and aggregated PJM steam natural gas units for the requested information. The Company does not have information about generating units that it does not own, operate, and maintain, and, therefore, the ability to make a comparison to the Company's generating units is very limited.

The Company does not own, maintain, or operate the Rockport generating units.

Witness: Timothy C. Kerns

Preparer: Counsel (as to the objections)

Net Capacity Factor (NCF), Equivalent Availability Factor (EAF) and Equivalent Demand Forced Outage Factor (EFORd) Industry Averages (2016 - 2022) for Mitchell Units 1 and 2 Comparisons					
Generator Catagory/Classification*	Year	# Units	NCF	EAF	EFORd
FOSSIL Coal Primary 800-999	2016	42	55.29	80.74	7.05
FOSSIL Coal Primary 800-999	2017	36	55.68	78.15	7.47
FOSSIL Coal Primary 800-999	2018	42	54.8	74.15	11.52
FOSSIL Coal Primary 800-999	2019	42	50.26	79.94	6.16
FOSSIL Coal Primary 800-999	2020	36	37.09	79.41	10.25
FOSSIL Coal Primary 800-999	2021	36	44.56	77.31	11.51
FOSSIL Coal Primary 800-999	2022	38	40.58	76.76	12.07
Generating Unit **	Year	# Units	NCF	EAF	EFORd
PJM Coal Units	2016	NA	46.2	77.6	9.2
PJM Coal Units	2017	NA	46.6	74.3	11.3
PJM Coal Units	2018	NA	44.4	73.6	10.8
PJM Coal Units	2019	NA	30.1	74.7	10
PJM Coal Units	2020	NA	34.3	77.1	8.4
PJM Coal Units	2021	NA	42.6	69.3	11.1
PJM Coal Units	2022	NA	41.8	70.2	12.3

*Source: North American Electric Reliability Council's Generating Availability Data System (NERC GADS), Generating Unit Statistical Brochures (Brochure 1).
https://www.nerc.com/pa/RAPA/gads/Pages/Reports.aspx
** Source: State of the Market Report for PJM, Volume 2: Detailed Analysis (2017-2022)
https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2017.shtml

NA= Information 'Not Available' in the State of the Market Report for PJM, Volume 2: Detailed Analysis (2017-22)

Net Capacity Factor (NCF), Equivalent Availability Factor (EAF) and Equivalent Demand Forced Outage Factor (EFORd) Industry Averages (2016 - 2022) for Big Sandy 1 Comparisons					
Generator Catagory/Classification*	Year	# Units	NCF	EAF	EFORd
FOSSIL Gas Primary 200-299	2016	41	13.78	78.58	9.42
FOSSIL Gas Primary 200-299	2017	35	12.32	82.69	9.26
FOSSIL Gas Primary 200-299	2018	36	18.56	82.59	7.85
FOSSIL Gas Primary 200-299	2019	29	23.00	75.6	10.2
FOSSIL Gas Primary 200-299	2020	23	22.54	81.82	7.88
FOSSIL Gas Primary 200-299	2021	24	12.48	81.7	7.45
FOSSIL Gas Primary 200-299	2022	32	16.08	83.44	8.38
Generating Unit**	Year	# Units	NCF	EAF	EFORd
PJM Steam-Natural Gas Units	2016	NA	12.30	NA	NA
PJM Steam-Natural Gas Units	2017	NA	9.30	NA	NA
PJM Steam-Natural Gas Units	2018	NA	37.10	NA	NA
PJM Steam-Natural Gas Units	2019	NA	34.80	NA	NA
PJM Steam-Natural Gas Units	2020	NA	40.60	NA	NA
PJM Steam-Natural Gas Units	2021	NA	40.70	NA	NA
PJM Steam-Natural Gas Units	2022	NA	42.00	NA	NA

*Source: North American Electric Reliability Council's Generating Availability Data System (NERC GA
Generating Unit Statistical Brochures (Brochure 1).
https://www.nerc.com/pa/RAPA/gads/Pages/Reports.aspx
**Source: Source: State of the Market Report for PJM, Volume 2: Detailed Analysis (2017-2022)
https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2017.shtml
NA= Information 'Not Available' in the State of the Market Report for PJM, Volume 2: Detailed Anal

Kentucky Power Company
KPSC Case No. 2021-00370
AG-KIUC's Second Set of Data Requests
Dated January 16, 2024

DATA REQUEST

AG-KIUC 2_3 Provide an annual history of operation and maintenance expense by FERC O&M expense account for each year 2013-2022 for each generating unit Big Sandy 1, Rockport 1 and 2, and Mitchell 1 and 2.

RESPONSE

The Company objects to this request to the extent it is not reasonably calculated to lead to the discovery of admissible evidence. Kentucky Power does not own and has never had operational and maintenance control of the Rockport Generating Units.

Without waiving that objection, the Company states as follows:

Please see KPCO_R_AG_KIUC_2_3_Attachment1 for Kentucky Power's non-fuel, non-consumables, non-labor O&M expense for years 2013-2022. Kentucky Power's O&M expenses include steam maintenance and steam operations amounts for Big Sandy Unit 1, the Company's 50% undivided interest in Mitchell Unit 1 and Unit 2, and shared plant costs not attributable to a specific generating unit (known as Non-Plant costs).

Witness: Timothy C. Kerns

Preparer: Counsel (as to the objections)

Kentucky Power Company
KPSC Case No. 2021-00370
AG-KIUC's Second Set of Data Requests
Dated January 16, 2024

DATA REQUEST

AG-KIUC 2_4 Provide all studies, reports correspondence, and Mitchell operating committee meeting minutes and/or resolutions that address the scope and/or spend rates for capital projects and non-fuel O&M expense starting in 2020 and each year thereafter through 2028.

RESPONSE

Please see KPCO_R_AG_KIUC_2_4_Attachment1 which reflects the Kentucky Power and Wheeling Power allocations applied to capital expenditures incurred on/after September 2022, excluding AFUDC.

Please see KPCO_R_AG_KIUC_2_4_Attachment2 which is the Written Consent Action of the Mitchell Operating Company, dated September 1, 2022.

Please see KPCO_R_AG_KIUC_2_4_Attachment3 which is the Mitchell operating committee meeting minutes. This attachment contains the agenda and material for a Mitchell Operating Committee meeting held January 31, 2024. The Company will supplement this attachment with the minutes from that the January 31, 2024, meeting after those minutes are completed.

Please see KPCO_R_AG_KIUC_2_4_Attachment4 which is the Burns McDonnell Report dated March 23, 2022.

Witness: Timothy C. Kerns

American Electric Power
Allocation of Non-ELG Mitchell Capital Expenditures

						Annual Avg.	
Month	**Wheeling**	**Kentucky**	**Remaining Dep. Life**	**Periods prior to Dec. 2028**	**Portion of Dep Life before Dec. 2028**	**Wheeling**	**Kentucky**
Sep-22	82.73%	17.27%	220	76	34.55%	82.95%	17.05%
Oct-22	82.88%	17.12%	219	75	34.25%		
Nov-22	83.03%	16.97%	218	74	33.94%		
Dec-22	83.18%	16.82%	217	73	33.64%		
Jan-23	83.33%	16.67%	216	72	33.33%	84.21%	15.79%
Feb-23	83.49%	16.51%	215	71	33.02%		
Mar-23	83.64%	16.36%	214	70	32.71%		
Apr-23	83.80%	16.20%	213	69	32.39%		
May-23	83.96%	16.04%	212	68	32.08%		
Jun-23	84.12%	15.88%	211	67	31.75%		
Jul-23	84.29%	15.71%	210	66	31.43%		
Aug-23	84.45%	15.55%	209	65	31.10%		
Sep-23	84.62%	15.38%	208	64	30.77%		
Oct-23	84.78%	15.22%	207	63	30.43%		
Nov-23	84.95%	15.05%	206	62	30.10%		
Dec-23	85.12%	14.88%	205	61	29.76%		
Jan-24	85.29%	14.71%	204	60	29.41%	86.28%	13.72%
Feb-24	85.47%	14.53%	203	59	29.06%		
Mar-24	85.64%	14.36%	202	58	28.71%		
Apr-24	85.82%	14.18%	201	57	28.36%		
May-24	86.00%	14.00%	200	56	28.00%		
Jun-24	86.18%	13.82%	199	55	27.64%		
Jul-24	86.36%	13.64%	198	54	27.27%		
Aug-24	86.55%	13.45%	197	53	26.90%		
Sep-24	86.73%	13.27%	196	52	26.53%		
Oct-24	86.92%	13.08%	195	51	26.15%		
Nov-24	87.11%	12.89%	194	50	25.77%		
Dec-24	87.31%	12.69%	193	49	25.39%		

						Annual Avg.	
Month	Wheeling	Kentucky	Remaining Dep. Life	Periods prior to Dec. 2028	Portion of Dep Life before Dec. 2028	Wheeling	Kentucky
Jan-25	87.50%	12.50%	192	48	25.00%	88.62%	11.38%
Feb-25	87.70%	12.30%	191	47	24.61%		
Mar-25	87.89%	12.11%	190	46	24.21%		
Apr-25	88.10%	11.90%	189	45	23.81%		
May-25	88.30%	11.70%	188	44	23.40%		
Jun-25	88.50%	11.50%	187	43	22.99%		
Jul-25	88.71%	11.29%	186	42	22.58%		
Aug-25	88.92%	11.08%	185	41	22.16%		
Sep-25	89.13%	10.87%	184	40	21.74%		
Oct-25	89.34%	10.66%	183	39	21.31%		
Nov-25	89.56%	10.44%	182	38	20.88%		
Dec-25	89.78%	10.22%	181	37	20.44%		
Jan-26	90.00%	10.00%	180	36	20.00%	91.28%	8.72%
Feb-26	90.22%	9.78%	179	35	19.55%		
Mar-26	90.45%	9.55%	178	34	19.10%		
Apr-26	90.68%	9.32%	177	33	18.64%		
May-26	90.91%	9.09%	176	32	18.18%		
Jun-26	91.14%	8.86%	175	31	17.71%		
Jul-26	91.38%	8.62%	174	30	17.24%		
Aug-26	91.62%	8.38%	173	29	16.76%		
Sep-26	91.86%	8.14%	172	28	16.28%		
Oct-26	92.11%	7.89%	171	27	15.79%		
Nov-26	92.35%	7.65%	170	26	15.29%		
Dec-26	92.60%	7.40%	169	25	14.79%		
Jan-27	92.86%	7.14%	168	24	14.29%	94.33%	5.67%
Feb-27	93.11%	6.89%	167	23	13.77%		
Mar-27	93.37%	6.63%	166	22	13.25%		
Apr-27	93.64%	6.36%	165	21	12.73%		
May-27	93.90%	6.10%	164	20	12.20%		
Jun-27	94.17%	5.83%	163	19	11.66%		
Jul-27	94.44%	5.56%	162	18	11.11%		
Aug-27	94.72%	5.28%	161	17	10.56%		
Sep-27	95.00%	5.00%	160	16	10.00%		
Oct-27	95.28%	4.72%	159	15	9.43%		
Nov-27	95.57%	4.43%	158	14	8.86%		
Dec-27	95.86%	4.14%	157	13	8.28%		

						Annual Avg.	
Month	**Wheeling**	**Kentucky**	**Remaining Dep. Life**	**Periods prior to Dec. 2028**	**Portion of Dep Life before Dec. 2028**	**Wheeling**	**Kentucky**
Jan-28	96.15%	3.85%	156	12	7.69%	97.87%	2.13%
Feb-28	96.45%	3.55%	155	11	7.10%		
Mar-28	96.75%	3.25%	154	10	6.49%		
Apr-28	97.06%	2.94%	153	9	5.88%		
May-28	97.37%	2.63%	152	8	5.26%		
Jun-28	97.68%	2.32%	151	7	4.64%		
Jul-28	98.00%	2.00%	150	6	4.00%		
Aug-28	98.32%	1.68%	149	5	3.36%		
Sep-28	98.65%	1.35%	148	4	2.70%		
Oct-28	98.98%	1.02%	147	3	2.04%		
Nov-28	99.32%	0.68%	146	2	1.37%		
Dec-28	99.66%	0.34%	145	1	0.69%		

WRITTEN CONSENT ACTION

OF THE MITCHELL OPERATING COMMITTEE

September 1, 2022

The undersigned, being all of the Owners' Operating Representatives of the Operating Committee (the "Committee") of the Mitchell Plant Operating Agreement (the "Agreement"), do hereby consent to the adoption of the following resolutions, which resolutions shall be deemed to be adopted as of the date hereof ("Effective Date") and to have the same force and effect as if such resolutions had been adopted at a meeting duly called therefor:

1. Waiver of Notice.

RESOLVED, that any and all notice to take any action in adopting the following resolutions be, and it hereby is, waived by the undersigned.

2. Approval of Resolutions To Implement the Agreement

WHEREAS, Wheeling Power Company ("Wheeling Power") and Kentucky Power Company ("Kentucky Power") recognize that the Public Service Commission of West Virginia ("WVPSC") and the Kentucky Public Service Commission ("KPSC") approved different investments in response to federal environmental rules at the Mitchell Plant and different approaches to operating and owning the Mitchell Plant after December 31, 2028;

WHEREAS, the WVPSC in its orders authorized Wheeling Power to make any improvements or upgrades to the Mitchell Plant to enable compliance with the Effluent Limitations Guidelines ("ELG Rule"), and agreed exclusively to fund all of the capital expenditures associated with implementation of the ELG Rule ("ELG Upgrades"), and to make other necessary improvements or upgrades to the Mitchell Plant, to preserve the option to operate the plant past 2028;

WHEREAS, the KPSC in its orders authorized Kentucky Power to make only the improvements and upgrades to the Mitchell Plant to enable compliance with the Coal Combustion Residuals Rule ("CCR Rule"), and agreed to fund only its ownership share of the capital expenditures associated with the CCR Rule ("CCR Upgrades"), but not the ELG Rule, and acknowledged that because the ELG Upgrades are needed to operate the Mitchell Plant after 2028, approving the CCR and not the ELG Upgrades results in Kentucky Power being permitted only to operate the Mitchell Plant until the end of 2028;

WHEREAS, on November 19, 2021, each Owner filed with its Commission a proposed Mitchell Plant Operations and Maintenance Agreement and a proposed Mitchell Plant Ownership Agreement ("Proposed Mitchell Agreements") to replace the Agreement to facilitate compliance with the KPSC's and WVPSC's respective orders regarding compliance with the CCR and ELG Rules at the Mitchell Plant;

WHEREAS, the Committee believed that replacement of the Agreement with the New Mitchell Agreements at the soonest practical date was advisable and in the best interests of

Kentucky Power Company, Wheeling Power Company, and their respective customers;

WHEREAS, the KPSC and WVPSC issued orders adopting versions of the Mitchell Agreements on May 3, 2022 and July 1, 2022, respectively, that differ in material respects, such that the Owners are unable to enter into new agreements at the current time;

WHEREAS, the Agreement remains in full force and effect in accordance with its terms pending future negotiation of longer term arrangements by the Owners that replace the Agreement, subject to state and other applicable regulatory approvals;

WHEREAS, in light of the foregoing developments, the Operating Committee believes it is now in the best interests of the Mitchell Plant and their respective customers to continue operating under the Agreement in the short term to accomplish the operational objectives necessitated by the KPSC and WVPSC in their orders and prevent any delays in constructing the ELG Upgrades, which could have a negative effect on future plant outages and unit availability;

WHEREAS, the Committee must establish certain operating principles pursuant to its authority under the Agreement to appoint Wheeling Power as the operator of the Mitchell Plant, to enable the ELG Upgrades to be performed by Wheeling Power, and to adopt the procedures necessary to properly allocate costs between the two Owners such that Wheeling Power will pay for all of the costs of the ELG Upgrades, in accordance with the authority of the Committee under the Agreement;

WHEREAS, the Committee must also appropriately allocate costs between the two Owners such that Wheeling Power will pay for the cost of capital investments to the extent they have a depreciable life after December 31, 2028;

WHEREAS, the Committee is vested with certain enumerated rights and duties under the Agreement, as well as other duties as agreed by the Owners (Section 7.2(j));

WHEREAS, the rights and responsibilities of the Committee include, but are not limited to, (1) review and approval of an annual budget and operating plan (Section 7.2(a)); (2) decisions on capital expenditures (Section 7.2(d)); establishment and modification of billing procedures (Section 7.2(f)); (3) establishment of, termination of, and approval of any change or amendment to the operating arrangements between Kentucky Power and Agent pertaining to the Mitchell Plant (Section 7.2(h)); and (4) review and approval of plans and procedures designed to ensure compliance with any environmental law, regulation ordinance or permit (Section 7.2(i));

WHEREAS, pursuant to Section 7.9 of the Agreement, capital repairs and improvements to the Mitchell Plant will be determined by the Committee pursuant to the annual budgeting process which shall, pursuant to Section 7.10 of the Agreement, remain in effect throughout the applicable operating year subject to such changes, revisions, amendments and updating as the Committee may determine; and

WHEREAS, further pursuant to Section 7.9, the expenditures that the Committee determines have been or will be incurred exclusively for one Owner shall be assigned exclusively

to that owner, and, pursuant to Section 7.2(d), decisions on capital expenditures are among the responsibilities of the Committee.

NOW, THEREFORE, BE IT RESOLVED, that Kentucky Power's rights and obligations to operate and maintain the Mitchell Plant are delegated to Wheeling Power, and Wheeling Power accepts and consents to such delegation, effective as of the Effective Date, including, but not limited to, Kentucky Power's rights and obligations under Sections 1.1 (Appointment of Operator), 1.2 (Maintenance of Books and Records), 1.4 (Monthly Statements), 1.5 (Daily Operations), 3.1 (Capital Work), 5.1 (Coal Procurement), 6.3 (Accounting - Operating Expenses), 6.4 (Accounting – Maintenance Expenses), and 7.10 (Budgeting) of the Agreement, including the following which shall occur on or after the Effective Date:

a. Kentucky Power's employees who work at the Mitchell Plant shall become employees of Wheeling Power;

b. All open and active contracts on the Effective Date for the purchase of fuel, transportation, goods and services for the operation, maintenance and improvement of the Mitchell Plant and all collective bargaining agreements for labor at Mitchell Plant shall be assigned by Kentucky Power to Wheeling Power and assumed by Wheeling Power;

c. All leased property used in support of the Mitchell Plant, including but not limited to vehicles and computer equipment, shall be transferred on the books of the lessor from the leased assets account of Kentucky Power to the leased assets account of Wheeling Power; and

d. Ownership or other beneficial interest of the tugboat used at Mitchell Plant shall be transferred to Wheeling Power.

RESOLVED, that Wheeling Power will have the power and obligation as the operator of the Mitchell Plant to enter into and hold permits in its name on behalf of both Owners or on its own behalf, as the circumstances require, including the ELG permits, and all existing permits not held by Wheeling Power will be transferred to it in an orderly manner.

RESOLVED, that pursuant to Sections 7.2(d) and 7.9 of the Agreement, the Owners jointly recognize Wheeling Power's right to carry out and pay for the ELG Upgrades under the Agreement and approve the following procedures to facilitate that work consistent with the orders of the WVPSC and KPSC, and to protect Kentucky ratepayers from the associated costs and risks:

a. The permits related to the ELG Upgrades at the Mitchell Plant will be transferred to Wheeling Power to the extent not held by Wheeling Power, and all prior action taken by the Owners in furtherance of the foregoing is ratified and approved;

b. All construction and other contracts related to the ELG Upgrades will be in the name of Wheeling Power such that Wheeling Power (and not Kentucky Power) is contractually responsible for those contracts;

c. The appropriate work orders and supporting accounting will be implemented to assign to Wheeling Power all costs associated with the ELG Upgrades;

d. The appropriate work orders and supporting accounting will be implemented to assign to Wheeling Power and Kentucky Power equally all costs associated with the CCR Upgrades;

e. The expenditures associated with the CCR Upgrades, in which the Owners share equally, and the ELG Upgrades, which will be the exclusive responsibility of Wheeling Power, will be classified in accordance with the recommendations of the independent engineer's report identifying the ELG Upgrades and CCR Upgrades and their associated costs, as previously adopted by this Committee.

RESOLVED, that to further implement and clarify Sections 3.2 and 7.9 of the Agreement, the Owners approve the following procedures related to capital items which have a depreciable life extending beyond, or with an in-service date not occurring until after, December 31, 2028:

a. Wheeling Power will exclusively pay for any capital item whose in-service date is reasonably expected to be after December 31, 2028;

b. Wheeling Power's Operating Representative may unilaterally authorize any capital expenditure that will be assigned exclusively to Wheeling Power, including the ELG Upgrades;

c. if a capital expenditure has a depreciable life that extends beyond December 31, 2028, Kentucky Power's responsibility for the cost of that item will be limited to its 50% ownership share of the cost of the asset ratably allocated to the portion of such depreciable life occurring prior to December 31, 2028, and Wheeling Power will be responsible for the remainder;

d. any other capital expenditures shall be allocated 50% to (and paid for by) each Owner, subject to the written approval of the Operating Committee;

e. to the extent either Owner funds any capital item in excess of 50%, that capital item will be owned by the Owners in proportion to their investment in that asset for regulatory, tax and other purposes; and

f. an Owner's Operating Representative may unilaterally authorize any capital expenditure for which such Owner shall be allocated greater than 75% of the capital costs, up to an aggregate amount of such capital costs that does not exceed $3 million per year allocated to the other Owner.

IN WITNESS WHEREOF, the undersigned have signed this written consent action effective as of the Effective Date.

OPERATING REPRESENTATIVES:

DocuSigned by:
Deryle Brett Mattison
E6E06DC6D8C3445...
D. Brett Mattison

DocuSigned by:
Christian T. Beam
E27434EFE1A34E4...
Christian T. Beam

Date: March 5, 2021

Time: 9:00 AM EST

Tim Kerns led the meeting, introducing new members to the Operating Agreement and the requirements of same.

Presentations were made on the topics reflected on the agenda and in the associated PowerPoint document.

Lee McGuire covered action items, of which there was one:

- At the request of Doug Rosenberger, Darryl Scott will contact Josh Snodgrass at Mitchell Plant to determine a more-agreeable testing schedule for gypsum (currently every 4 hours), to see if this can be worked into the upcoming negotiations with CertainTeed.

There was consensus among the Committee members that a 4th Quarter meeting is desirable. Lee McGuire will get this meeting scheduled.

Mitchell Operating Committee

2021 ANNUAL MEETING

MARCH 5, 2021

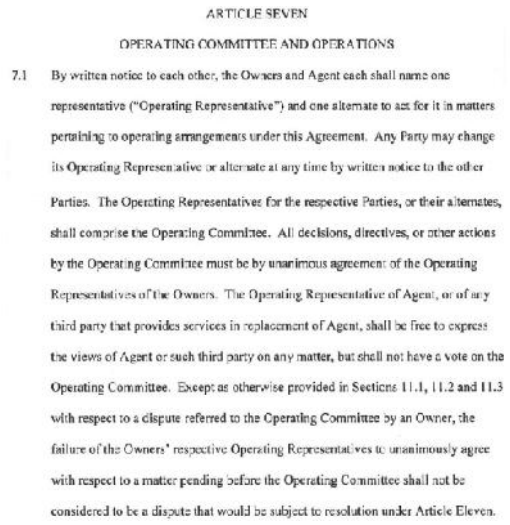
Agenda

❖Welcome	Kerns
❖Introductions	All
❖Purpose of Meeting	Kerns
❖Review 2021 Capital and O&M Budget	Belter
❖Review 2022 – 2025 Capital Forecast	Belter
❖Unit Operation – March 2021	Beller
❖Review Fuel & Consumables Status	Leskowitz
❖Review Environmental Compliance Plan and Allowance	March
❖Open Discussion	All
❖Takeaways and Action Items	McGuire
❖Adjourn	

Mitchell Operation Agreement and Committee

Mitchell Operating Agreement

- Operating Agreement was filed and ordered under KPSC Case No. 2014-00396
- Article 7 of the Operating Agreement describes the Operating Committee and Operations



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.

Mitchell Operating Agreement

- Operating Committee shall consist of one representative and one alternate from each Owner (KPCo and WPCo) and the Agent (AEP).

- Operating Committee Members:
  - Tim Kerns – VP Generating Assets (Agent Rep)
  - Brett Mattison – President and COO KPCo
  - Brian West – VP KPCo Regulatory and Finance (KPCo Alternate)
  - Chris Beam – President and COO APCo / WPCo
  - Mike Zwick – VP APCo Generating Assets (APCo / WPCo Alternate)
  - Lee McGuire – Manager-Planning and Analysis (Agent Rep)

2021 -2025 Control Budget and Forecast

Control Budget and Forecast

Mitchell Plant & ML Major Projects - Direct Cost Control Budgets						
Sum of Ctrl $		By Year				
Budget	Type	2021	2022	2023	2024	2025
Capital	ML 1 SCR Catalyst	$1,837,678	$59,703		$457,000	$2,302,000
	ML 2 SCR Catalyst	$424,000	$2,138,000		$457,000	$2,302,000
	ML CCR-ELG	$13,481,714	$28,886,154	$63,784,342	$6,313,371	$1,013,920
	ML DSI Project		$3,999,237	$4,186,591		
	ML Haul Road Relocate		$3,816,927			
	ML Landfill Expansion	$510,000	$42,421	$10,366,423	$3,155,329	
	ML1 Air Heater Basket Repl		$5,112,000			
	ML1 Cooling Tower Repl		$5,000,000			
	ML1 HP/1st RH Rotor Inspect		$3,390,000			
	ML1 Lower Sidewall		$2,000,000			
	ML2 Air Heater Basket Repl	$362,000	$4,750,000			
	ML2 Cooling Tower Comp	$3,925,000	$2,287,000			
	ML2 Cooling Tower Repair			$110,661	$3,036,064	$4,116,446
	ML2 Cooling Tower Shell			$196,611	$3,423,997	$4,505,543
	ML2 ESP Upgrades	$90,004	$7,295,379			
	ML2 HP/2ndRH Rotor Inspect				$3,234,000	
	ML2 HP/RH Turbine Inspect				$3,234,000	
	Partial Removal Old Stack		$930,000			
	Phase 2 GSU Transformer	$3,360,000	$1,440,000			
	Plant Blankets	$4,500,677	$15,457,203	$8,440,563	$6,452,230	$7,733,287
	PPB	$2,195,283	$2,348,006	$2,443,055	$2,460,330	$2,525,742
Capital Total		**$30,686,355**	**$88,952,030**	**$89,528,246**	**$32,223,321**	**$24,498,938**
O&M	Base Cost of Operations	$25,207,040	$25,863,666	$27,522,574	$27,989,434	$29,613,766
	Non-Outage Maintenance	$5,308,050	$5,432,897	$5,823,819	$5,910,195	$5,654,949
	Scheduled Outage	$4,239,970	$14,250,064	$5,302,000	$8,094,000	$7,946,000
O&M Total		**$34,755,060**	**$45,546,627**	**$38,648,393**	**$41,993,629**	**$43,214,715**
Grand Total		**$65,441,415**	**$134,498,657**	**$128,176,639**	**$74,216,950**	**$67,713,653**

Fuel Procurement and Reagents

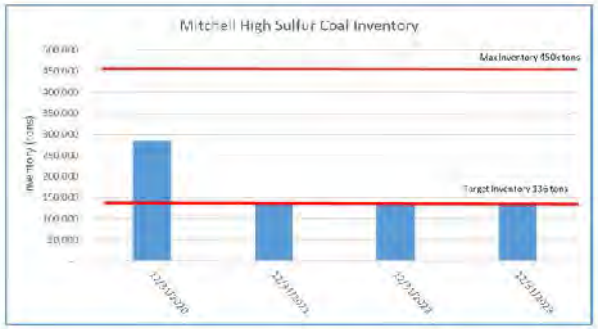
Coal Procurement Strategy

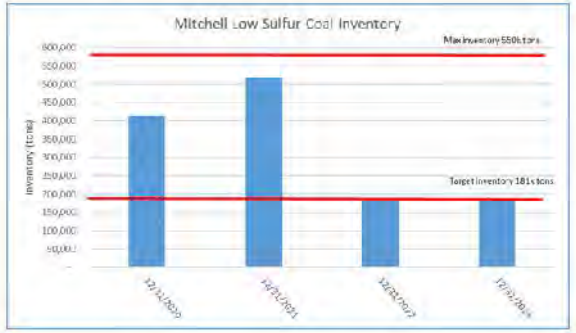
- **Inventory Analysis**

  Projected burn used in scenario below is based on Q1 2021 Forecast

  The forecasted fuel blend represents 80% high sulfur and 20% low sulfur on Unit 1 and 60% high sulfur and 40% low sulfur on Unit 2

  - Intend to flex coal blends on Unit 1 to assist with low sulfur inventory pile while optimizing unit offer price



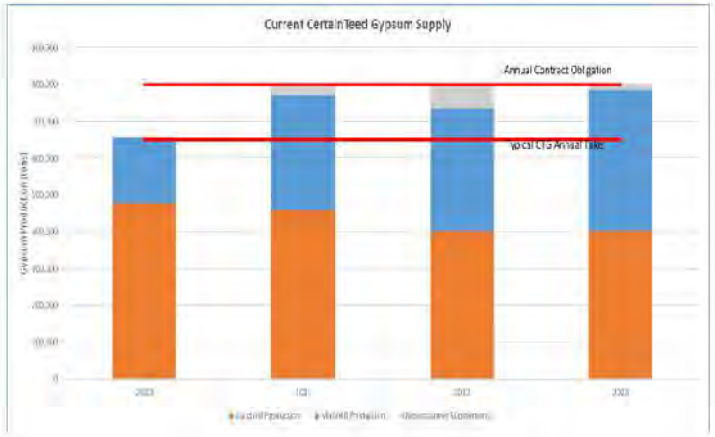


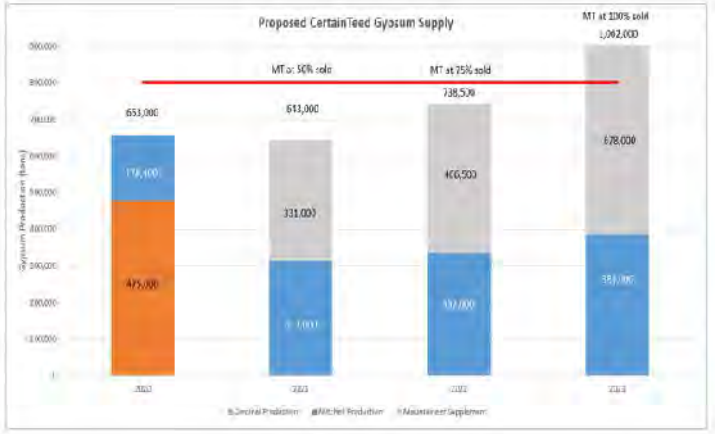
Mitchell High Sulfur	2021	2022	2023
Beginning Inventory Level	283,636	135,823	135,822
Total Commitments	1,020,907	1,000,000	1,000,000
Projected Burn	1,495,055	1,679,449	1,945,559
Open Position	326,335	679,448	945,559
Ending Inventory	135,823	135,822	135,823
Delivered $/MMBtu	*$1.62*	*$1.57*	*$1.53*

Mitchell Low Sulfur	2021	2022	2023
Beginning Inventory Level	412,262	516,588	181,097
Total Commitments	700,457	250,000	-
Projected Burn	596,131	669,677	841,962
Open Position	-	84,186	841,962
Ending Inventory	516,588	181,097	181,097
Delivered $/MMBtu	*$2.79*	*$2.76*	*$2.67*

AEP Gypsum Supply to CertainTeed (CTG)

- **Current Contract Analysis**
  - Cardinal provided 475,000 tons in 2020 inclusive of landfill tons and at least 400,000 tons in other years on current slide
  - Mountaineer gypsum needed in current case to meet the production needs of CTG
  - Supply levels below CTG contractual annual level creates liquidated damage exposure risk to KPCO and Cardinal up to $20 per ton
  - Should AEP decide to walk away from contract, "failure to supply" exposure of $75M through 2023, then $60M beginning in 2024
- **Proposed Contract Points**
  - All production from ML and MT will be sold to CTG. Cardinal has separate agreement with CTG.
  - No mine, as produced, LDs are not a part of the proposed agreement.
  - Dock facilities must be maintained at ML, or infrastructure sold to CTG.



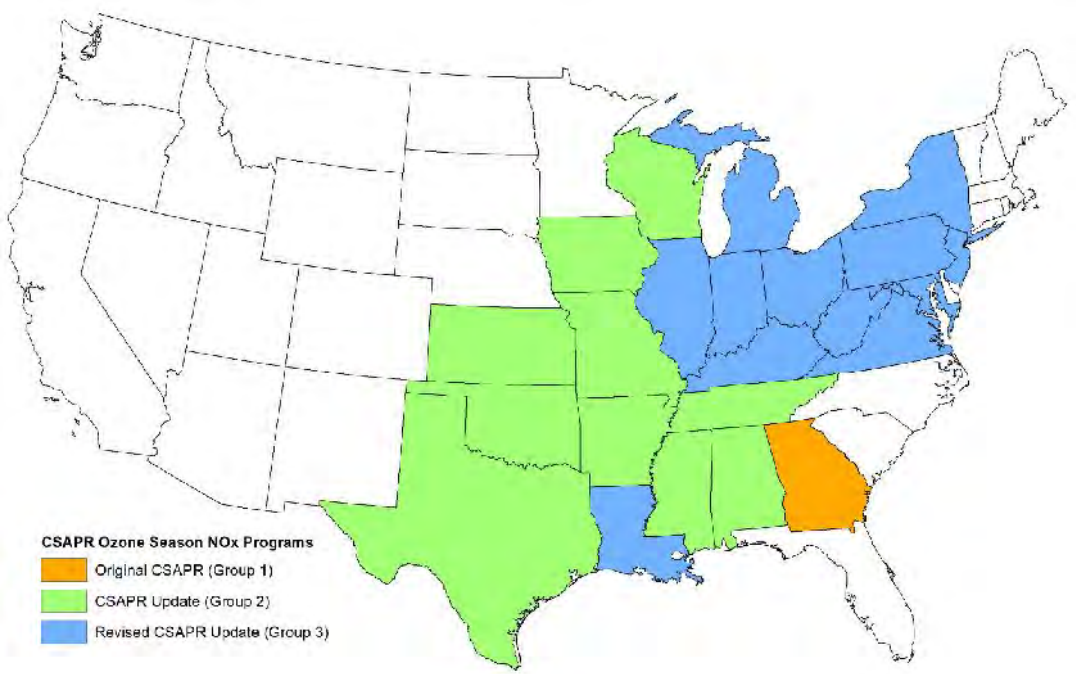


Reagents Discussion

- Limestone
  - Trialed new sourcing with much better logistics. Delivered pricing will go from ~$33.67/ton to ~$19.02/ton.
  - Expecting a 43% savings in the delivered cost of the Limestone, approximately a $3 million savings on a $7 million spend for 2021.
  - Reducing the Limestone $/MWh from ~$1.36 to ~$0.77.
- High Reactivity Hydrated Lime conversion
  - Completed testing at Mitchell (800 MW unit). Lhoist favored over Mississippi Lime product.
  - Currently engineering has plans to test Amos 3 (1300 MW unit) around April 1.
  - Transition in our forecasting system planned for July 2023.
- Trona
  - 2021, servicing out of MIE milling facility. Likely to continue through 2022.
  - 2023 will see the plants serviced via rail cars as the transition is completed.
- Urea
  - Current contract runs through 2021 and will conduct an RFP in late Q2. Typically a 5- year agreement.
- Hydrated Lime
  - Used for waste water treatment (WWT). Current contract runs through 2022.

Environmental Update

Revised CSAPR Updated Coverage



What's in Store for 2021

		2021*** 2021 Operating Co. Positions (tons)		
		SO2	ANNx	OSNx
	APCo	8,365	6,842	357
	IMCo	23,013	14,934	1,173
Enter zero "0" below to hide AGR data, else enter 1	KPCo	7,279	4,715	624
	WPCo	2,021	1,835	448
0		0	0	0
	PSO	0		953
TEXAS SO2 Program 2019+	SWEPCo	17,132		1,088
	Total	40,678	28,326	4,644

2021 AEP State Position Summary (tons)				
State/OPCo		SO2	ANNx	OSNx
AGR		0	0	0
KPCo		4,061	2,636	207
IMCo		23,013	14,934	1,173
Ind. Total		27074	17570	1380
KPCo		1,197	244	(30)
Ky. Total		1197	244	(30)
BPCo		0	0	0
JOU		682	0	0
APCo		0	0	(2)
Oh. Total		14063	6581	(171)
APCo		2,457	1,532	3
Va. Total		2457	1532	3
AGR		0	0	0
APCo		5,908	5,310	356
KPCo		2,021	1,835	448
WPCo		2,021	1,835	448
WVa Total		9950	8980	1251
IOU				(14)

2021 PROPOSED AEP DR Emissions by State as % of AEP's Allocations			
Limit 118% SO2 %	Limit 118% ANNx %	Limit 121% OSNx %	
13%	11%	33%	Indiana
18%	77%	111%	Kentucky
0%	5%	103%	Ohio
6%	15%	97%	Virginia
66%	57%	78%	West Virginia

Ozone Season NOX Allowance Position – 2021

2021 AEP Ozone NOx Emissions/Allocations/Positions (tons)						
Op Co	State	Budget	Projected Emissions	Allowance Surplus (Shortfall)	2021 Op Co Aggregate Gr2/Gr3	EOY Adj'd Bank
APCO	OH	69	71	(2)	357	
APCO	VA	110	107	3		
APCO	WV	4227	3,871	356		
I&M	IN	1,749	576	1173	1173	
KPCO	IN	309	102	207	624	
KPCO	KY	282	312	(30)		
KPCO	WV	704.5	257	448		
WPCO	WV	704.5	257	448	448	
PSO	OK	2,738	1,928	810	953	
PSO	TX	143	0	143		
SWEPCO	AR	779	654	125	976	
SWEPCO	LA	659	546	113	113	
SWEPCO	TX	3,539	2,688	851		
			AEP OSNx Gr2 Total	1929		
			AEP OSNx Gr3 Total	2715		

What Changes in 2024

	2024*** 2024 Operating Co. Positions (tons)			
		SO2	ANNx	OSNx
	APCo	7,882	6,488	(1,029)
	IMCo	26,866	17,094	315
Enter zero "0" below to hide AGR data, else enter 1	KPCo	7,192	4,798	(132)
	WPCo	1,254	1,434	(46)
0	AGR	0	0	0
	PSO	0		359
TEXAS SO2 Program 2019+	SWEPCo	28,406		643
	Total	43,194	29,814	110

2024 AEP State Position Summary (tons)				
State/OPCo		SO2	ANNx	OSNx
AGR		0	0	0
KPCo		4,653	2,949	0
IMCo		26,866	17,094	315
Ind. Total		31519	20043	315
KPCo		1,285	415	(86)
Ky. Total		1285	415	(86)
BPCo		0	0	0
JOU		682	429	0
APCo		0	0	(9)
Oh. Total		14433	9370	0
APCo		2,521	1,491	(201)
Va. Total		2521	1491	(201)
AGR		0	0	0
APCo		5,361	4,997	(819)
KPCo		1,254	1,434	(46)
WPCo		1,254	1,434	(46)
WVa Total		7869	7865	(911)
JOU				(112)

2024 PROPOSED AEP DR Emissions by State as % of AEP's Allocations			
Limit 118% SO2 %	Limit 118% ANNx %	Limit 121% OSNx %	
6%	5%	60%	Indiana
12%	61%	139%	Kentucky
0%	3%	113%	Ohio
3%	17%	391%	Virginia
73%	62%	119%	West Virginia

Ozone Season NOX Allowance Position – 2024

2024 AEP Ozone NOx Emissions/Allocations/Positions (tons)						
Op Co	State	Budget	Projected Emissions	Allowance Surplus (Shortfall)	2021 Op Co Aggregate Gr2/Gr3	EOY Adj'd Bank
APCO	OH	69	78	(9)	(1029)	
APCO	VA	69	270	(201)		
APCO	WV	3689	4,508	(819)		
I&M	IN	795	480	315	315	
KPCO	IN	0	0	0	(132)	
KPCO	KY	220	306	(86)		
KPCO	WV	595	641	(46)		
WPCO	WV	595	641	(46)	(46)	
PSO	OK	2,069	1,853	216	359	
PSO	TX	143	0	143		
SWEPCO	AR	779	984	(205)	93	
SWEPCO	LA	634	84	550	550	
SWEPCO	TX	2,888	2,590	298		
			AEP OSNx Gr2 Total	452		
			AEP OSNx Gr3 Total	(342)		

Closing Comments

Open Discussion

Action Items and Takeaways

MITCHELL OPERATING COMMITTEE

MINUTES

October 20, 2021

Pursuant to notice, a videoconference meeting of the Operating Committee (the "Committee") of the Mitchell Operating Agreement (the "Agreement") was held on October 20, 2021, at 3:00 p.m. (Eastern).

Operating Representatives Present:

(1) Chris Beam, President and Chief Operating Officer, Wheeling Power Company; (2) Brett Mattison, President and Chief Operating Officer, Kentucky Power Company; and (3) Tim Kerns, VP Generating Assets, Fossil & Hydro Generation, American Electric Power Service Corporation.

Constituting all of the Operating Representatives. Also present were John Crespo, Mike Zwick, Christen Blend, Jim Bacha, Gary Spitznogle, Kathy Milenkovski, Brian West, Brian Rupp, and Raja Sundararajan.

Mr. Crespo acted as Secretary of the meeting of the Operating Committee. Mr. Crespo presented and on motion duly seconded the Operating Representatives approved the Agenda for the meeting, attached.

Ms. Blend, Mr. Bacha and Ms. Milenkovski, legal counsel for AEP, provide an update on (1) the KY Order on Application for Declaratory Order; (2) the WV Order on Petition to Reopen and Take Further Action; and (3) ELG/CCR environmental permitting matters. The Operating Representatives asked questions and engaged in further discussions regarding the matters presented. The Operating Representatives asked that additional information be presented at a future meeting by legal counsel regarding the environmental permits related to the Mitchell Plant.

Mr. Zwick provided an update on the status of the ELG/CCR engineering and construction. Mr. Zwick also provided an update on the status of the forecasted capital expenditures for the ELG/CCR Project and the status of the 2022 Budget, which is currently under review. The Operating Representative asked questions and engaged in further discussions regarding the matters presented.

The Operating Representatives took up discussion on the proposed Resolution set forth in the Agenda regarding the appointment of an independent engineer to evaluate the allocation of the capital costs of the CCR and ELG project in accordance with the orders issued by the public service commissions of West Virginia and Kentucky. The Operating Representatives discussed modifications to the proposed resolution to (1) affirmatively state that the independent engineer should be qualified to perform the work, and (2) require that the selection of the independent engineer by the Agent be presented to and ratified by the Operating Committee.

WHEREFORE, upon motion duly made and seconded, it was unanimously,

RESOLVED, in order to ensure that neither Kentucky Power nor its customers will inappropriately bear the costs of the Mitchell ELG project, and to ensure that each Owner bears an equitable share of other costs of environmental compliance benefitting that Owner, the Operating Committee, pursuant to its authority under Section 7.2 of the Agreement, delegates to Agent authority to retain an independent engineer on behalf of the Owners, qualified for the work, at their equal cost and expense, to prepare an analysis of the appropriate allocation between the Owners of the capital and operating costs of the ELG and CCR projects, provided that the independent engineer selected by the Agent shall first be presented to and ratified by the Operating Committee in writing, and to take such further action in furtherance of the foregoing and provide such information of the Owners to the independent engineer as may be necessary or advisable in Agent's reasonable discretion.

Mr. Crespo, Secretary to the Operating Committee and legal counsel for AEP, reviewed the terms of the Agreement and the changes that could be made to address the matters raised in the orders issued by the public service commissions of West Virginia and Kentucky. The Operating Representative asked questions and engaged in further discussions regarding the matters presented.

The Operating Representatives took up discussion on the proposed Resolution set forth in the Agenda regarding the preparation of modifications to the Agreement to address the matters presented.

WHEREFORE, upon motion duly made and seconded, it was unanimously,

RESOLVED, the Operating Committee directs Agent within 10 business days to prepare for its review proposed modifications to the Agreement and/or new agreements related to the ownership, operation, maintenance and future potential retirement of the Mitchell Plant that will address the matters raised in the orders issued by the Kentucky and West Virginia public service commissions, and other matters, including but not limited to provisions regarding: (1) transfer of plant operations and permits from Kentucky Power to Wheeling Power; (2) ensuring that neither Kentucky Power nor its customers will inappropriately bear the costs of the Mitchell ELG project; (3) ensuring that Wheeling Power is appropriately made responsible for capital and operating costs (including ELG costs) arising from directives of the West Virginia commission that Wheeling operate the Mitchell Plant beyond 2028; (4) prohibitions on Kentucky Power sharing in capacity and energy from the Mitchell Plant after December 31, 2028; (5) changes in the ownership of the Mitchell Plant to accommodate the continued operation of the Mitchell Plant without involvement of Kentucky Power or Kentucky jurisdictional customers; and (6) Any other provisions that the Agent may deem necessary or advisable to propose to the Owners.

There being no further business, the Operating Committee meeting was adjourned.

John Crespo

Secretary

MITCHELL OPERATING COMMITTEE

AGENDA

October 20, 2021

Pursuant to notice, a videoconference meeting of the Operating Committee (the "Committee") of the Mitchell Operating Agreement (the "Agreement") will be held on October 20, 2021, at 3:00 p.m. (Eastern).

Invitees: Operating Representatives: Tim Kerns (Agent), Brett Mattison (Kentucky Power), Chris Beam (Wheeling Power), Mike Zwick (Agent – Alternate)

Other Invitees: John Crespo (Secretary), Christen Blend, Jim Bacha, Gary Spitznogle, Kathy Milenkovski

1. Call to Order

A. Roll Call for Quorum

B. Review of Agenda

2. Legal Update on ELG/CCR Certificate Proceedings in KY and WV -- Legal Counsel

A. KY Order on Application for Declaratory Order

B. WV Order on Petition to Reopen and Take Further Action

C. ELG/CCR Environmental Permitting Update

3. Update on CCR/ELG Projects -- Tim Kerns

A. Update on ELG/CCR Planning and Construction Progress

B. Proposed Resolution for review by the Operating Committee:

RESOLVED, in order to ensure that neither Kentucky Power nor its customers will inappropriately bear the costs of the Mitchell ELG project, and to ensure that each Owner bears an equitable share of other costs of environmental compliance benefitting that Owner, the Operating Committee, pursuant to its authority under Section 7.2 of the Agreement, delegates to Agent authority to retain an independent engineer on behalf of the Owners, at their equal cost and expense, to prepare an analysis of the appropriate allocation between the Owners of the capital and operating costs of the ELG and CCR projects, and to take such further action in furtherance of the foregoing and provide such information of the Owners to the independent engineer as may be necessary or advisable in Agent's reasonable discretion.

4. Update on CCR/ELG Budget – Tim Kerns

A. Review of 2021 Budget

B. Review of Upcoming 2022 Budget Cycle Process

5. Operating Agreement – Tim Kerns

A. Review of Terms of Operating Agreement

B. Proposed Resolution for review by the committee:

RESOLVED, the Operating Committee directs Agent within 10 business days to prepare for its review proposed modifications to the Agreement and/or new agreements related to the ownership, operation, maintenance and future potential retirement of the Mitchell Plant that will address the matters raised in the orders issued by the Kentucky and West Virginia public service commissions, and other matters, including but not limited to provisions regarding:

(1) Transfer of plant operations and permits from Kentucky Power to Wheeling Power;

(2) Ensuring that neither Kentucky Power nor its customers will inappropriately bear the costs of the Mitchell ELG project;

(3) Ensuring that Wheeling Power is appropriately made responsible for capital and operating costs (including ELG costs) arising from directives of the West Virginia commission that Wheeling operate the Mitchell Plant beyond 2028;

(4) Prohibitions on Kentucky Power sharing in capacity and energy from the Mitchell Plant after December 31, 2028;

(5) Changes in the ownership of the Mitchell Plant to accommodate the continued operation of the Mitchell Plant without involvement of Kentucky Power or Kentucky jurisdictional customers; and

(6) Any other provisions that the Agent may deem necessary or advisable to propose to the Owners.

6. Other Business

7. Adjournment

MITCHELL OPERATING COMMITTEE

Minutes

October 25, 2021

Pursuant to notice, a videoconference meeting of the Operating Committee (the "Committee") of the Mitchell Operating Agreement (the "Agreement") was held on October 25, 2021, at 12:00 p.m. (Eastern).

Operating Representatives Present:

(1) Chris Beam, President and Chief Operating Officer, Wheeling Power Company; and
(2) Brett Mattison, President and Chief Operating Officer, Kentucky Power Company.

Constituting the Operating Representatives of the Owners. Also present were John Crespo, Christen Blend, Jim Bacha, Matt Satterwhite, Mike Zwick and Raja Sundararajan.

Mr. Crespo acted as Secretary of the meeting of the Operating Committee. Mr. Crespo presented and on motion duly seconded the Operating Representatives approved the Agenda for the meeting, attached.

Mr. Crespo, Secretary to the Operating Committee and legal counsel for AEP, presented the draft Mitchell Operation and Maintenance Agreement and the draft Mitchell Ownership Agreement. Mr. Crespo further presented the terms and conditions of the Mitchell Ownership Agreement to the Operating Representatives as set forth in the Agenda. The Operating Representatives asked questions of legal counsel and engaged in further discussions regarding the matters presented. The Owners requested that Mr. Crespo, as Secretary, summarize and record their comments, representing the views of the Owners on the agreements, and provide those comments to the Agent for further review. The summary prepared by Mr. Crespo at the request of the Owners is attached.

There being no further business, the Operating Committee meeting was adjourned.

John Crespo

Secretary

John C Crespo

From: John C Crespo
Sent: Monday, October 25, 2021 3:43 PM
To: Randy G Ryan (rgryan@aep.com); Stephan T Haynes
Cc: Christian T Beam; Brett Mattison; Tim Kerns; Michael J Zwick
Subject: Mitchell Operating Committee Feedback

Randy and Steve, the Mitchell Operating Committee met today and we went over the draft Mitchell Operating Agreement and draft Mitchell Ownership Agreement. Based on our discussions, the Committee has asked me to provide the following feedback on various sections and definitions. We would plan to further discuss these items and any revisions proposed by AEP Service Corp. to the form of the documents at a future meeting of the Operating Committee.

- Recitals
  - Requested more information about the removal of AEPSC as a party.
  - Requested clarification on the title of the O&M Agreement – is the "M" maintenance or management, and would the latter be more appropriate.
- Section 1.8
  - Section reference to "ELG Expenses" could be confusing because it refers to investment and not expense. The term could be renamed to indicate it refers to capital investments.
  - The second line may be more clearly phrased, "an amount greater than 50% of any capital expenditures, including ELG [Investments], as contemplated…."
- Sections 6.4(d), 6.7(a), 6.7(b), 6.7(d), 7.2(f)
  - Should be worded to avoid the impression that KPCO is paying for a portion of ELG upgrades.
  - Ensuring that each section referring to the allocation of the costs of capital investments and O&M required by KPCO and WPCO to each comply with their CCR and CCR/ELG obligations, respectively, is described consistently in each affected section. Should be clear that the division is based on the independent engineer's evaluation. Defined terms should also be consistent with that process.
- Section 6.7(b)
  - Should be worded to avoid the impression that KPCO is paying for a portion of ELG upgrades.
  - Could be clearer if the proviso regarding KPCO sharing in ELG costs is revised or deleted. KPCO should pay its share of the costs identified by the IE that are necessary for it to comply with the CCR rules, and WPCO should pay its share of the costs identified by the IE that are necessary for it to comply with both the CCR and ELG rules.
- Section 7.6
  - Requested more information about separate dispatch and operating committee safeguards regarding use of coal inventory in times of coal scarcity.
- Section 9.6
  - The buyout standards were discussed and are being reviewed. Discussed whether the Operating Committee needs to address their use of good faith in considering future capacity commitments in PJM related to Mitchell after 2028.

Please let me know if you have any questions. --John

MITCHELL OPERATING COMMITTEE

AGENDA

October 25, 2021

Pursuant to notice, a videoconference meeting of the Operating Committee (the "Committee") of the Mitchell Operating Agreement (the "Agreement") will be held on October 25, 2021, at 12:00 p.m. (Eastern).

Invitees: Operating Representatives: Tim Kerns (Agent), Brett Mattison (Kentucky Power), Chris Beam (Wheeling Power), Mike Zwick (Agent – Alternate)

Other Invitees: John Crespo (Secretary), Christen Blend, Jim Bacha, Randy Ryan, Mathew Satterwhite, Raja Sundararajan, Randy Ryan, Stephan Haynes

1. Call to Order

A. Roll Call for Quorum

B. Review of Agenda

2. Operating Agreement – Legal Counsel

A. Review of Terms of draft Operating and Ownership Agreements, including the following provisions of the draft Ownership Agreement:

- Section 1.5, regarding appointment of Wheeling as the operator.
- Section 1.8, regarding the funding of certain capital expenditures and ELG expenditures in the Capital Budget.
- Section 3.2, regarding early retirement.
- Section 6.4(d), regarding O&M expenses related to ELG upgrades.
- Section 6.7, regarding the funding of certain capital investments including ELG upgrades and upgrades with a depreciable life extending beyond 2028.
- Section 7.2(d), (f), related to inclusion in the Capital Budget of certain Owner-funded capital projects and determinations by a technical expert related to division of ELG expenses.
- Section 9.6, regarding buyout by Wheeling of Kentucky Power's ownership interests effective 12/31/2028 if an early retirement has not previously occurred, and related matters including valuation of said interest and other buyout procedures.
- Such other provisions as may be of interest to the Committee.

6. Other Business

7. Adjournment

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

[_____], 2021

TABLE OF CONTENTS

Page

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 31st 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][1]. 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

[1] **Note**: Subject to modification if registration cannot be effective as of the Effective Date.

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 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 a 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^{th}) 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 (vii) 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) 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 it 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:

14.12.1Existence. 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.

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

14.12.3Validity. 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).

14.12.4No 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.

14.12.5No 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.

14.12.6No 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.

14.12.7No 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

Task Name	Description
Routine Services	Provide operational services as reasonably necessary for electrical power generation.
Detailed Programs	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.
Routine Maintenance	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: **Service Checks** – Conduct visual equipment inspections and log significant parameters such as pressures, temperatures, and flow rates. Trend and analyze this information as appropriate. **Routine and Fixed Interval Maintenance** –Identify preventive maintenance requirements. Schedule and assign routine maintenance during Facility operation, planned outages, and forced or unscheduled outages.
Predictive Maintenance Program	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.
Major Maintenance and Repairs	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.
Capital Improvements	Conduct/oversee all capital improvements. As appropriate, retain vendors for the benefit of the Owners to design, construct and implement capital improvements.
Facility Outages	Use commercially reasonable efforts to manage all Facility outages (planned, unscheduled, forced) to optimize outage duration and impact on production:

Task Name	Description
	Task Assignment – Identify and schedule all maintenance that requires a Facility outage or equipment to be taken out of service. **Work Schedule –** 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.
Assistance to the Non-Operator Owner and Operating Committee	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.
Facility Administration	Conduct administration to meet Operator requirements and Owners' goals, including: **Budgets** – 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. **Procurement** – 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. **Inventory Control** – 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. **Personnel Matters** – 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.

Task Name	Description
	Community Relations – In coordination with and with the approval of the Operating Committee, conduct a community relations program to establish the Facility and its employees as "good citizens" in the local community. **Regulatory –** Perform all duties set forth in Section 7.8 of the Ownership Agreement with respect to Emission Allowances (as defined therein).
Work Assignment	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.
Buildings and Grounds	Arrange for janitorial, garbage pickup and landscape services and maintain all access roads, office buildings, and other structures in reasonable repair.
Reports	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.
Security	Implement or arrange for implementation of security measures in accordance with the Operating Committee-approved Facility security plan.
Safety	Continue to implement Corporate and Plant Level Safety Programs including on-site visits and discussions at the facility.
PJM Capacity Analysis	Analysis and plant level information to PJM as part of PJM's FRR or RPM Capacity Market requirements
Information Systems	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.
Training Program	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

Task Name	Description
	aware of Operating Committee -approved Facility safety requirements and emergency procedures. This program includes specialty skills training.
Drawing/Manual Maintenance	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.

Task Name	Description
Fuel Purchasing and Handling	• 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 • Contract administration for Fuel supply contracts along with legal review. • Third Party Settlements of fuel related supply and inventory tracking in ComTrac system • Joint Books Accounting to prepare information for billing among co-owners per agreement • Analysis of fuel related costs for data requests from regulatory bodies or joint owner • 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. • Receive coal and provide fuel handling • Fuel coordinator functions to review fuel quality with third party suppliers at coal or limestone facilities. • Administer and reconcile volumes of all fuel with suppliers • Administer and comply with the requirements set forth in the Facility's fuel agreements, including quality testing and invoice review and approval • 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

Task Name	Description
Day Ahead and Real Time Market Operations	• 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. • GADS Reporting – Create GADS events as they are scheduled or occur. Submit monthly event reporting as required by NERC and PJM. • 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. • Unit Characteristic Updates to PJM – Provide any relevant configuration updates related to generating units to PJM that may occur. • Telemetry – Maintain current real time telemetry to/from the plant, PJM and Market Operations control center.
Administration of Contracts	• 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 • 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
Insurance	• 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.

Task Name	Description
Decommissioning	• 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.

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-xxxxxxxx

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
Total Operating Expenses	$4,969,439.98
KPCo's share of Capital Expenditures	$100,000.00
Storeroom Inventory Activity	$150,000.00
TOTAL AMOUNT DUE WHEELING POWER COMPANY	**$5,219,439.98**

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

[RATE SCHEDULE NO. 303]

MITCHELL PLANT OWNERSHIP AGREEMENT

KENTUCKY POWER COMPANY

and

WHEELING POWER COMPANY

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 Expenses 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 Expenses) 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 Expenses shall be allocated exclusively to, and paid for exclusively by, WPCo (subject to adjustment of the Buyout Price in accordance with Section 9.6); provided that, to the extent that ELG Upgrades are also used to satisfy, or result in reduced capital expenditures to comply with, the CCR Rule, KPCo shall be allocated its equitable share of ELG Expenses associated with such ELG Upgrades. The Operating Committee shall engage or retain a Technical Expert to make recommendations with respect to

KPCo's equitable share of ELG Expenses to be allocated to KPCo in accordance with this Section 6.7(b).

(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 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 $5 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 the equitable allocation of any ELG Expense not fully allocated to WPCo), 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) Engagement or retention of a Technical Expert to make recommendations with respect to KPCo's equitable share of ELG Expenses to be allocated to KPCo in accordance with Section 6.7(b).

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

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

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

(j) 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.

(k) 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 7.10.

(l) 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.

(m) 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.

(n) 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.

(o) 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.

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

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

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

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

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

7.7 Emission Allowances. 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, 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 Expenses 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, 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); 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 KPCo shall sell, transfer and assign to WPCo, and WPCo shall purchase and assume from KPCo, all of KPCo's Ownership Interest (the "KPCo 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 KPCo 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 KPCo 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 KPCo Interest and the Decommissioning Costs Amount. Unless prior to June 30, 2027, (i) the Fair Market Value for the KPCo 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 KPCo, but without relieving Operator of any of its obligations hereunder.

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

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

KENTUCKY POWER COMPANY
[_____]
[_____]

Attn: _____

Phone: [_____]

Email: [_____]

WHEELING POWER COMPANY
[_____]
[_____]

Attn: _____

Phone: [_____]

Email: [_____]

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

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

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

13.9 Any of the terms, covenants, or conditions hereof may be waived only by a written instrument executed by or on behalf of the Owners waiving compliance. No course of dealing on the part of any Owners, or its respective officers, employees, agents, accountants, attorneys, investment bankers, consultants or other authorized representatives, nor any failure by an Owner to exercise any of its rights under this Agreement shall operate as a waiver thereof or affect in any way the right of such Owner at a later time to enforce the performance of such provision. No waiver by any Owner of any condition, or any breach of any term or covenant contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term or covenant. The rights of the Owners under this Agreement shall be cumulative, and the exercise or partial exercise of any such right shall not preclude the exercise of any other right.

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

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

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

13.13 Each Owner acknowledges that it shall be inadequate or impossible, or both, to measure in money the damage to the Members if any of them or any transferee or any legal representative of any Owner fails to comply with any of the restrictions or obligations imposed by

Article Nine that every such restriction and obligation is material, and that in the event of any such failure, the Owners shall not have an adequate remedy at law or in damages. Therefore, each Owner consents to the issuance of an injunction or the enforcement of other equitable remedies against such Owner at the suit of an aggrieved party without the posting of any bond or other security, to compel specific performance of all of the terms of Article Nine and to prevent any Disposition in contravention of any terms of Article Nine, and waives any defenses thereto, including the defenses of: (i) failure of consideration, (ii) breach of any other provision of this Agreement and (iii) availability of relief in monetary damages.

ARTICLE FOURTEEN
DEFINITIONS

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

"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 Expenses, 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.

"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.

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

"Coal Inventory Adjustment" shall mean the weighted-average cost of KPCo'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 Expenses" 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 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. The transferred assets and assumed liabilities transferred under the Mitchell Interest Purchase Agreement shall be consistent with the scope of those items set forth in the Asset Contribution Agreement (and related indemnity agreements) between AEP Generation Resources Inc. and WPCo (as successor by merger to Newco Wheeling Inc.), dated January 31, 2015, the form of which was approved by the WVPSC in WVPSC Case No. 14-0546-E-PC.

"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.

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

"WVPSC" shall mean the West Virginia Public Service Commission.

[*Signature pages follow*.]

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

KENTUCKY POWER COMPANY

By: _____

Title:

WHEELING POWER COMPANY

By: _____
Title:

Solely with respect to Section 13.4:

AMERICAN ELECTRIC POWER SERVICE CORPORATION

By: _____
Title:

Exhibit A

Capital Budget, Initial Budgets and Forecast

[To Be Attached as of the Effective Date.]

Exhibit B

Form of Monthly Sample Report

[Attached.]

MITCHELL OPERATING COMMITTEE

MINTUES

November 2, 2021

Pursuant to notice, a videoconference meeting of the Operating Committee (the "Committee") of the Mitchell Operating Agreement (the "Agreement") was held on November 2, 2021, at 8:00 a.m. (Eastern).

Operating Representatives Present:

(1) Chris Beam, President and Chief Operating Officer, Wheeling Power Company; (2) Brett Mattison, President and Chief Operating Officer, Kentucky Power Company; and (3) Tim Kerns, VP Generating Assets, Fossil & Hydro Generation, American Electric Power Service Corporation.

Constituting all of the Operating Representatives. Also present were John Crespo, Christen Blend, Jim Bacha, Randy Ryan, Stephan Haynes, Matt Satterwhite, and Raja Sundararajan.

Mr. Crespo acted as Secretary of the meeting of the Operating Committee. Mr. Crespo presented and on motion duly seconded the Operating Representatives approved the Agenda for the meeting, attached.

Mr. Crespo, Secretary to the Operating Committee and legal counsel for AEP, presented the revised drafts of the proposed Mitchell Operation and Maintenance Agreement and the proposed Mitchell Ownership Agreement. AEP legal counsel also described the current status of the draft agreements as forms included in the transaction for the sale of Kentucky Power to Liberty, which will include the sale of Kentucky Power's undivided interests in the Mitchell Plant. The Operating Representatives engaged in general discussions regarding the proposed agreements and their terms and conditions. The Operating Representatives requested additional information from Legal Counsel regarding the proposed agreements.

There being no further business, the Operating Committee meeting was adjourned.

John Crespo

Secretary

MITCHELL OPERATING COMMITTEE

AGENDA

November 2, 2021

Pursuant to notice, a videoconference meeting of the Operating Committee (the "Committee") of the Mitchell Operating Agreement (the "Agreement") will be held on November 2, 2021, at 8:00 a.m. (Eastern).

Invitees: Operating Representatives: Brett Mattison (Kentucky Power), Chris Beam (Wheeling Power), Tim Kerns (Agent), Mike Zwick (Agent – Alternate)

Other Invitees: John Crespo (Secretary), Christen Blend, Jim Bacha, Randy Ryan, Mathew Satterwhite, Raja Sundararajan, Randy Ryan, Stephan Haynes

1. Call to Order

A. Roll Call for Quorum

B. Review of Agenda

2. Operating Agreement – Legal Counsel

A. Review and discussion of revised terms of draft Mitchell Operations and Maintenance Agreement and draft Mitchell Ownership Agreement.

B Discussion of potential resolutions related to the proposed agreements.

3. Other Business

4. Adjournment

Exhibit C
[Final Form]

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

Page

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 31st 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][1]. 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

[1] **Note**: Subject to modification if registration cannot be effective as of the Effective Date.

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 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 a 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^{th}) 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 (vii) 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 it 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).

14.12.4No 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.

14.12.5No 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.

14.12.6No 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.

14.12.7No 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

Task Name	Description
Routine Services	Provide operational services as reasonably necessary for electrical power generation.
Detailed Programs	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.
Routine Maintenance	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: **Service Checks** – Conduct visual equipment inspections and log significant parameters such as pressures, temperatures, and flow rates. Trend and analyze this information as appropriate. **Routine and Fixed Interval Maintenance** –Identify preventive maintenance requirements. Schedule and assign routine maintenance during Facility operation, planned outages, and forced or unscheduled outages.
Predictive Maintenance Program	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.
Major Maintenance and Repairs	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.
Capital Improvements	Conduct/oversee all capital improvements. As appropriate, retain vendors for the benefit of the Owners to design, construct and implement capital improvements.
Facility Outages	Use commercially reasonable efforts to manage all Facility outages (planned, unscheduled, forced) to optimize outage duration and impact on production:

Task Name	Description
	Task Assignment – Identify and schedule all maintenance that requires a Facility outage or equipment to be taken out of service. **Work Schedule –** 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.
Assistance to the Non-Operator Owner and Operating Committee	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.
Facility Administration	Conduct administration to meet Operator requirements and Owners' goals, including: **Budgets** – 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. **Procurement** – 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. **Inventory Control** – 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. **Personnel Matters** – 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.

Task Name	Description
	Community Relations – In coordination with and with the approval of the Operating Committee, conduct a community relations program to establish the Facility and its employees as "good citizens" in the local community. **Regulatory –** Perform all duties set forth in Section 7.8 of the Ownership Agreement with respect to Emission Allowances (as defined therein).
Work Assignment	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.
Buildings and Grounds	Arrange for janitorial, garbage pickup and landscape services and maintain all access roads, office buildings, and other structures in reasonable repair.
Reports	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.
Security	Implement or arrange for implementation of security measures in accordance with the Operating Committee-approved Facility security plan.
Safety	Continue to implement Corporate and Plant Level Safety Programs including on-site visits and discussions at the facility.
PJM Capacity Analysis	Analysis and plant level information to PJM as part of PJM's FRR or RPM Capacity Market requirements
Information Systems	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.
Training Program	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

Task Name	Description
	aware of Operating Committee -approved Facility safety requirements and emergency procedures. This program includes specialty skills training.
Drawing/Manual Maintenance	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.

Task Name	Description
Fuel Purchasing and Handling	• 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 • Contract administration for Fuel supply contracts along with legal review. • Third Party Settlements of fuel related supply and inventory tracking in ComTrac system • Joint Books Accounting to prepare information for billing among co-owners per agreement • Analysis of fuel related costs for data requests from regulatory bodies or joint owner • 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. • Receive coal and provide fuel handling • Fuel coordinator functions to review fuel quality with third party suppliers at coal or limestone facilities. • Administer and reconcile volumes of all fuel with suppliers • Administer and comply with the requirements set forth in the Facility's fuel agreements, including quality testing and invoice review and approval • 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

Task Name	Description
Day Ahead and Real Time Market Operations	• 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. • GADS Reporting – Create GADS events as they are scheduled or occur. Submit monthly event reporting as required by NERC and PJM. • 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. • Unit Characteristic Updates to PJM – Provide any relevant configuration updates related to generating units to PJM that may occur. • Telemetry – Maintain current real time telemetry to/from the plant, PJM and Market Operations control center.
Administration of Contracts	• 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 • 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
Insurance	• 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.

Task Name	Description
Decommissioning	• 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.

APPENDIX B – INITIAL BUDGET AND PLAN

[To be attached as of the Effective Date]

APPENDIX C – OPERATING COSTS WORKSHEET/SAMPLE INVOICE

[See attached.]

INVOICE # xxx-xxxxxxxx

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
Total Operating Expenses	$4,969,439.98
KPCo's share of Capital Expenditures	$100,000.00
Storeroom Inventory Activity	$150,000.00
TOTAL AMOUNT DUE WHEELING POWER COMPANY	**$5,219,439.98**

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

[RATE SCHEDULE NO. 303]

MITCHELL PLANT OWNERSHIP AGREEMENT

KENTUCKY POWER COMPANY

and

WHEELING POWER COMPANY

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

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

7.7 Emission Allowances. Prior to the earlier of any Buyout Transaction or December 31, 2028 (or earlier retirement of the Facility), to the extent that emission allowances issued by the U.S. Environmental Protection Agency ("USEPA") pursuant to Title IV of the Clean Air Act Amendments of 1990 and any regulations thereunder, and any other emission allowance trading program created under the Clean Air Act and administered by USEPA or the State of West Virginia, including but not limited to the Cross-State Air Pollution Rule 40 C.F.R. Part 97, and any amendments thereto (the "Emission Allowances"), are required for operation of the Mitchell Plant, each Owner will be entitled to receive for its own benefit 50% of any Emissions Allowances allocated to the Mitchell Plant. Each Owner will be responsible for acquiring any additional Emission Allowances needed to satisfy the Emission Allowances required because of such Owner's dispatch of energy from the Mitchell Plant. Additionally, prior to such time, each Owner will be responsible for acquiring the Emission Allowances required, to the extent necessary in addition to its share of the Emissions Allowances allocated to the Mitchell Plant, to satisfy 50% of the Emission Allowance surrender obligations attributable to the Mitchell Plant imposed under the Consent Decree entered in *United States, et al. v. American Electric Power Service Corp., et al*., Civil Action Nos. C2-99-1182 and C2-99-1250 and *United States, et al. v. American Electric Power Service Corp., et al., Civil Action No. C2-05-360 and Ohio Citizen Action, et al. v. American Electric Power Service Corp.*, Civil Action No. C2-04-1098 dated December 10, 2007 as subsequently modified or amended, it being understood that the Owners may be subject to additional rights and obligations under any applicable agreement among the Owners (and/or their Affiliates) and American Electric Power Company, Inc. (and/or its Affiliates) pertaining to the allocation of emission limitations associated with the Mitchell Plant. As early as possible, but no later than three business days after the deadline for submitting final electronic data to the EPA for compliance purposes, the Operator shall notify each Owner of the number of annual or seasonal Emission Allowances that are needed to offset each Owner's share of emissions for the previous year or season. Each Owner shall supply its respective share of allowances, with a reasonable compliance margin as determined by the Operating Committee, by transferring the applicable allowances to the Mitchell Plant's Allowance Facility Account on or before 15 days prior to the remittance date. In the event that an Owner fails to surrender the required number of Emission Allowances in accordance with the prior paragraph, the other Owner shall have the option to purchase the required number of Emission Allowances, and the Owner that failed to surrender the required number of Emission Allowances shall reimburse the other Owner for any amounts it shall have incurred to make such purchases, with interest at the "Federal Funds Rate" (as published by the Board of Governors of the Federal Reserve System as from time to time in effect) running from the date of such purchases to the date of payment. The Operating Committee will develop procedures to be implemented after the end of each calendar year to account for each Owner's

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

7.8 At least ninety (90) days before the start of each operating year, the Operator shall submit to the Operating Committee any proposed amendments to the Capital Budget and an annual operating budget for such operating year with respect to the Mitchell Plant, a proposed annual operating plan with respect to the Mitchell Plant for such operating year, and a forecast of operating and capital costs to be incurred during the next six-year period. The annual operating budget and amendments to the Capital Budget shall be presented on a month-by-month basis, and shall include an operating budget, a capital budget, and an estimate of the cost of any major repairs or improvements that are anticipated to occur during the relevant period with respect to the Mitchell Plant, and an itemized estimate of all projected fixed and variable operating expenses relating to the operation of the Mitchell Plant during that operating year. The members of the Operating Committee will meet and work in good faith to agree upon the final annual operating budget, final annual operating plan and any amendments to the Capital Budget. Once approved, the annual operating budget and annual operating plan shall remain in effect throughout the applicable operating year, subject to such changes, revisions, amendments, and updating as the Operating Committee may determine. If 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, KPCo shall have the sole and exclusive right to select and designate any successor "Operator" or replacement third-party Operator, in each case so long as such successor replacement is a "Qualified Replacement Operator" (as defined in the O&M Agreement); provided, however, that notice of any such action described in this Section 7.9 shall be sent to the other Owner at the time such action is taken if such other Owner is not the Operator. For purposes of this Agreement, "Affiliate" shall mean, with respect to any person or entity, any other person or entity that directly or indirectly, controls, is controlled by, or is under common control with such person or entity. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

ARTICLE EIGHT
EFFECTIVE DATE AND TERM

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

8.2 Subject to FERC approval or acceptance of any termination, if necessary, this Agreement shall remain in force until the earlier of (a) the date on which this Agreement is terminated by mutual agreement of the Owners 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 KPCo shall sell, transfer and assign to WPCo, and WPCo shall purchase and assume from KPCo, all of KPCo's Ownership Interest (the "KPCo 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 KPCo 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 KPCo 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 KPCo Interest and the Decommissioning Costs Amount. Unless prior to June 30, 2027, (i) the Fair Market Value for the KPCo 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 KPCo, but without relieving Operator of any of its obligations hereunder.

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

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

KENTUCKY POWER COMPANY
[_____]
[_____]

Attn: _____

Phone: [_____]

Email: [_____]

WHEELING POWER COMPANY
[_____]

[_____]

_____

Attn: _____

Phone: [_____] _____

Email: [_____] _____

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

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

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

13.9 Any of the terms, covenants, or conditions hereof may be waived only by a written instrument executed by or on behalf of the Owners waiving compliance. No course of dealing on the part of any Owners, or its respective officers, employees, agents, accountants, attorneys, investment bankers, consultants or other authorized representatives, nor any failure by an Owner to exercise any of its rights under this Agreement shall operate as a waiver thereof or affect in any way the right of such Owner at a later time to enforce the performance of such provision. No waiver by any Owner of any condition, or any breach of any term or covenant contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term or covenant. The rights of the Owners under this Agreement shall be cumulative, and the exercise or partial exercise of any such right shall not preclude the exercise of any other right.

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

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

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

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

ARTICLE FOURTEEN
DEFINITIONS

For all purposes of this Agreement (including the preceding sections and recitals), unless otherwise required by the context in which any defined term appears or otherwise defined in the body of this Agreement, capitalized terms have the meanings specified in this Article Fourteen. In this Agreement, unless expressly stated otherwise: (a) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as has been, or may be, amended, supplemented or otherwise modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (b) reference to any

Applicable Law means such Applicable Law as has been, or may be, amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations, promulgated thereunder; (c) the singular includes the plural, as the context requires; (d) the terms "includes" and "including" mean "including, but not limited to"; (e) "Day" (regardless of capitalization) shall mean a calendar day, unless specifically designated as a Business Day or business day; (f) "Month" (regardless of capitalization) shall mean a calendar month; (vii) references to articles, sections and appendices mean the articles and sections of, and appendices to, this Agreement.

"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 KPCo (as assignee of Ohio Power Company), as amended by Amendment No. 2010-1 dated August 2, 2010, as further amended by Amendment No. 2012-1 dated February 20, 2012 and as further amended by Amendment No. 2013-1 dated June 5, 2013, as may be amended, amended and restated, supplemented or modified from time to time, and as may be assigned to Operator or an Affiliate of Operator.

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

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

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

"Coal Inventory Adjustment" shall mean the weighted-average cost of KPCo'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*.]

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:

Exhibit A

Capital Budget, Initial Budgets and Forecast

[To Be Attached as of the Effective Date.]

Exhibit B

Form of Monthly Sample Report

[To Be Attached as of the Effective Date.]

MITCHELL OPERATING COMMITTEE

MINUTES

November 9, 2021

Pursuant to notice, a videoconference meeting of the Operating Committee (the "Committee") of the Mitchell Operating Agreement (the "Agreement") was held on November 9, 2021, at 5:00 p.m. (Eastern).

Operating Representatives Present:

(1) Chris Beam, President and Chief Operating Officer, Wheeling Power Company; (2) Brett Mattison, President and Chief Operating Officer, Kentucky Power Company; and (3) Tim Kerns, VP Generating Assets, Fossil & Hydro Generation, American Electric Power Service Corporation.

Constituting all of the Operating Representatives. Also present were John Crespo, Christen Blend, Jim Bacha, Randy Ryan, Stephan Haynes, Matt Satterwhite, Mike Zwick, Brian Sherrick and Bill Mast.

Mr. Crespo acted as Secretary of the meeting of the Operating Committee. Mr. Crespo presented and on motion duly seconded the Operating Representatives approved the Agenda for the meeting, attached.

Mr. Ryan, AEP legal counsel, presented further information about the proposed Mitchell Operation and Maintenance Agreement and the proposed Mitchell Ownership Agreement requested by the Operating Representatives during the meeting of the Mitchell Operating Committee held on November 2, 2021. The Operating Representatives and legal counsel engaged in further discussions regarding the terms and condition of the agreements.

Mr. Sherrick, on behalf of the Agent, presented information regarding the selection of an independent engineer as a technical expert to provide information to the Operating Committee to identify and separate ELG and CCR project costs. Mr. Sherrick presented a non-final summary of the Agent's evaluation of the firms, attached to these Minutes. Mr. Sherrick noted that the Agent was still completing its evaluation. The Operating Representatives, Mr. Sherrick and other meeting attendees engaged in additional discussions regarding the selection of the independent engineer. Mr. Sherrick stated that the Agent would provide a final recommendation to the Operating Representatives for their approval when the Agent's evaluation was completed.

Mr. Sherrick further provided information to the Operating Representatives concerning the engineering and design contracts that would need to be awarded by the Mitchell Plant operator to various vendors so that the ELG and CCR work could be completed. Mr. Sherrick further noted that any expenditures could be reallocated between Kentucky Power and Wheeling Power based

on the study of the independent engineer and the terms of the proposed Mitchell Ownership Agreement, when full executed following necessary regulatory approvals.

There being no further business, the Operating Committee meeting was adjourned.

John Crespo

Secretary

John C Crespo

From: Brian D Sherrick
Sent: Tuesday, November 9, 2021 12:57 PM
To: John C Crespo
Cc: Bill Mast; Raja Sundararajan; Matthew J Satterwhite; Tim Kerns
Subject: WV Units - CCR/ELG Engineering Study Update (11/9/21)

John,
Here is the status update for finding an independent engineering consultant to evaluate the WV units CCR/ELG cost allocations in preparation for the Mitchell Operating Agreement meeting this afternoon:

==========

We have engaged several A/E firms with the necessary technical, accounting, and regulatory experience to provide direction on appropriate cost allocation of the CCR vs ELG scope of works at the WV facilities. The requests were made to firms based on our experience and recommendations from the project equipment suppliers and peer utilities. What we found is a very small subset of A/Es that possess the capabilities to perform this analysis and that the same A/Es (Worley, Burns & McDonnell, and S&L) were recommended by several sources. Note: Worley is the A/E for the projects.

A list of the firms and proposal status is outlined in the matrix below. We are still awaiting a proposal from one firm, but indications are that we would select either Burns & McDonnell or Black & Veatch to perform this study. The work will be done under a T&M contract, so there is an assumption that the cost gap will narrow between those two firms upon execution of a contract.

WV Plants CCR/ELG Engineering Cost Study
rev 11-9-21

Privileged and confidential

Consultant	Technology Experience	CCR/ELG Rule Familiarity	Reg./Test Experience	Submitted Proposal	Proposed Schedule	Proposed Cost ($K)	Evaluation
Burns & McDonnell	**X**	**X**	**X**	**X**	10 wks	$148	Provided conservative proposal. Add'l cost for operational cost evaluation. A/E for Flint Creek CCR/ELG Project.
TRC	**X***			**-**	-	-	*No ELG Exp. No Reg. Exp. No Proposal

Power Engineers	**X**	**X**	**X**	**-**	-	-	Firm is capable, no resource availability until Q1 '22
Golder Associates							RFP made 10-29-21 (DUKE reference), proposal due 11/10.
Black & Veatch	**X**	**X**	**X**	**X**	10 wks	$44	Add'l cost for operational cost evaluation. A/E for Southern Plant Barry CCR/ELG Project. AEP T&D uses; past AEP Gen experience.
HDR	**X***			**-**	-	-	*No ELG Exp. No Reg. Exp. No RFP Issued
Keiwit	**X**	**X**	**X**	**-**	-	-	Non-responsive

Our evaluation and final recommendation will be made by 11/12, but wanted to update you on our progress and see if there are any concerns with using a firm very experienced with AEP and not completely independent given the sparsity of firms capable of completing the task.

Thanks,
Bill Mast

MITCHELL OPERATING COMMITTEE

AGENDA

November 9, 2021

Pursuant to notice, a videoconference meeting of the Operating Committee (the "Committee") of the Mitchell Operating Agreement (the "Agreement") will be held on November 9, 2021, at 5:00 p.m. (Eastern).

Invitees: Operating Representatives: Brett Mattison (Kentucky Power), Chris Beam (Wheeling Power), Tim Kerns (Agent), Mike Zwick (Agent – Alternate)

Other Invitees: John Crespo (Secretary), Christen Blend, Jim Bacha, Randy Ryan, Mathew Satterwhite, Raja Sundararajan, Randy Ryan, Stephan Haynes, Brian Sherrick, Bill Mast

1. Call to Order

A. Roll Call for Quorum

B. Review of Agenda

2. Review of Proposed Mitchell Operations and Maintenance Agreement and Proposed Mitchell Ownership Agreement – Legal Counsel

A. Review and discussion of revised terms of draft Mitchell Operations and Maintenance Agreement and draft Mitchell Ownership Agreement.

B Discussion of potential resolutions related to the proposed agreements.

2. Update on Selection of Independent Engineer for CCR/ELG Cost Segregation – Brian Sherrick

3. Briefing on Future Expenditures Related to CCR/ELG Engineering and Design – Brian Sherrick

3. Other Business

4. Adjournment

Pursuant to notice, a videoconference meeting of the Operating Committee (the "Committee") of the Mitchell Operating Agreement (the "Agreement") was held on April 12, 2022, at 1:00 p.m. EDT.

Operating Representatives Present:

- Chris Beam, President and Chief Operating Officer, Wheeling Power Company (WPCo)
- Brett Mattison, President and Chief Operating Officer, Kentucky Power Company (KPCo)
- Tim Kerns, VP Generating Assets – KPCO and I&M, American Electric Power Service Corporation (AEPSC)

Constituting all of the Operating Committee representatives. Also present were:

- John Crespo – Deputy General Counsel, AEPSC
- Mike Zwick – VP Generating Assets - APCo, AEPSC
- Brian West – VP Regulatory and Finance, KPCo
- Brian Sherrick – Project Solutions Managing Director, AEPSC
- Bill Mast – Project Solutions Director, AEPSC

Bill Mast provided an overview presentation for the Committee to review the results of the Burns and McDonnell (independent engineer retained by this Operating Committee to evaluate the allocation of capital and O&M costs of the CCR and ELG compliance projects) CCR/ELG Cost Allocation Summary. The Operating Committee will review the Mitchell Plant CCR/ELG Cost Allocation Summary report and respond by email to accept, modify, or amend the document by 4/28/22.

Action Item: Voting members of the Operating Committee to respond by email by 4/28/22 whether to accept, modify or amend the Burns and McDonnell letter regarding ELG / CCR cost allocations.

WRITTEN CONSENT ACTION

OF THE MITCHELL OPERATING COMMITTEE

September 1, 2022

The undersigned, being all of the Owners' Operating Representatives of the Operating Committee (the "Committee") of the Mitchell Plant Operating Agreement (the "Agreement"), do hereby consent to the adoption of the following resolutions, which resolutions shall be deemed to be adopted as of the date hereof ("Effective Date") and to have the same force and effect as if such resolutions had been adopted at a meeting duly called therefor:

1. Waiver of Notice.

RESOLVED, that any and all notice to take any action in adopting the following resolutions be, and it hereby is, waived by the undersigned.

2. Approval of Resolutions To Implement the Agreement

WHEREAS, Wheeling Power Company ("Wheeling Power") and Kentucky Power Company ("Kentucky Power") recognize that the Public Service Commission of West Virginia ("WVPSC") and the Kentucky Public Service Commission ("KPSC") approved different investments in response to federal environmental rules at the Mitchell Plant and different approaches to operating and owning the Mitchell Plant after December 31, 2028;

WHEREAS, the WVPSC in its orders authorized Wheeling Power to make any improvements or upgrades to the Mitchell Plant to enable compliance with the Effluent Limitations Guidelines ("ELG Rule"), and agreed exclusively to fund all of the capital expenditures associated with implementation of the ELG Rule ("ELG Upgrades"), and to make other necessary improvements or upgrades to the Mitchell Plant, to preserve the option to operate the plant past 2028;

WHEREAS, the KPSC in its orders authorized Kentucky Power to make only the improvements and upgrades to the Mitchell Plant to enable compliance with the Coal Combustion Residuals Rule ("CCR Rule"), and agreed to fund only its ownership share of the capital expenditures associated with the CCR Rule ("CCR Upgrades"), but not the ELG Rule, and acknowledged that because the ELG Upgrades are needed to operate the Mitchell Plant after 2028, approving the CCR and not the ELG Upgrades results in Kentucky Power being permitted only to operate the Mitchell Plant until the end of 2028;

WHEREAS, on November 19, 2021, each Owner filed with its Commission a proposed Mitchell Plant Operations and Maintenance Agreement and a proposed Mitchell Plant Ownership Agreement ("Proposed Mitchell Agreements") to replace the Agreement to facilitate compliance with the KPSC's and WVPSC's respective orders regarding compliance with the CCR and ELG Rules at the Mitchell Plant;

WHEREAS, the Committee believed that replacement of the Agreement with the New Mitchell Agreements at the soonest practical date was advisable and in the best interests of

Kentucky Power Company, Wheeling Power Company, and their respective customers;

WHEREAS, the KPSC and WVPSC issued orders adopting versions of the Mitchell Agreements on May 3, 2022 and July 1, 2022, respectively, that differ in material respects, such that the Owners are unable to enter into new agreements at the current time;

WHEREAS, the Agreement remains in full force and effect in accordance with its terms pending future negotiation of longer term arrangements by the Owners that replace the Agreement, subject to state and other applicable regulatory approvals;

WHEREAS, in light of the foregoing developments, the Operating Committee believes it is now in the best interests of the Mitchell Plant and their respective customers to continue operating under the Agreement in the short term to accomplish the operational objectives necessitated by the KPSC and WVPSC in their orders and prevent any delays in constructing the ELG Upgrades, which could have a negative effect on future plant outages and unit availability;

WHEREAS, the Committee must establish certain operating principles pursuant to its authority under the Agreement to appoint Wheeling Power as the operator of the Mitchell Plant, to enable the ELG Upgrades to be performed by Wheeling Power, and to adopt the procedures necessary to properly allocate costs between the two Owners such that Wheeling Power will pay for all of the costs of the ELG Upgrades, in accordance with the authority of the Committee under the Agreement;

WHEREAS, the Committee must also appropriately allocate costs between the two Owners such that Wheeling Power will pay for the cost of capital investments to the extent they have a depreciable life after December 31, 2028;

WHEREAS, the Committee is vested with certain enumerated rights and duties under the Agreement, as well as other duties as agreed by the Owners (Section 7.2(j));

WHEREAS, the rights and responsibilities of the Committee include, but are not limited to, (1) review and approval of an annual budget and operating plan (Section 7.2(a)); (2) decisions on capital expenditures (Section 7.2(d)); establishment and modification of billing procedures (Section 7.2(f)); (3) establishment of, termination of, and approval of any change or amendment to the operating arrangements between Kentucky Power and Agent pertaining to the Mitchell Plant (Section 7.2(h)); and (4) review and approval of plans and procedures designed to ensure compliance with any environmental law, regulation ordinance or permit (Section 7.2(i));

WHEREAS, pursuant to Section 7.9 of the Agreement, capital repairs and improvements to the Mitchell Plant will be determined by the Committee pursuant to the annual budgeting process which shall, pursuant to Section 7.10 of the Agreement, remain in effect throughout the applicable operating year subject to such changes, revisions, amendments and updating as the Committee may determine; and

WHEREAS, further pursuant to Section 7.9, the expenditures that the Committee determines have been or will be incurred exclusively for one Owner shall be assigned exclusively

to that owner, and, pursuant to Section 7.2(d), decisions on capital expenditures are among the responsibilities of the Committee.

NOW, THEREFORE, BE IT RESOLVED, that Kentucky Power's rights and obligations to operate and maintain the Mitchell Plant are delegated to Wheeling Power, and Wheeling Power accepts and consents to such delegation, effective as of the Effective Date, including, but not limited to, Kentucky Power's rights and obligations under Sections 1.1 (Appointment of Operator), 1.2 (Maintenance of Books and Records), 1.4 (Monthly Statements), 1.5 (Daily Operations), 3.1 (Capital Work), 5.1 (Coal Procurement), 6.3 (Accounting - Operating Expenses), 6.4 (Accounting – Maintenance Expenses), and 7.10 (Budgeting) of the Agreement, including the following which shall occur on or after the Effective Date:

a. Kentucky Power's employees who work at the Mitchell Plant shall become employees of Wheeling Power;

b. All open and active contracts on the Effective Date for the purchase of fuel, transportation, goods and services for the operation, maintenance and improvement of the Mitchell Plant and all collective bargaining agreements for labor at Mitchell Plant shall be assigned by Kentucky Power to Wheeling Power and assumed by Wheeling Power;

c. All leased property used in support of the Mitchell Plant, including but not limited to vehicles and computer equipment, shall be transferred on the books of the lessor from the leased assets account of Kentucky Power to the leased assets account of Wheeling Power; and

d. Ownership or other beneficial interest of the tugboat used at Mitchell Plant shall be transferred to Wheeling Power.

RESOLVED, that Wheeling Power will have the power and obligation as the operator of the Mitchell Plant to enter into and hold permits in its name on behalf of both Owners or on its own behalf, as the circumstances require, including the ELG permits, and all existing permits not held by Wheeling Power will be transferred to it in an orderly manner.

RESOLVED, that pursuant to Sections 7.2(d) and 7.9 of the Agreement, the Owners jointly recognize Wheeling Power's right to carry out and pay for the ELG Upgrades under the Agreement and approve the following procedures to facilitate that work consistent with the orders of the WVPSC and KPSC, and to protect Kentucky ratepayers from the associated costs and risks:

a. The permits related to the ELG Upgrades at the Mitchell Plant will be transferred to Wheeling Power to the extent not held by Wheeling Power, and all prior action taken by the Owners in furtherance of the foregoing is ratified and approved;

b. All construction and other contracts related to the ELG Upgrades will be in the name of Wheeling Power such that Wheeling Power (and not Kentucky Power) is contractually responsible for those contracts;

c. The appropriate work orders and supporting accounting will be implemented to assign to Wheeling Power all costs associated with the ELG Upgrades;

d. The appropriate work orders and supporting accounting will be implemented to assign to Wheeling Power and Kentucky Power equally all costs associated with the CCR Upgrades;

e. The expenditures associated with the CCR Upgrades, in which the Owners share equally, and the ELG Upgrades, which will be the exclusive responsibility of Wheeling Power, will be classified in accordance with the recommendations of the independent engineer's report identifying the ELG Upgrades and CCR Upgrades and their associated costs, as previously adopted by this Committee.

RESOLVED, that to further implement and clarify Sections 3.2 and 7.9 of the Agreement, the Owners approve the following procedures related to capital items which have a depreciable life extending beyond, or with an in-service date not occurring until after, December 31, 2028:

a. Wheeling Power will exclusively pay for any capital item whose in-service date is reasonably expected to be after December 31, 2028;

b. Wheeling Power's Operating Representative may unilaterally authorize any capital expenditure that will be assigned exclusively to Wheeling Power, including the ELG Upgrades;

c. if a capital expenditure has a depreciable life that extends beyond December 31, 2028, Kentucky Power's responsibility for the cost of that item will be limited to its 50% ownership share of the cost of the asset ratably allocated to the portion of such depreciable life occurring prior to December 31, 2028, and Wheeling Power will be responsible for the remainder;

d. any other capital expenditures shall be allocated 50% to (and paid for by) each Owner, subject to the written approval of the Operating Committee;

e. to the extent either Owner funds any capital item in excess of 50%, that capital item will be owned by the Owners in proportion to their investment in that asset for regulatory, tax and other purposes; and

f. an Owner's Operating Representative may unilaterally authorize any capital expenditure for which such Owner shall be allocated greater than 75% of the capital costs, up to an aggregate amount of such capital costs that does not exceed $3 million per year allocated to the other Owner.

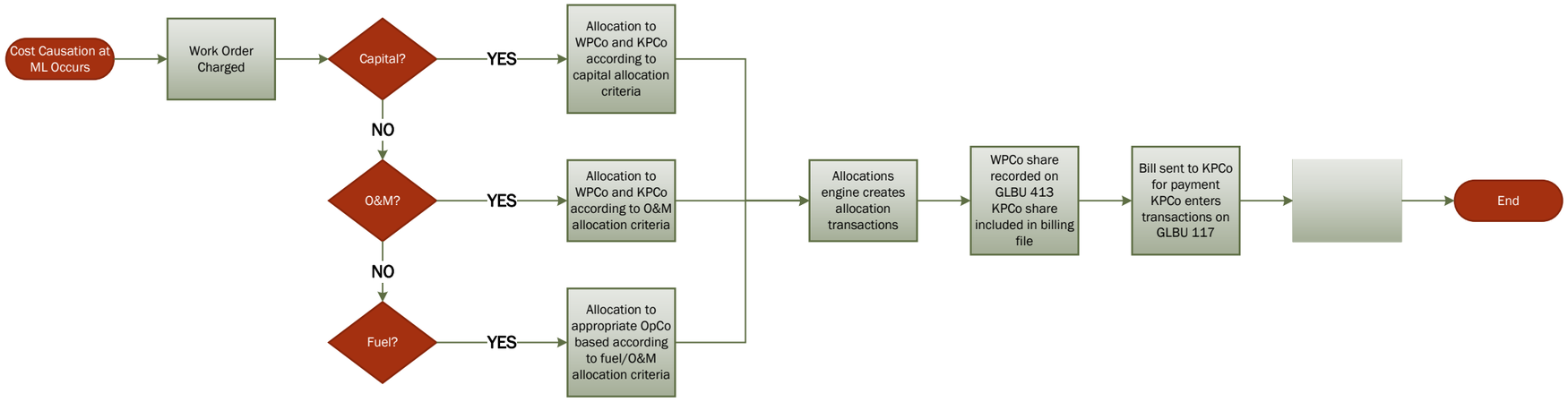
IN WITNESS WHEREOF, the undersigned have signed this written consent action effective as of the Effective Date.

OPERATING REPRESENTATIVES:

D. Brett Mattison

Christian T. Beam

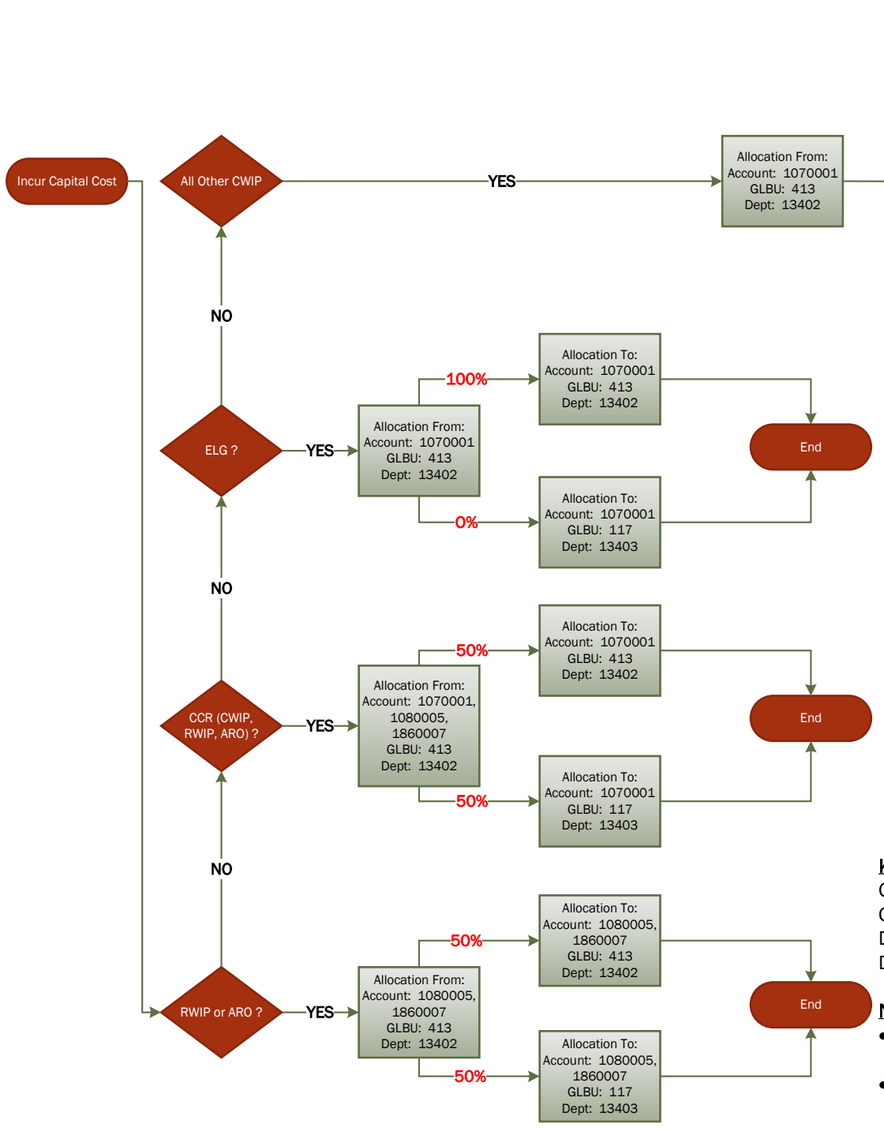
Mitchell Plant Billing Process (WPCo to KPCo)



Key:
GLBU 117 – Kentucky Power Company Generation
GLBU 413 - Wheeling Power Company Generation

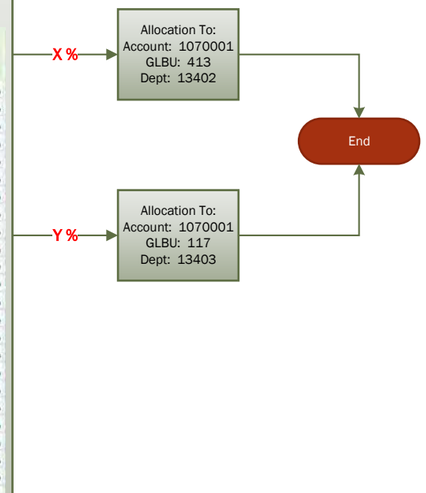
Notes:
The Mitchell Plant joint billing process dictates the allocation of capital and expense transactions incurred in support, directly and indirectly, of the plant. Certain portions of the billings process related to fuel expense occur manually but are included within this process flow document.

Mitchell Plant Capital Allocation



CWIP Allocation Lookup Table

Month	(X) Wheeling	(Y) Kentucky	Month	(X) Wheeling	(Y) Kentucky
Sep-22	82.73%	17.27%	Jan-26	90.00%	10.00%
Oct-22	82.88%	17.12%	Feb-26	90.22%	9.78%
Nov-22	83.03%	16.97%	Mar-26	90.45%	9.55%
Dec-22	83.18%	16.82%	Apr-26	90.68%	9.32%
Jan-23	83.33%	16.67%	May-26	90.91%	9.09%
Feb-23	83.49%	16.51%	Jun-26	91.14%	8.86%
			Jul-26	91.38%	8.62%
Mar-23	83.64%	16.36%	Aug-26	91.62%	8.38%
Apr-23	83.80%	16.20%	Sep-26	91.86%	8.14%
May-23	83.96%	16.04%	Oct-26	92.11%	7.89%
Jun-23	84.12%	15.88%	Nov-26	92.35%	7.65%
Jul-23	84.29%	15.71%	Dec-26	92.60%	7.40%
Aug-23	84.45%	15.55%	Jan-27	92.86%	7.14%
Sep-23	84.62%	15.38%	Feb-27	93.11%	6.89%
Oct-23	84.78%	15.22%	Mar-27	93.37%	6.63%
Nov-23	84.95%	15.05%	Apr-27	93.64%	6.36%
Dec-23	85.12%	14.88%	May-27	93.90%	6.10%
Jan-24	85.29%	14.71%	Jun-27	94.17%	5.83%
Feb-24	85.47%	14.53%	Jul-27	94.44%	5.56%
Mar-24	85.64%	14.36%	Aug-27	94.72%	5.28%
Apr-24	85.82%	14.18%	Sep-27	95.00%	5.00%
May-24	86.00%	14.00%	Oct-27	95.28%	4.72%
Jun-24	86.18%	13.82%	Nov-27	95.57%	4.43%
Jul-24	86.36%	13.64%	Dec-27	95.86%	4.14%
Aug-24	86.55%	13.45%	Jan-28	96.15%	3.85%
Sep-24	86.73%	13.27%	Feb-28	96.45%	3.55%
Oct-24	86.92%	13.08%	Mar-28	96.75%	3.25%
Nov-24	87.11%	12.89%	Apr-28	97.06%	2.94%
Dec-24	87.31%	12.69%	May-28	97.37%	2.63%
Jan-25	87.50%	12.50%	Jun-28	97.68%	2.32%
Feb-25	87.70%	12.30%	Jul-28	98.00%	2.00%
Mar-25	87.89%	12.11%	Aug-28	98.32%	1.68%
Apr-25	88.10%	11.90%	Sep-28	98.65%	1.35%
May-25	88.30%	11.70%	Oct-28	98.98%	1.02%
Jun-25	88.50%	11.50%	Nov-28	99.32%	0.68%
Jul-25	88.71%	11.29%	Dec-28	99.66%	0.34%
Aug-25	88.92%	11.08%			
Sep-25	89.13%	10.87%			
Oct-25	89.34%	10.66%			
Nov-25	89.56%	10.44%			
Dec-25	89.78%	10.22%			

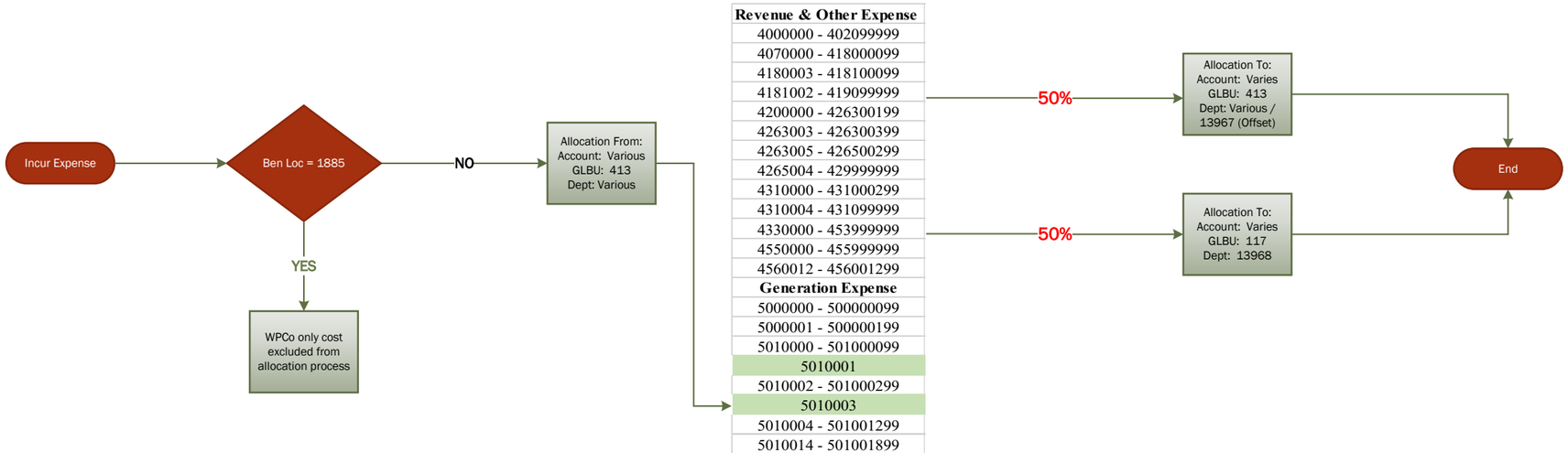


Key:
GLBU 117 – Kentucky Power Company Generation
GLBU 413 - Wheeling Power Company Generation
DeptID 13402 – Mitchell Plant WPCo's Share
DeptID 13403 – Mitchell Alloc/WPCo Billing

Notes:

- WPCo will exclusively pay for any capital item whose in-service date is reasonably expected to be after 12/31/2028.
- If a capital expenditure has a depreciable life that extends beyond 12/31/2028, KPCo's responsibility for the cost of that item will be limited to its 50% ownership share of the cost of the asset ratably allocated to the portion of such depreciable life occurring prior to 12/31/2028. The table above provides for the methodology to meet this requirement.
- Any other capital expenditure will be allocated 50% to each owner.

Mitchell O&M / A&G / Fuel Expense Allocation



Revenue & Other Expense
4000000 - 402099999
4070000 - 418000099
4180003 - 418100099
4181002 - 419099999
4200000 - 426300199
4263003 - 426300399
4263005 - 426500299
4265004 - 429999999
4310000 - 431000299
4310004 - 431099999
4330000 - 453999999
4550000 - 455999999
4560012 - 456001299
Generation Expense
5000000 - 500000099
5000001 - 500000199
5010000 - 501000099
5010001
5010002 - 501000299
5010003
5010004 - 501001299
5010014 - 501001899
5010019
5010020 - 501003299
5010034 - 502099999
5020002
5020004
5030000 - 506000399
5060005 - 507099999
5100000 - 511099999
5120000 - 513099999
5140000 - 514099999
A&G Expense
9200000 - 926005499
9260056 - 931099999
9350001 - 935099999
Note - fuel expense highlighted in green is split 50 / 50 via manual journal entry

Key:
Ben Loc 1885 - WPCo Generation Only (excluded from allocation process)
GLBU 117 – Kentucky Power Company Generation
GLBU 413 - Wheeling Power Company Generation
DeptID 13967 - Mitchell Alloc KPCo Share
DeptID 13968 – Mitchell Plant/KPCo Share

Notes:
O&M costs incurred on BU 413 but not included in the list above are EXCLUDED from the joint billing process (i.e. PJM NITS charges billed to the generator but not related to Mitchell plant operation).

Mitchell Fuel Inventory

					TOTAL PILE		
	QUANTITY	DOLLARS	$/QUANTITY		QUANTITY	DOLLARS	$/QUANTITY
COAL HIGH SULFUR INVENTORY (FERC ACCT 151)							
Balance Beginning of Month	189,876	$7,972,569.56	$41.99		379,751	$15,945,139.12	$41.99
Added During Month	57,827	$2,385,142.21	$41.25		104,640	$4,309,773.82	$41.19
Available for Use During Month	247,702	$10,357,711.77	$41.82		484,391	$20,254,912.94	$41.82
Inventory/Survey Adjustments	-	$0.00	$0.00		-	$0.00	$0.00
Used During Month: Generation Unit #1	40,001	$1,672,649.07	$41.82		75,317	$3,149,394.01	$41.82
Used During Month: Generation Unit #2	34,999	$1,463,489.53	$41.82		63,670	$2,662,372.59	$41.82
Total Consumed	75,000	$3,136,138.60	$41.82		138,987	$5,811,766.60	$41.82
Balance End of Month	172,702	$7,221,573.17	$41.82		345,404	$14,443,146.34	$41.82

Notes:
In any calendar month, the average unit cost of coal available for consumption from Mitchell common coal stockpiles 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 stockpiles. 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.

The number of tons of coal consumed by the Mitchell Plant in each calendar month from the Mitchell Plant common coal stockpiles 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 stockpile 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 stockpiles during such month. Such dollar amount shall be credited to the Mitchell Plant fuel stockpile and charged to the Mitchell Plant fuel consumed.

Mitchell Plant O&M Allocation Source Data

O&M Step #2: Mitchell O&M	
Costs directly charged to Mitchell benefiting locations	
Pool Fields - Dollars to be allocated:	
Account Range: Tree: Allocation MTCH O&M	4000000 - 402099999
	4070000 - 418000099
	4180003 - 418100099
	4181002 - 419099999
	4200000 - 426300199
	4263003 - 426300399
	4263005 - 426500299
	4265004 - 429999999
	4310000 - 431000299
	4310004 - 431099999
	4330000 - 453999999
	4550000 - 455999999
	4560012 - 456001299
	5000000 - 500000099
	5000001 - 500000199
	5030000 - 506000399
	5060005 - 507099999
	5100000 - 511099999
	5140000 - 514099999
	9200000 - 926005499
	9260056 - 931099999
	9350001 - 935099999
MITCH O&M MON	5010000 - 501000099
	5010002 - 501000299
	5010004 - 501001299
	5010014 - 501001899
	5010020 - 501003299
	5010034 - 502099999
MTCH VOM	5120000 - 513099999
GLBU:	413
Benefiting Loc:	1267 - Mitchell Plant
	1257 - Mitchell Unit 1
	1311 - Mitchell Unit 2
Basis to Allocating Capital:	50%
Output:	
GLBU:	413
Dept:	13968 - Mitchell Plant Liberty Share
Account:	1430080
Work Order:	Blank
Project:	Blank
CC:	Blank
ABM:	Blank
GLBU:	413
Dept:	13967 - Mitchell Alloc/Liberty Billing
Account:	From Pool
Work Order:	From Pool
Project:	From Pool
CC:	From Pool
ABM:	From Pool

Mitchell Plant Capital Allocation Source Data

Capital Step #1: CWIP			Changes each month based on spreadsheet Jeff pulled together.					Annual Avg.	
Pool Fields - Dollars to be allocated:			**Month**	**(X) Wheeling**	**(Y) Kentucky**	**Remaining Dep. Life**	**Periods prior to Dec. 2028**	**Portion of Dep Life before Dec. 2028**	**Wheeling**	**Kentucky**
Account Range:	1070001		Sep-22	82.73%	17.27%	220	76	34.55%		
GLBU:	413		Oct-22	82.88%	17.12%	219	75	34.25%		
Cost Component:	0 - 022		Nov-22	83.03%	16.97%	218	74	33.94%		
	025 - ZZZ		Dec-22	83.18%	16.82%	217	73	33.64%	**82.95%**	**17.05%**
Benefiting Loc:	1267 - Mitchell Plant		Jan-23	83.33%	16.67%	216	72	33.33%		
	1257 - Mitchell Unit 1		Feb-23	83.49%	16.51%	215	71	33.02%		
	1311 - Mitchell Unit 2									
Basis to Allocating Capital:	Stat Entry - Allocation of Non-ELG Mitchell Capital Expenditures		Mar-23	83.64%	16.36%	214	70	32.71%		
Output:			Apr-23	83.80%	16.20%	213	69	32.39%		
GLBU:	117		May-23	83.96%	16.04%	212	68	32.08%		
Dept:	13403		Jun-23	84.12%	15.88%	211	67	31.75%		
Account:	1070001		Jul-23	84.29%	15.71%	210	66	31.43%		
Work Order:	Child Work Order with ML		Aug-23	84.45%	15.55%	209	65	31.10%		
Project:	Project unique for Child Work Order		Sep-23	84.62%	15.38%	208	64	30.77%		
CC:	From Pool		Oct-23	84.78%	15.22%	207	63	30.43%		
ABM:	From Pool		Nov-23	84.95%	15.05%	206	62	30.10%		
GLBU:	413		Dec-23	85.12%	14.88%	205	61	29.76%	**84.21%**	**15.79%**
Dept:	13402		Jan-24	85.29%	14.71%	204	60	29.41%		
Account:	1070001		Feb-24	85.47%	14.53%	203	59	29.06%		
Work Order:	From Pool		Mar-24	85.64%	14.36%	202	58	28.71%		
Project:	From Pool		Apr-24	85.82%	14.18%	201	57	28.36%		
CC:	From Pool		May-24	86.00%	14.00%	200	56	28.00%		
ABM:	From Pool		Jun-24	86.18%	13.82%	199	55	27.64%		
			Jul-24	86.36%	13.64%	198	54	27.27%		
Capital Step #2: RWIP			Aug-24	86.55%	13.45%	197	53	26.90%		
Pool Fields - Dollars to be allocated:			Sep-24	86.73%	13.27%	196	52	26.53%		
Account Range:	1080005		Oct-24	86.92%	13.08%	195	51	26.15%		
GLBU:	413		Nov-24	87.11%	12.89%	194	50	25.77%		
Cost Component:	0 - 022		Dec-24	87.31%	12.69%	193	49	25.39%	**86.28%**	**13.72%**
	025 - ZZZ		Jan-25	87.50%	12.50%	192	48	25.00%		
Benefiting Loc:	1267 - Mitchell Plant		Feb-25	87.70%	12.30%	191	47	24.61%		
	1257 - Mitchell Unit 1		Mar-25	87.89%	12.11%	190	46	24.21%		
	1311 - Mitchell Unit 2		Apr-25	88.10%	11.90%	189	45	23.81%		
Basis to Allocating Capital:	50%		May-25	88.30%	11.70%	188	44	23.40%		
Output:			Jun-25	88.50%	11.50%	187	43	22.99%		
GLBU:	117		Jul-25	88.71%	11.29%	186	42	22.58%		
Dept:	13403		Aug-25	88.92%	11.08%	185	41	22.16%		
Account:	1080005		Sep-25	89.13%	10.87%	184	40	21.74%		
Work Order:	Child Work Order with ML		Oct-25	89.34%	10.66%	183	39	21.31%		
Project:	Project unique for Child Work Order		Nov-25	89.56%	10.44%	182	38	20.88%		
CC:	From Pool		Dec-25	89.78%	10.22%	181	37	20.44%	**88.62%**	**11.38%**
ABM:	From Pool		Jan-26	90.00%	10.00%	180	36	20.00%		
GLBU:	413		Feb-26	90.22%	9.78%	179	35	19.55%		
Dept:	13402		Mar-26	90.45%	9.55%	178	34	19.10%		
Account:	1080005		Apr-26	90.68%	9.32%	177	33	18.64%		
Work Order:	From Pool		May-26	90.91%	9.09%	176	32	18.18%		
Project:	From Pool		Jun-26	91.14%	8.86%	175	31	17.71%		
CC:	From Pool		Jul-26	91.38%	8.62%	174	30	17.24%		
ABM:	From Pool		Aug-26	91.62%	8.38%	173	29	16.76%		
			Sep-26	91.86%	8.14%	172	28	16.28%		
Capital Step #3: ARO			Oct-26	92.11%	7.89%	171	27	15.79%		
Pool Fields - Dollars to be allocated:			Nov-26	92.35%	7.65%	170	26	15.29%		
Account Range:	1860007		Dec-26	92.60%	7.40%	169	25	14.79%	**91.28%**	**8.72%**
GLBU:	413		Jan-27	92.86%	7.14%	168	24	14.29%		
Cost Component:	0 - 022		Feb-27	93.11%	6.89%	167	23	13.77%		
	025 - ZZZ		Mar-27	93.37%	6.63%	166	22	13.25%		
Benefiting Loc:	1267 - Mitchell Plant		Apr-27	93.64%	6.36%	165	21	12.73%		
	1257 - Mitchell Unit 1		May-27	93.90%	6.10%	164	20	12.20%		
	1311 - Mitchell Unit 2		Jun-27	94.17%	5.83%	163	19	11.66%		
Basis to Allocating Capital:	50%		Jul-27	94.44%	5.56%	162	18	11.11%		
Output:			Aug-27	94.72%	5.28%	161	17	10.56%		
GLBU:	117		Sep-27	95.00%	5.00%	160	16	10.00%		
Dept:	13403		Oct-27	95.28%	4.72%	159	15	9.43%		
Account:	1860007		Nov-27	95.57%	4.43%	158	14	8.86%		
Work Order:	Child Work Order with ML		Dec-27	95.86%	4.14%	157	13	8.28%	**94.33%**	**5.67%**
Project:	Project unique for Child Work Order		Jan-28	96.15%	3.85%	156	12	7.69%		
CC:	From Pool		Feb-28	96.45%	3.55%	155	11	7.10%		
ABM:	From Pool		Mar-28	96.75%	3.25%	154	10	6.49%		
GLBU:	413		Apr-28	97.06%	2.94%	153	9	5.88%		
Dept:	13402		May-28	97.37%	2.63%	152	8	5.26%		
Account:	1860007		Jun-28	97.68%	2.32%	151	7	4.64%		
Work Order:	From Pool		Jul-28	98.00%	2.00%	150	6	4.00%		
Project:	From Pool		Aug-28	98.32%	1.68%	149	5	3.36%		
CC:	From Pool		Sep-28	98.65%	1.35%	148	4	2.70%		
ABM:	From Pool		Oct-28	98.98%	1.02%	147	3	2.04%		
			Nov-28	99.32%	0.68%	146	2	1.37%		
Capital Step #4: CWIP/RWIP/ARO - CCR			Dec-28	99.66%	0.34%	145	1	0.69%	**97.87%**	**2.13%**
Pool Fields - Dollars to be allocated:										
Account Range:	1070001									
	1080005									
	1860007									
GLBU:	413									
Cost Component:	0 - 022									
	025 - ZZZ									
Benefiting Loc:	1962 - CCR Mitchell Plant									
Basis to Allocating Capital:	50%									
Output:										
GLBU:	117									
Dept:	13403									
Account:	1070001									
Work Order:	Child Work Order with ML									
Project:	Project unique for Child Work Order									
CC:	From Pool									
ABM:	From Pool									
GLBU:	413									
Dept:	13402									
Account:	1070001									
Work Order:	From Pool									
Project:	From Pool									
CC:	From Pool									
ABM:	From Pool									

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 KPCo and WPCo, or both of them, as the case may be.

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

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

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

Allowances to satisfy the Emission Allowances required because of its dispatch of energy from the Mitchell Plant, and the Emission Allowances required to satisfy the Emission Allowance surrender obligations attributable to the Mitchell Plant imposed under the Consent Decree between USEPA and Ohio Power Company entered on December 10, 2007, in Civil Action No. C2-99-1182 and consolidated cases by the U.S. District Court in the Southern District of Ohio. On or before January 10 of each year, Agent shall determine and notify KPCo and WPCo of the number of additional annual Emission Allowances consumed by each of them through December 31 of the previous year, and KPCo and WPCo shall each transfer into the Mitchell Plant U.S. EPA Allowance Transfer System account that number of Emission Allowances with a small compliance margin by January 31 of that year. For seasonal Emission Allowance programs, Agent shall determine and notify KPCo and WPCo of the number of additional seasonal Emission Allowances consumed by each of them during the applicable compliance period by the 10th day of the first month following the end of the compliance period, and KPCo and WPCo shall each transfer into the appropriate Mitchell Plant U.S. EPA Allowance Transfer System Account that number of Emission Allowances with a small compliance margin by the last day of the first month following the end of the compliance period. In the event that KPCo or WPCo fails to surrender the required number of Emission Allowances by January 31 or the last day of the first month following any seasonal compliance period, Agent shall purchase the required number of Emission Allowances, and KPCo or WPCo, as the case may be, shall reimburse Agent for such purchases, with interest at the Federal Funds Rate (as published by the Board of

Governors of the Federal Reserve System as from time to time in effect) running from the date of such purchases to the date of payment. The Operating Committee will develop procedures to be implemented after the end of each calendar year to account for the Emission Allowances required by the use of the Mitchell Plant by KPCo and WPCo and to correct any imbalance between Emission Allowances supplied and Emission Allowances used through the end of the preceding year by settlement or payment.

7.9 Capital repairs and improvements to the Mitchell Plant will be determined by the Operating Committee pursuant to the annual budgeting process set forth in Section 7.10. Expenditures that the Operating Committee determines have been or will be incurred exclusively for one Owner shall be assigned exclusively to that Owner.

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:

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 11.1within 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, incurred 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

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
Charles R. Patton

Title: President

AMERICAN ELECTRIC POWER SERVICE CORPORATION

By:_____
Mark C. McCullough

Title: Executive Vice President - Generation

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

MITCHELL OPERATING COMMITTEE

MINTUES

August 15, 2023

Pursuant to notice, a videoconference meeting of the Operating Committee (the "Committee") of the Mitchell Operating Agreement (the "Agreement") was held on November 2, 2021, at 8:00 a.m. (Eastern).

Operating Representatives Present:

- Aaron Walker, President and Chief Operating Officer, Wheeling Power Company (WPCo);
- Cynthia Wiseman, President and Chief Operating Officer, Kentucky Power Company (KPCo); and
- Tim Kerns, VP Generating Assets APCo/WPCo, American Electric Power Service Corporation (AEPSC).

Constituting all of the Operating Representatives. Also present were:

- Brian West, VP Regulatory and Finance, KPCo
- John Scalzo, VP Regulatory and Finance, WPCo
- Joshua Snodgrass, Energy Production Supt Sr - Mitchell Plant, AEPSC
- Jeff Dial, Dir Coal Tran & Reagent Procurement, Coal, Reagents and Trans, AEPSC
- Bob Jessee, Mng Dir Generating Assets I&M, AEPSC
- Frank Zeroski, Budget Analyst Staff, Appalachian Power
- John Crespo, Deputy General Counsel-Regulatory & Nuclear, AEPSC

Mr. Crespo acted as Secretary of the meeting of the Operating Committee. Mr. Crespo presented and on motion duly seconded the Operating Representatives approved the agenda for the meeting, attached. Mr. Kerns presided over the meeting, constituting the required annual meeting of the Mitchell Operating Committee pursuant to Section 7.3 of the Agreement.

During the meeting, the agenda items were presented to the Operating Committee Representatives by the attendees as follows, as more fully set forth in the 2023 Annual Meeting Slide Deck:

- 2023 YTD Mitchell Unit Performance –Josh Snodgrass
- 2023 YTD Mitchell Financial Performance –Frank Zeroski
- 2023 and 2024 Fuel and Reagent Status –Jeff Dial
- 2024 Proposed Operating Plan –Tim Kerns
- 2024 Annual Budget Review –Frank Zeroski

The Operating Representatives engaged in general discussions regarding the agenda items and reviewed the Consent Action dated September 1, 2022 regarding the allocation of CCR and ELG costs between WPCo and KPCo at the Mitchell Plant. The Operating Representatives requested that AEPSC prepare additional information regarding the options for the future of the Mitchell Plant after December 31, 2028.

There being no further business, the Operating Committee meeting was adjourned.

John C Crespo

Subject:	Mitchell Operating Committee Annual Meeting
Location:	Microsoft Teams Meeting
Start:	Tue 8/15/2023 11:30 AM
End:	Tue 8/15/2023 12:30 PM
Recurrence:	(none)
Meeting Status:	Accepted
Organizer:	Tim Kerns
Required Attendees:	Cynthia G Wiseman; Aaron D Walker; John C Crespo; John J Scalzo; Brian West; Frank J Zeroski; Kimberly K Chilcote; Joshua D Snodgrass
Optional Attendees:	Bob Jessee; Jeffrey C Dial

This will the required annual meeting of the Mitchell Operating Committee. Others will be added to the invitation as the Agenda is finalized. I have attached a copy of the Agreement, the Consent Action transferring the operatorship from KPCo to WPCo and flow diagram describing how the ML costs are allocated to the two OpCos.

If there's a specific topic you'd like to have on the agenda, please let me know.

Agenda items at this time:

- 2023 YTD Unit Performance
- 2023 YTD Capital and O&M Performance
- 2023 and 2024 Fuel and Reagent Inventory and Commitments
- 2024 Operating Plan including Planned Outage Schedule
- 2024 Annual Budget Review and Approval

Thanks!

Microsoft Teams meeting

Join on your computer, mobile app or room device
Click here to join the meeting

Meeting ID: 261 005 420 739
Passcode: FL5sYC
Download Teams | Join on the web

Join with a video conferencing device
953812256@t.plcm.vc
Video Conference ID: 113 657 646 6
Alternate VTC instructions

Or call in (audio only)

+1 614-706-7239,,30967535# United States, Columbus

Phone Conference ID: 309 675 35#

Find a local number | Reset PIN

Learn More | Meeting options

Mitchell Operating Committee
2023 Annual Meeting

August 15, 2023

Agenda

- Welcome and Introductions – Tim Kerns
- Purpose of Meeting – Tim Kerns
- New Since Last Meeting – Tim Kerns
- 2023 YTD Mitchell Unit Performance – Josh Snodgrass
- 2023 YTD Mitchell Financial Performance – Frank Zeroski
- 2023 and 2024 Fuel and Reagent Status – Jeff Dial
- 2024 Proposed Operating Plan – Tim Kerns
- 2024 Annual Budget Review – Frank Zeroski

Purpose of Meeting

- Section 7.3 of the Mitchell Operating Agreement requires that the Operating Committee “shall meet at least annually, and at such other times as any Party may reasonably request.”
- This meeting will serve as the 2023 annual meeting.
- In this meeting we’ll review, and approve where required, the Mitchell Plant’s
  - 2023 YTD operational and financial performance,
  - 2023 and 2024 fuel and reagent status,
  - 2024 Mitchell Plant Operating Plan
  - 2024 Mitchell Budget

New Since Last Meeting

- Key items from the 9/1/22 Consent Action
  - Cost Allocation Process approved and implemented
    - Link to Mitchell Cost Allocation Flow Chart included in Appendix A
  - Operatorship of the Mitchell Plant transferred to Wheeling Power from Kentucky Power

- Internal audit of the Mitchell Cost Allocation process resulting in a “Well Controlled” rating.
  - The audit identified one Process Improvement recommendation which is:
    - Formalize The Unilateral Capital Project Decision Process – due 10/27/23

- Verification of Operating Representatives for WPCo and KPCo
  - WPCo
    - Aaron Walker – Primary
    - John Scalzo – Alternate
  - KPCo
    - Cindy Wiseman – Primary
    - Brian West - Alternate

2023 YTD Unit Performance

	NCF (%)	EAF (%)	EFOR (%)	AF (%)	FOF (%)	POF (%)	MOF (%)
Unit 1	25.34	52.37	25.43	55.68	13.80	15.23	15.28
Unit 2	23.85	53.71	23.77	58.33	11.08	8.62	21.96
Plant	**24.60**	**53.05**	**24.61**	**57.02**	**12.43**	**11.89**	**18.66**

Key Contributors to Unit Performance:

- *Josh*

2023 YTD Financial Performance

Sum of YTD Jul Act, Tot Yr FC	Column Labels			
	YTD (07) Jul		YTD (07) Jul Total	Total Year Total
Row Labels	117 Kentucky Power Co - Gene	413 Wheeling Power Co - Generation		
Capital	**6,604,770**	**57,349,114**	**63,953,884**	**122,283,266**
Project Solutions - MLWPC0ELG ML PCC U0 ELG Compliance	4,615,797	44,861,215	49,477,012	85,755,730
Project Solutions - MLWEC1CTF ML E U1 Cooling Tower Compnnts	236,311	1,243,672	1,479,983	8,624,243
Plant PPB - GWSC8 Cap Blkt - Prod Plant Blnkt	1,003,617	2,666,234	3,669,851	6,989,687
Plant PPB - OUTC8 Cap Blk - Outage	11,332	1,523,531	1,534,863	5,352,004
Project Solutions - MLWSC1AHB ML S U1 Air Heater Basket Rplc	16,591	133,186	149,777	4,499,056
Project Solutions - MLWPC0LIM ML PCC U0 Lime Conversion	542,359	2,856,247	3,398,606	2,840,879
Plant CI - MLWEC1VHL ML E U1 VHP/HP&LPA Turbn Insp	14,243	76,231	90,474	2,687,955
Project Solutions - 000026265 ML U2 Cooling Tower Reinforce	199,521	1,048,436	1,247,957	1,486,858
Project Solutions - ML020SP01 ML MITCHELL DSI PROJECT	(0)		(0)	1,347,701
Stores Loadings		(147,382)	(147,382)	1,140,958
Project Solutions - 000022309 ML U2 ESP Upgrades				865,559
Plant PPB - EVRC8 Cap Blkt - Environmental Repl	-	681,312	681,312	728,168
Plant PPB - EROC8 Cap Blkt - Env Repl Outage	-	350,765	350,765	538,292
Plant CI - MLWVC2CL1 ML V U2 SCR Catalyst Layer 1				472,452
Project Solutions - MLWPC2ESP ML PCC U2 ESP Upgrades	101,089	517,165	618,254	81,051
Contingency/Adjustments				50,885
Other/IT	9,363	2,094,257	2,103,620	44,498
Project Solutions - MLWVC2CL4 ML V U2 Catalyst Layer 4 Rplc	19,480	96,154	115,634	7,679
Plant PPB - EVNC8 Cap Blkt - Environmental New		182,302	182,302	
Project Solutions - MLWPC2CTC ML PCC U2 Cooling Tower Comp	(36,055)	(179,875)	(215,930)	(347,619)
Project Solutions - MLWSC2AHB ML S U2 Air Heater Basket Rplc	(128,878)	(654,336)	(783,214)	(882,772)
O&M	**14,470,955**	**14,622,489**	**29,093,444**	**56,321,195**
AEPSC	3,788,092	3,788,089	7,576,180	13,612,504
Straight Time Labor	2,810,395	2,810,375	5,620,770	11,262,589
BCO	3,234,152	3,242,352	6,476,504	11,168,354
NOMI	771,616	775,285	1,546,900	6,164,333
Sch Out - 1257 Mitchell Plant Unit 1	698,510	698,509	1,397,019	3,839,880
Overtime Labor	597,532	597,528	1,195,059	3,036,363
Sch Out - 1311 Mitchell Plant Unit 2	178,858	178,857	357,715	2,323,037
Stores Loadings	408,943	408,943	817,886	1,415,969
Contingency/Adjustments				790,489
Project Solutions - MLWSC1AHB ML S U1 Air Heater Basket Rplc				730,000
Project Solutions - MLWPC2ESP ML PCC U2 ESP Upgrades	191,738	191,738	383,476	681,000
Other	235,276	374,389	609,665	547,679
Plant CI - MLWEC1VHL ML E U1 VHP/HP&LPA Turbn Insp				480,000
Project Solutions - MLWSC2AHB ML S U2 Air Heater Basket Rplc	95,028	95,028	190,056	189,000
Sch Out - 1267 Mitchell Plant Unit 0	30,200	30,200	60,401	80,000
Forced Outage	1,430,615	1,431,196	2,861,811	
Removal	**1,274,369**	**3,053,346**	**4,327,715**	**8,993,826**
Grand Total	**22,350,094**	**75,024,949**	**97,375,043**	**187,598,287**

Fuel and Reagent Positions

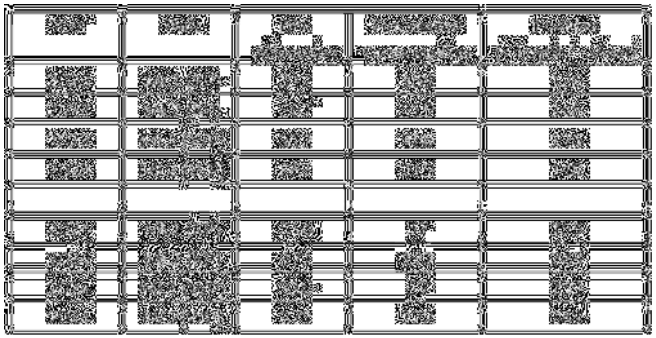
Mitchell Coal														
	Inventory (tons)		Inventory (Days at FLB)		% Committed		$/Ton Delivered		Est $/MWH		$/MMBTU		BTU	
	YE 2023	YE 2024	YE 2023	YE 2024	2023	2024	2023	2024	2023	2024	2023	2024	2023	2024
High Sulfur	604,640	645,883	61	65	130%	124%	$69.48	$58.48	$27.78	$23.41	$2.74	$2.31	12,655	12,638
Low Sulfur	776,535	877,391	78	88	217%	110%	$129.99	$129.02	$54.20	$53.43	$5.35	$5.27	12,136	12,219
Blended @65/35							**$90.66**	**$83.17**	**$36.78**	**$33.69**	**$3.65**	**$3.35**	**12,473**	**12,491**

Mitchell Consumables				
	June to Dec 23		2024	
	Total $	$/MWH	Total $	$/MWH
HRH Hydrated Lime	$1,519,866	$0.50	$2,399,414	$0.55
Hydrated Lime	$17,118	$0.01	$28,811	$0.01
Limestone	$3,419,944	$1.12	$5,567,013	$1.29
Urea	$1,665,253	$0.56	$2,671,537	$0.62
Total	**$6,622,180**		**$10,666,775**	

- Comments
  - *Jeff*

2023 – 2024 Emissions Allowance Position

Mitchell NOx Allocations for 2023 and 2024 under CSAPR Good Neighbor Plan



Mitchell Allowance Position for Years 2023 and 2024

	2023	**2024**
WPCo	+ 367	+ 689
KPCo	+ 274	+ 507

2024 Proposed Operating Plan

Plexos Forecast:	2023-20233 Q2-23 4+8 Budget Update; published 5/12/2023
Forecast Period:	7/1/2023 - 12/31/2032

Unit Name	**State**	**Fuel Type**	**Data Item**	**Units**	**Jul-Dec 2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**	**2033**
Mitchell 1	WV	Coal	Capacity Factor	(%)	22.7	23.3	15.9	18.9	7.0	4.1	5.2	5.7	18.6	31.7	33.3
Mitchell 2	WV	Coal	Capacity Factor	(%)	32.9	31.4	29.4	30.0	7.7	7.8	6.5	14.2	29.9	44.7	43.2

** Gray shaded cells indicated years of decrement pricing for fuel inventory management*

Planned Outage Schedule											
	2023	**2024**		**2025**		**2026**		**2027**		**2028**	
	Fall	**Spring**	**Fall**	**Spring**	**Fall**	**Spring**	**Fall**	**Spring**	**Fall**	**Spring**	**Fall**
Unit 1	87	0	38	0	58	0	16	0	16	0	58
Unit 2	73	0	38	73	0	16	0	58	0	16	0

- Comments
  - *Tim*

2024 Budget Forecast

Sum of Update Q2 $	Column Labels		
	2024		Grand Total
Row Labels	117 Kentucky Power Co - Gene	413 Wheeling Power Co - Generation	
Capital	**7,913,532**	**41,328,014**	**49,241,546**
Project Solutions - MLWPC0ELG ML PCC U0 ELG Compliance	3,335,937	10,910,371	14,246,307
Plant PPB - GWSCB Cap Blkt - Prod Plant Blnkt	1,527,791	9,612,056	11,139,847
Project Solutions - 000026265 ML U2 Cooling Tower Reinforce	918,128	5,776,490	6,694,619
Project Solutions - 000025624 Mitchell Haul Road Relocate	701,810	4,415,175	5,116,985
Plant PPB - OUTCB Cap Blk - Outage	512,617	3,225,265	3,737,882
Contingency/Adjustments	397,615	3,325,318	3,722,933
Plant PPB - EROCB Cap Blkt - Env Repl Outage	214,760	1,351,243	1,566,003
Stores Loadings	72,113	1,247,662	1,319,776
Plant PPB - EVRCB Cap Blkt - Environmental Repl	155,776	980,145	1,135,922
Plant CI - MLWVC1CL1 ML V U1 SCR Catalyst Layer 1	76,984	484,289	561,273
O&M	**28,017,389**	**29,008,445**	**57,025,833**
Straight Time Labor	6,504,757	6,504,757	13,009,513
AEPSC	6,362,829	6,362,829	12,725,657
BCO	6,062,472	6,072,889	12,135,361
NOMI	3,439,597	3,439,598	6,879,195
Sch Out - 1311 Mitchell Plant Unit 2	2,265,000	2,265,000	4,530,000
Overtime Labor	1,651,657	1,651,657	3,303,313
Sch Out - 1257 Mitchell Plant Unit 1	1,271,375	1,271,375	2,542,750
Stores Loadings	286,610	1,267,249	1,553,858
Other	348,912	348,912	697,825
Sch Out - 1267 Mitchell Plant Unit 0	77,500	77,500	155,000
Contingency/Adjustments	(253,320)	(253,320)	(506,640)
Removal	**2,176,736**	**2,176,736**	**4,353,472**
Plant PPB - GWSCB Cap Blkt - Prod Plant Blnkt	993,229	993,229	1,986,457
Contingency/Adjustments	500,000	500,000	1,000,000
Plant PPB - OUTCB Cap Blk - Outage	356,250	356,250	712,500
Plant PPB - EROCB Cap Blkt - Env Repl Outage	203,500	203,500	407,000
Plant PPB - EVRCB Cap Blkt - Environmental Repl	123,758	123,758	247,515
Grand Total	**38,107,657**	**72,513,195**	**110,620,852**

Open Discussion

Appendix A – Links

- Mitchell Cost Allocation Flow Diagram
  - WPCo KPCo Cost Allocation from Mitchell Flow Diagram FINAL.pdf
- Mitchell 2023 YTD Budget Performance
  - Mitchell 2023 YTD Budget Performance
- Mitchell 2024 Budget Forecast
  - Mitchell 2024 Budget Forecast

MITCHELL OPERATING COMMITTEE

AGENDA

January 31, 2023

Pursuant to notice, a videoconference meeting of the Operating Committee (the "Committee") of the Mitchell Operating Agreement (the "Agreement") will be held on January 31, 2024, at 1:00 p.m. (Eastern).

Invitees: Operating Representatives: Cynthia Wiseman (Kentucky Power), Aaron Walker (Wheeling Power), Tim Kerns (Agent)

Other Invitees: John Crespo (Secretary), Mathew Satterwhite, Brian West, John Scalzo

1. Call to Order

A. Roll Call for Quorum

B. Review of Agenda

2. Mitchell Plant Dispatch and Operation After December 31, 2028

A. At the August 15, 2023, Meeting, the Operating Representatives requested that AEPSC prepare additional information regarding the options for the future of the Mitchell Plant after December 31, 2028.

B. Presentation on Orders of the Kentucky and West Virginia Commissions regarding the ownership and operation of the Mitchell Plant after December 31, 2028. (Exhibit A, Attachments 1-6)

1. Orders regarding Kentucky Commission approval of CCR and West Virginia Approval of CCR and ELG

2. Orders regarding Kentucky Power's termination of usage of the Mitchell Plant and Wheeling Power's continued usage of the Mitchell Plant, after December 31, 2028.

3. Orders regarding the Kentucky Commission's expectation that Kentucky Power should receive the greater of net book value or market value if Kentucky Power's Mitchell interest is sold to Wheeling Power when both entities are affiliates.

4. Orders regarding the West Virginia Commission's expectation that West Virginia ratepayers should pay no more than the net salvage value to purchase Kentucky Power's interest in the Mitchell Plant because Wheeling Power, and not Kentucky Power, made the ELG investments without which the Mitchell Plant would have no value as an electric generating plant after 2028.

C. Important Dates

Date	Event
October 2025	FRR or RPM Election Deadline for 2028/2029 DY*
November 2025	FRR Capacity Plan Deadline for 2028/2029 DY*
December 2025	BRA for 2028/2029 DY*
December 31, 2028	Kentucky Power's interest in Mitchell must terminate in accordance with the July 15, 2021, Order in Case No. 2021-00004.

* Under current PJM auction schedule

D. Affiliate Transaction Rules

1. Kentucky

"The terms for transactions between a utility and its affiliates shall be in accordance with the following…. Services and products provided to an affiliate by the utility pursuant to a tariff shall be at the tariffed rate, with nontariffed items priced at the utility's fully distributed cost but in no event less than market, or in compliance with the utility's existing USDA, SEC, or FERC approved cost allocation methodology." KRS 278.2207(1)(a)

(*See Exhibit B for full text of KRS 278.2207*)

2. West Virginia

"Unless the consent and approval of the public service commission of West Virginia is first obtained…. (f) no public utility… may, by any means, direct or indirect, enter into any contract or arrangement for management, construction, engineering, supply or financial services or for the furnishing of any other service, property or thing, with any affiliated corporation, person or interest…. The commission may grant its consent… upon proper showing that the terms and conditions thereof are reasonable and that neither party thereto is given an undue advantage over the other, and do not adversely affect the public in this state." WV Code §24-2-12

(*See Exhibit C for full text of WV Code §24-2-12*)

E. Discussion of potential resolutions regarding the options for the future of the Mitchell Plant after December 31, 2028.

3. Other Business

4. Adjournment

Exhibit A

Orders of the Kentucky and West Virginia Commission Regarding

the Ownership and Operation of the Mitchell Plant After December 31, 2028

I. Public Service Commission of Kentucky

Attachment 1 – Order, Case No. 2021-00004 (KY CPCN Case), July 15, 2021

IT IS THEREFORE ORDERED that:

1. Kentucky Power's 2021 Plan, as set forth in Case 2 [CCR Only] in its application, is approved.

2. Kentucky Power's request for a CPCN to construct environmental projects to comply with the CCR Rule as set forth in Case 2 in its application is approved.

3. Kentucky Power's request to construct environmental projects as set forth in Case 1 [CCR and ELG] in its application is denied.

***

5. Kentucky Power shall notify the Commission prior to performing any additional construction not expressly authorized by this Order.

6. Any deviation from the construction approved by this Order shall be undertaken only with prior approval of the Commission.

(pp. 25-26)

Attachment 2 – Order, Case No. 2021-00370 (KY Investigation Case), October 8, 2021

…[T]he Commission notes that based upon a cursory review of the application as well as a similarly cursory review of the law, particularly given the limited time afforded to its review, the Commission is unaware of any legal requirement that Wheeling seek a CPCN from the Commission to construct equipment necessary to comply with the ELG Rules. (pp. 8-9)

Attachment 3 – Order, Case No. 2021-00421 (KY Mitchell Agreements Case), May 3, 2022

The WVPSC approved CPCNs for both projects. Under revised ELG rules, Mitchell has to be compliant with ELG rules or retire by December 31, 2028. Kentucky Power asserted that Wheeling Power expected to continue operating Mitchell through 2040, which is the retirement date based upon Mitchell's service life. Kentucky Power claimed that the Mitchell Agreements were necessary to designate Wheeling Power as operator and to transfer permits into Wheeling Power's name to start construction on the ELG compliance project while complying with the Commission's Order in Case No. 2021-00004. (pp. 4-5, Citations Omitted)

***

Based upon a review of the case record and being otherwise sufficiently advised, the Commission finds that the buyout provision contained in Article 9.6 of the revised Ownership Agreement, and related provisions, including the unit swap dispute resolution provisions in Article 12 and the buyout provision-related definitions, are not reasonable for the reasons discussed above that establishing the structure of a future sale of Kentucky Power's interest is premature in light of the pending acquisition of Kentucky Power by Liberty, because the buyout terms were not negotiated as an arm's length transaction, as they would be if they were negotiated between non-affiliates; because the terms for the future sale of Kentucky Power's interest were not required by the Commission in order to continue operating Mitchell; and because the buyout provision is based on assumptions regarding future circumstances that are likely to change closer to the December 31, 2028 date when Kentucky Power's interest in Mitchell must terminate in accordance with the July 15, 2021 Order in Case No. 2021-00004. (p. 13)

***

Because Kentucky Power withdrew the proposal to use fair market value as a baseline for a purchase price for Kentucky Power's interest, the Commission will not address that issue. However, the Commission concurs with Attorney General/KIUC that KRS 278.2207 applies if Kentucky Power's interest in Mitchell is sold to Wheeling Power as an affiliate transaction.[29] For this reason, the Commission expects that, if Kentucky Power's Mitchell interest is sold to Wheeling Power when both entities are affiliates, then the sale shall be priced at the greater of net book value or market value, with necessary adjustments, and is subject to the Commission approval. As evidenced in the case record, past sales of Mitchell among AEP affiliates were all made at net book value and AEP's cost allocation manual, which applies to both Kentucky Power and Wheeling Power, requires that sales between affiliates be at net book value.[30] Furthermore, given Kentucky Power's purchase of its interest in Mitchell at net book value, this Commission expects its sale to be at approximately net book value, as modified by necessity for certain capital costs related to Mitchell's joint ownership, including ELG costs. Given this expectation, this Commission believes it is reasonable for Kentucky Power to pay for its fair share of capital costs ahead of such a sale at net book value. To act otherwise would run the risk of making the transaction unfair to Wheeling Power and its customers. Kentucky Power customers should pay their fair share of capital costs between now and 2029, based on an expectation that Wheeling Power will buy Kentucky Power's interest in Mitchell at its remaining net book value post-2028. Any actions subsequent to this order that leads this Commission to believe its expectations regarding the sale of Mitchell will not occur at approximately net book value will require this

Commission to reassess its position on the sharing, allocation and depreciation of costs and expenses subject to the relevant agreements discussed herein. (pp. 15-16)

---

[29] In testimony filed in response to the original proposal, Attorney General/KIUC's witness, Lane Kollen, argued that basing the buyout price on the fair market value violated KRS 277.2207 because the buyout price did not establish a floor for the sale price as the greater of net book value or market value. See Direct Testimony of Lane Kollen (Kollen Direct Testimony) (filed Mar. 29, 2022) at 6–13.

30 Kollen Direct Testimony at 4 and 12–13. In Kentucky Power's Response to Attorney General/KIUC's Second Request for Information (filed Jan. 14, 2022), Item 1, Kentucky Power stated that there were three prior transfers of Mitchell between AEP subsidiaries and that all were made at adjusted net book value.

II. Public Service Commission of West Virginia

Attachment 4 – Order, Case No. 20-1040-E-CN (WV CPCN Case), August 4, 2021

Considering the NPV benefits of adding both CCR and ELG controls at Amos and Mountaineer as compared to alternatives and the relatively small NPV costs of the ELG investment at Mitchell as compared to alternatives particularly when spread over the years of the analysis, and considering the benefits to the economy of West Virginia from continued operations of Amos, Mountaineer and Mitchell beyond 2028, as discussed herein, we find that Alternative 1 is prudent, cost effective, and in the best interest of current and future utility customers, the general interest of the State's economy, and the interests of the Companies. (p. 16)

If there are changes in ownership or allocation of costs and output of any of the three Plants, the Companies should present the nature and effect of such changes to the Commission in an appropriate proceeding. We have always faced the possibility of changes in allocation of costs or ownership shares of jointly-owned plants and have not delayed decisions based on the possibility of such changes. (p. 18)

IT IS THEREFORE ORDERED that Appalachian Power Company and Wheeling Power Company are granted a certificate of convenience and necessity to make the necessary compliance modifications to the Plants under Alternative 1 that will enable the three Plants to continue to generate electricity through 2040. (p. 19)

Attachment 5 – Order, Case No. 20-1040-E-CN (WV CPCN Case), October 12, 2021

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

Some intervenors expressed concerns that it is unfair, or unreasonable, or even illegal for the Companies to seek from this Commission approval of other costs incurred between now and the final plant retirement dates to keep the Plants open beyond 2028 without allocating a portion of those costs to Kentucky and Virginia. We disagree. Virginia and Kentucky have effectively ordered that the Companies retire the Plants by 2028. Thus, but for a West Virginia order directing that the Plants remain open, capital and continuing operations costs necessary to keep the Plants in working order after 2028 would not be incurred. Under those circumstances it would be unfair and unreasonable for West Virginia to expect Virginia or Kentucky customers to pay a share of those costs. From the perspective of Virginia and Kentucky, the Plants would be prematurely

retired by 2028 because of the KPSC and VSCC orders on the ELG compliance requests. Given those decisions, Virginia and Kentucky jurisdictional customers should receive no capacity or energy from the Plants after 2028. Nor should they receive incremental capacity and energy that is available solely because of pre-2028 costs funded by only West Virginia and FERC jurisdictional customers. Therefore, they should not pay for the costs that are incurred solely because of the West Virginia decision to require the Plants to remain open.

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

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

***

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

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

Our analysis of the difference between the cost of keeping the Plants open and premature retirement and incurring billions in replacement costs supports our original decision to direct the Companies to proceed with the necessary ELG compliance to assure that the Plants are not retired prematurely…. We find it fair and reasonable to expect West Virginia customers, and FERC jurisdictional customers benefitting from the Plants, to pay the ELG control and continuing operations costs incurred solely to keep the Plants open and to assign all capacity and energy from the Plants after 2028 either for the needs of those West Virginia and FERC jurisdictional customers or to be sold to third parties with the benefits of those sales being credited to West Virginia and FERC jurisdictional revenue requirements.

(pp. 7-9; the transcript quotation has been shortened)

***

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

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

***

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

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

(p. 15)

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

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

(p. 16)

Attachment 6 – Order, Case No. 21-0810-E-PC (WV Mitchell Agreements Case), July 1, 2022

The Current Operating Agreement is sufficient to allow WPCo to make and pay for unilateral investments in the plant and to dispatch up to 100 percent of the capacity of the plant even if KPCo does not choose, or is not allowed, to participate in necessary investments or in sharing the capacity and energy from the plant in the future. We do not believe that all of the changes and refinements contemplated in the Agreements are necessary….

We are inclined to believe that it is best to focus on the operation of and investment in Mitchell going forward which may be accomplished with minor changes in the Current Operating

Agreement. Under the Current Operating Agreement, WPCo has the right to make investments necessary to keep the plant open and operating and to dispatch 100 percent of the capacity of the plant. Any new agreements must provide the same right to WPCo.

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

….We will require the Companies to remove Section 9.6 [which provides for transfer of KPCO's 50% undivided interest in Mitchell to WPCO or an unit swap] and all related provisions from the revised Ownership Agreement. Additionally, we will require the Companies to modify the dispatch sections of the Ownership Agreement to mirror the dispatch language in the Operating Agreement….

…. The Companies must seek Commission consent and approval in a future case for any proposed sale of KPCo's (or its successor's) interest to WPCo and/or APCo. Upon such filing, we will consider a purchase by WPCo and decide on the reasonableness of any proposal based on the evidence at that time.

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

(pp. 3-5)

***

FINDINGS OF FACT

***

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

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

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

***

(pp. 6-7)

278.2207 Transactions between utility and affiliate -- Pricing requirements -- Request for deviation.

(1) The terms for transactions between a utility and its affiliates shall be in accordance with the following:

(a) Services and products provided to an affiliate by the utility pursuant to a tariff shall be at the tariffed rate, with nontariffed items priced at the utility's fully distributed cost but in no event less than market, or in compliance with the utility's existing USDA, SEC, or FERC approved cost allocation methodology.

(b) Services and products provided to the utility by an affiliate shall be priced at the affiliate's fully distributed cost but in no event greater than market or in compliance with the utility's existing USDA, SEC, or FERC approved cost allocation methodology.

(2) A utility may file an application with the commission requesting a deviation from the requirements of this section for a particular transaction or class of transactions. The utility shall have the burden of demonstrating that the requested pricing is reasonable. The commission may grant the deviation if it determines the deviation is in the public interest.

(3) Nothing in this section shall be construed to interfere with the commission's requirement to ensure fair, just, and reasonable rates for utility services.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 511, sec. 5, effective July 14, 2000.

WEST VIRGINIA CODE: §24-2-12

§24-2-12. What acts may not be done without consent of commission; consent in advance of exemption of transactions; when sale, etc., of franchises, mergers, etc., void.

Unless the consent and approval of the Public Service Commission of West Virginia is first obtained: (a) No public utility subject to the provisions of this chapter, except railroads other than street railroads, may enter into any contract with any other utility to operate any line or plant of any other utility subject thereto, nor which will enable such public utility to operate their lines or plants in connection with each other, but this shall not be construed to prevent physical connections between utilities supplying the same service or commodity, for temporary purposes only, upon condition, however, that prompt notice thereof be given to the commission for such action, if any, as it may deem necessary, and thereafter the commission may require such connection to be removed or discontinued; (b) no public utility subject to the provisions of this chapter, except railroads other than street railroads, may purchase, lease, or in any other manner acquire control, direct or indirect, over the franchises, licenses, permits, plants, equipment, business or other property of any other utility; (c) no public utility subject to the provisions of this chapter, except railroads other than street railroads, may assign, transfer, lease, sell, or otherwise dispose of its franchises, licenses, permits, plants, equipment, business or other property or any part thereof; but this shall not be construed to prevent the sale, lease, assignment or transfer by any public utility of any tangible personal property which is not necessary or useful, nor will become necessary or useful in the future, in the performance of its duties to the public; (d) no public utility subject to the provisions of this chapter, except railroads other than street railroads, may, by any means, direct or indirect, merge or consolidate its franchises, licenses, permits, plants, equipment, business or other property with that of any other public utility; (e) no public utility subject to the provisions of this chapter, except railroads other than street railroads, may purchase, acquire, take or receive any stock, stock certificates, bonds, notes or other evidence of indebtedness of any other public utility; (f) no public utility subject to the provisions of this chapter, except railroads other than street railroads, may, by any means, direct or indirect, enter into any contract or arrangement for management, construction, engineering, supply or financial services or for the furnishing of any other service, property or thing, with any affiliated corporation, person or interest; (g) no person or corporation, whether or not organized under the laws of this state, may acquire either directly or indirectly a majority of the common stock of any public utility organized and doing business in this state.

The commission may grant its consent in advance or exempt from the requirements of this section all assignments, transfers, leases, sales or other disposition of the whole or any part of the franchises, licenses, permits, plants, equipment, business or other property of any public utility, or any merger or consolidation thereof and every contract, purchase of stocks, arrangement, transfer or acquisition of control, or other transaction referred to in this

section, upon proper showing that the terms and conditions thereof are reasonable and that neither party thereto is given an undue advantage over the other, and do not adversely affect the public in this state.

The commission shall prescribe such rules and regulations as, in its opinion, are necessary for the reasonable enforcement and administration of this section, including the procedure to be followed, the notice to be given of any hearing hereunder, if it deems a hearing necessary, and after such hearing or in case no hearing is required, the commission shall, if the public will be convenienced thereby, enter such order as it may deem proper and as the circumstances may require, attaching thereto such conditions as it may deem proper, consent to the entering into or doing of the things herein provided, without approving the terms and conditions thereof, and thereupon it shall be lawful to do the things provided for in such order.

Every assignment, transfer, lease, sale or other disposition of the whole or any part of the franchises, licenses, permits, plant, equipment, business or other property of any public utility, or any merger or consolidation thereof and every contract, purchase of stock, arrangement, transfer or acquisition of control or other transaction referred to in this section made otherwise than as hereinbefore provided shall be void to the extent that the interests of the public in this state are adversely affected, but this shall not be construed to relieve any utility from any duty required by this section.

Attachment 1

Order, Case No. 2021-00004 (KY CPCN Case), July 15, 2021

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY POWER COMPANY FOR APPROVAL OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR ENVIRONMENTAL PROJECT CONSTRUCTION AT THE MITCHELL GENERATING STATION, AN AMENDED ENVIRONMENTAL COMPLIANCE PLAN, AND REVISED ENVIRONMENTAL SURCHARGE TARIFF SHEETS	)))))))))	CASE NO. 2021-00004

O R D E R

On February 8, 2021, Kentucky Power Company (Kentucky Power), pursuant to KRS 278.020(1) and KRS 278.183, filed an application requesting a Certificate of Public Convenience and Necessity (CPCN) to construct projects at the Mitchell Generating Station (Mitchell) to comply with federal environmental regulations, approval of Kentucky Power's 2021 Environmental Compliance Plan (2021 Plan), and to amend its Environmental Surcharge tariff (Tariff E.S.). Kentucky Power stated that the proposed projects and amendments allow Kentucky Power to include the cost of projects to comply with recent revisions to the federal Coal Combustion Residuals Rule (CCR) and Effluent Limitations Guidelines (ELG) and that the proposed projects are necessary to continue to operate Mitchell after 2028 through its planned retirement date of 2040.[1] KRS 278.183 establishes a six-month statutory deadline to process environmental surcharge applications. Thus, the Commission must enter its Order no later than August 6, 2021.

[1] Application at 5–8.

Kentucky Power proposed that its amended Tariff E.S. become effective for bills rendered on and after September 28, 2021.

The following parties requested and were granted intervention: the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General); Kentucky Industrial Utility Customers, Inc. (KIUC); and Sierra Club. The Attorney General and KIUC (Attorney General/KIUC) jointly sponsored discovery requests, witness testimony, and briefs. Pursuant to a procedural schedule established on February 12, 2021, and amended on March 10, 2021, Kentucky Power responded to two rounds of discovery from Attorney General/KIUC and Sierra Club and to four rounds of discovery from Commission Staff; Attorney General/KIUC and Sierra Club filed their respective witness testimony and responded to one round of discovery; and Kentucky Power filed rebuttal testimony. The hearing scheduled for June 15–17, 2021, was canceled,[2] with the matter being submitted for a decision on the written record. Kentucky Power filed a memorandum brief on June 15, 2021. Attorney General/KIUC and Sierra Club filed their respective response briefs on June 24, 2021. Kentucky Power filed a reply brief on July 1, 2021. This matter now stands submitted for a decision based on the written record.

LEGAL STANDARD

KRS 278.020 - CPCN

The Commission's standard of review of a request for a CPCN is well settled. In accordance with KRS 278.020(1), no utility may construct or acquire any facility to be

[2] A public comment period was held on June 15, 2021, to accept telephonic public comments as requested by Sierra Club. However, no telephonic public comments were received. A significant number of written public comments were received and filed in the case record.

used in providing utility service to the public until it has obtained a CPCN from this Commission. To obtain a CPCN, a utility must demonstrate a need for such facilities and an absence of wasteful duplication.[3]

"Need" requires:

> [A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.
>
> [T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.[4]

"Wasteful duplication" is defined as "an excess of capacity over need" and "an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties."[5] To demonstrate that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.[6] The fundamental principle of reasonable least-cost alternative is embedded in such an analysis. Selection

[3] *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885 (Ky. 1952).

[4] *Id.* at 890.

[5] *Id.*

[6] Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.[7] All relevant factors must be balanced.[8]

KRS 278.183 – Environmental Surcharge

KRS 278.183 provides that a utility shall be entitled to the current recovery of its costs to comply with the federal Clean Air Act as amended and those federal, state, or local environmental requirements that apply to coal combustion wastes and by-products from facilities utilized for the production of energy from coal.

Pursuant to KRS 278.183(2), a utility seeking to recover its environmental compliance costs through an environmental surcharge must first submit to the Commission a plan that addresses compliance with the applicable environmental requirements. The plan must also include the utility's testimony concerning a reasonable return on compliance-related capital expenditures and a tariff addition containing the terms and conditions of the proposed surcharge applied to individual rate classes.

Within six months of submission, the Commission must render a decision that considers and, if the plan and rate surcharge are found reasonable and cost-effective for compliance with the applicable environmental requirements, approves the compliance plan and rate surcharge. The Commission must also establish a reasonable return on compliance-related capital expenditures and approve the application of the surcharge.

[7] *See Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 390 S.W.2d 168, 175 (Ky. 1965). *See also* Case No. 2005-00089, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005).

[8] Case No. 2005-00089, *East Kentucky Power* (Ky. PSC Aug. 19, 2005), Order at 6.

BACKGROUND

Kentucky Power distributes and sells retail electric service to approximately 165,000 customers in 20 counties and wholesale electric service to two municipalities in eastern Kentucky.[9] Kentucky Power filed its last environmental compliance plan in 2019.[10]

Kentucky Power owns a 50 percent undivided interest in Mitchell, which is located in Moundsville, West Virginia, with Wheeling Power Company (Wheeling Power), another American Electric Power (AEP) affiliate.[11] Wheeling Power filed a similar CPCN and environmental compliance plan with the West Virginia Public Service Commission,[12] which will be discussed below. Relevant here, Kentucky Power and Wheeling Power operate Mitchell under the Mitchell Operating Agreement,[13] which does not contain any terms that address a situation in which there is a conflicting decision between the

[9] Application at 2.

[10] Case No. 2019-00389, *Electronic Application of Kentucky Power Company for Approval of an Amended Environmental Compliance Plan and a Revised Environmental Surcharge* (Ky. PSC May 18, 2020).

[11] *See* Case No. 2012-00578, *Application of Kentucky Power Company for (1) A Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power Company of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company's Efforts to Meet Federal Clean Air Act and Related Requirements; and (5) All Other Required Approvals and Relief* (Ky. PSC Oct. 7, 2013).

[12] West Virginia Public Service Commission Case No. 20-1040-E-CN, *Application for a Certificate of Public Convenience and Necessity for the Internal Modifications at Coal Fired Generating Plants Necessary to Comply with Federal Environmental Regulations* (filed Dec. 23, 2020).

[13] Kentucky Power's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Mar. 26. 2021), Item 1.

Kentucky PSC and West Virginia PSC. Kentucky Power asserted that any conflicting decision would be addressed with both Commissions to determine how to proceed.[14]

Also relevant here, Kentucky Power's 2020 peak demand was 925 MW.[15] Kentucky Power's share of Mitchell's total capacity is 780 MW.[16] Kentucky Power also owns a 285 MW natural gas-fired unit, Big Sandy Unit 1, in Lawrence County, Kentucky, and obtains 393 MW of capacity and associated energy under the Rockport Unit Power Agreement (Rockport UPA), which expires December 7, 2022.[17] Once the Rockport UPA expires, Kentucky Power will have a total capacity of 1,065 MW. If Mitchell is retired in 2028, Kentucky Power would have only the 285 MWs of capacity from Big Sandy Unit 1.[18]

2021 PLAN AND CPCN

Compliance and Construction Options

Kentucky Power explained that the proposed projects are necessary to comply with 2020 revisions to the federal CCR rules, which regulate the handling, storage, and disposal of CCR materials, and federal ELG rules, which regulate wastewater discharges at coal-fired electric generating facilities.[19] Kentucky Power further explained that the CCR rules revisions required Kentucky Power to begin closing the Mitchell ash pond by April 11, 2021, and that Kentucky Power requested an extension of that deadline from the

[14] Kentucky Power's Response to Commission Staff's Third Request for Information (Staff's Third Request) (filed June 2, 2021), Item 2.

[15] Application at 3.

[16] Application at 2. Mitchell has a total capacity of 1560 MW, with Wheeling Power receiving 780 MW and Kentucky Power receiving 780 MW.

[17] Application at 2–3. Kentucky Power stated that it will not renew the Rockport UPA.

[18] Application at 3.

[19] Direct Testimony of Gary O. Spitznogle (Spitznogle Direct Testimony) (filed Feb. 28, 2021) at 3.

EPA to October 17, 2023.[20] Kentucky Power maintained that, without the proposed CCR compliance projects, it would be required to cease coal-fired operations at Mitchell in 2023 ahead of the October 17, 2023 deadline.[21] Regarding the revised ELG rules, Kentucky Power explained that, without the proposed ELG compliance projects, it would have to terminate coal-fired operations and retire Mitchell by December 31, 2028.[22]

Kentucky Power modeled two options to address CCR and ELG Rules compliance. The first option, identified by Kentucky Power as Project 22 (Case 1) would install equipment to comply with CCR and ELG Rules, which would allow Mitchell to operate through 2040. The second option, Case 2,[23] would comply with the CCR Rule only, resulting in the retirement of Mitchell by December 31, 2028, and requiring Kentucky Power to obtain replacement capacity sooner than currently planned.

In support of the CPCN, Kentucky Power asserted that the proposed project is required in order to allow Mitchell to operate until 2040 by complying with CCR and ELG Rule revisions and because, without Mitchell, Kentucky Power would have inadequate capacity to provide service. Kentucky Power asserted that Case 1 is the least cost, technically feasible option to maintain adequate capacity. In support of Case 1, Kentucky Power explained that it will have a significant capacity shortfall if Mitchell is retired in 2028. Kentucky Power determined that it could not retire Mitchell to avoid CCR compliance because it cannot replace the 780 MW committed into the PJM capacity market through

[20] Spitznogle Direct Testimony at 8.

[21] *Id.*

[22] *Id.*

[23] Kentucky Power referred to the first option as Project 22, Case 1, or CCR and ELG option. Kentucky Power referred to the second option as Case 2 or CCR-only.

2022 and could not procure replacement capacity to serve its native load by 2023.[24] The results of Kentucky Power's modeling show compliance costs for Case 1 and Case 2 of $67 million and $18 million respectively.[25] Kentucky Power maintained that if Case 1 is selected over Case 2 the projected net present value revenue requirement (NPVRR) savings of $20-27 million without a carbon commodity price.[26] Kentucky Power calculated incremental NPVRR costs of $6 million associated with Case 1 with a carbon commodity price.[27]

Case 1

Case 1 includes projects to modify Mitchell's dry ash handling system and wastewater ponds and install a FGD biological treatment system with ultrafiltration. For the CCR project, Kentucky Power will remove ash from the existing ponds, over-excavate the ponds, install a new liner system in the footprint of the existing bottom ash pond to accept current CCR and non-CCR wastewater streams, and install a chemical treatment system for non-CCR wastewater streams.[28] For the ELG project, Kentucky Power will modify the bottom ash handling systems to stop the discharge of bottom ash transport water, which includes the installation of submerged grind conveyor systems, a new ash bunker, and a new FGD biological treatment system with ultrafiltration.[29] Kentucky Power proposed to construct the projects in stages, with compliance with the ELG by April

[24] Direct Testimony of Brett Mattison (Mattison Direct Testimony) (filed Feb. 28, 2021) at 8.

[25] Direct Testimony of Mark A. Becker (Becker Direct Testimony) (filed Feb. 28, 2021) at 4, Table 1.

[26] *Id.*

[27] *Id.*

[28] Direct Testimony of Brian D. Sherrick (Sherrick Direct Testimony) (filed Feb. 28, 2021) at 4–5.

[29] *Id.* at 5.

2025.[30] The projected completion date for the dry ash handling system is May 2023; the wastewater ponds on November 2023; and the FGD system by April 2024.[31]

The total estimated cost of Case 1 is $133.5 million, with $131.5 million in capital, $1.8 million in other charges, and $166,000 in asset retirement obligation costs; of the $133.5 million, Kentucky Power's share would be $66.75 million.[32] Kentucky Power stated that the annualized first year revenue requirement for Case 1 is $1,449,677; the estimated annual revenue requirement once all stages are in service is $8,166,153.[33] Kentucky Power does not plan to issue debt or equity to finance the construction because it will fund the construction through operating cash and internally generated funds.[34]

Case 2

Case 2 consists only of the projects described above that would comply with the revised CCR Rule, which would result in Mitchell being retired as of December 31, 2028. The total estimated capital cost for CCR-only compliance is $35.1 million, of which Kentucky Power would be responsible for $17.55 million.[35] Kentucky Power stated the estimated annualized first year revenue requirement is $561,052; once Case 2 projects are fully in service in 2024, the estimated annual revenue requirement is $3,246,750.[36]

[30] Application at 7.

[31] *Id.*

[32] *Id.*

[33] *Id.* at 12.

[34] *Id.* at 11.

[35] Sherrick Direct Testimony at 11.

[36] Direct Testimony of Lerah M. Scott (Scott Direct Testimony) (filed Feb. 28, 2021) at 8.

These costs exclude the cost of capacity that Kentucky Power will need to obtain once Mitchell is retired.

Assumptions in Economic Analysis

Kentucky Power evaluated both Case 1 and Case 2 over three scenarios: base fuel costs with carbon pricing, base fuel costs without carbon pricing, and low fuel costs. The alternative to compliance for Case 1 and Case 2 was retiring Mitchell and replacing its capacity. Kentucky Power forecasted the replacement capacity using the Energy Information Administration's (EIA) major utility scale estimates and capacity-only, one-year purchase power agreements (PPAs) based on the PJM capacity market.[37] Kentucky Power assumed that production tax credits for wind resources would expire in 2025. Kentucky Power expected to incur approximately $500 million of replacement capacity costs in 2028 if it cannot be delayed by making investments to comply with the ELG Rule.[38] Kentucky Power asserted that the optimal replacement resources were including in its modelling, which are summarized in the following table.[39]

Kentucky Power's Optimal Replacement Capacity Additions Through the Retirement Year – Nameplate Megawatts					
	Gas Combustion Turbine	Cumulative Solar	Cumulative Wind	Capacity Only PPA	Total
Case 1 – Additions from 2021-2040*					
Base with Carbon	480	450	400	300	1,630
Base No Carbon	480	300		400	1,180
Low No Carbon	480	300		400	1,180
Case 2 – Additions from 2021-2028					
Base with Carbon	480		400	150	1,030
Base No Carbon	480			200	680

[37] Becker Direct Testimony at 14-16.

[38] *Id.* at 8.

[39] *Id.* at 17, Table 4.

Low No Carbon	480			200	680
*Case 1 additions through 2040 include replacements for both Mitchell and Big Sandy 1. Big Sandy is assumed to retire in 2030. Case 2 additions through 2028 only include replacements for Mitchell					

Attorney General/KIUC's witness, Lane Kollen, testified that Kentucky Power's modeling assumed a levelized cost for energy and capacity of approximately $55.00/MWh.[40] Kentucky Power asserted that Mr. Kollen did not make a like-for-like comparison because he compared 20-year solar PPAs to Kentucky Power's proposed 30-year solar PPA, and thus Mr. Kollen's analysis should be disregarded. Sierra Club's witness, Rachel Wilson, testified that Kentucky Power uses a solar PPA price of $57.58/MWh, reportedly based upon U.S. EIA data, and that this cost assumption is higher than the levelized cost of energy of $33.68/MWh in EIA's 2021 Annual Energy Outlook.[41] Kentucky Power claimed that Wilson's assertion that $26.00/MWh is a more reasonable projected cost understated the actual value and was "particularly hard to believe given extreme demand for solar panel components."[42] However, as documented in the evidence of record, the Commission recently approved a 20-year energy and capacity solar PPA with levelized costs between $27.30/MWh to $29.30/MWh, and a 20-year solar PPA with levelized energy costs of $27.82/MWh.[43] Further, according to the

[40] Direct Testimony of Lane Kollen (Kollen Direct Testimony) (filed June 7, 2021) at 14 and Exhibit LK-1. Kollen's calculation is derived from Kentucky Power's Response to Sierra Club's Second Request for Information (Sierra Club's Second Request) (filed May 5, 2021), Item 5(c).

[41] Direct Testimony of Rachel Wilson (Wilson Direct Testimony) (filed May 12, 2021) at 21.

[42] Rebuttal Testimony of Mark A. Becker (Becker Rebuttal Testimony) (filed June 9, 2021) at R4–R5.

[43] Kollen Direct Testimony at 14–16 and Exhibit LK-13; and Attorney General/KIUC's Response Brief at 4–5.

updated version of the EIA report cited by Kentucky Power, the levelized cost of energy for solar resources is $31.30 without tax credits, and $29.04 with tax credits.[44]

Kollen testified that Kentucky Power did not consider that retirement of Mitchell in 2028 will provide recognition of the abandonment loss for tax purposes. Kollen calculated that the NPV of the abandonment loss would be approximately $28.8 million.[45] However, Kentucky Power explained that it provided incorrect information as the basis for that calculation and that correcting the errors results in a tax benefit of $8.5 million.[46]

Kentucky Power assumed that solar investment tax credits (ITC) would be 0 percent after 2024; however, Kollen explained that the current law allows for a permanent 10 percent ITC for resources that go into service after 2023.[47] Kollen further stated that this error is less relevant given that solar PPAs are significantly less expensive than the assumed cost of new utility-owned solar generation. Kentucky Power also assumed that wind resources production tax credits (PTC) would cease in 2024; however, Kollen stated that 60 percent PTC are available for projects that go into service by 2026. Kollen testified that this error overstates both cases by the same amount and that wind resources do not have sufficient capacity factors when located inside Kentucky Power's service territory.[48]

---

[44] U.S. Energy Information Administration, Levelized Costs of New Generation Resources in the Annual Energy Outlook 2021 (https://www.eia.gov/outlooks/aeo/pdf/electricity_generation.pdf).

[45] Corrected Supplemental Direct Testimony of Lane Kollen (Kollen Supplemental Testimony) (filed June 15, 2021) at 4.

[46] Kentucky Power's Amended Response to the Attorney General/KIUC's Second Request for Information (filed June 30, 2021), Item 6.

[47] Kollen Direct Testimony at 21.

[48] *Id.* at 22–23.

Sierra Club's witness, Rachel Wilson, performed an alternative analysis that resulted in savings of $194 million without carbon pricing to savings of $341 million with carbon pricing if Mitchell is retired in 2028 without ELG compliance.[49] The main difference in the assumptions between Kentucky Power's modelling and Wilson's modelling was the cost of solar, wind, and battery storage replacement resources. Wilson testified that Kentucky Power's assumptions for these resources are significantly higher than EIA estimates and are not consistent with the modelling performed by other utilities.[50] Wilson used the National Renewable Laboratory's 2020 Advanced Technology Baseline (NREL ATB 2020) because it incorporates a variety of data points.[51]

Kentucky Power argued that Wilson's proposed plan would require Kentucky Power to acquire large amounts of generating capacity and incorrectly accounted for the required capacity amount by including additional capacity requirements if Mitchell operates until 2040.[52] Kentucky Power also challenged Wilson's replacement capacity cost inputs and NVPRR calculation methodology.[53]

Kollen and Wilson also argue in their respective testimonies that, although Kentucky Power's modelling did not include future environmental regulations, it is reasonable to assume that coal plants will be subject to carbon pricing and more stringent environmental regulations before 2040.[54]

---

[49] Direct Testimony of Rachel Wilson (Wilson Direct Testimony) (filed May 12, 2021) at 6.

[50] *Id.* at 18–19.

[51] *Id.* at 17.

[52] Kentucky Power's Brief at 28.

[53] *Id.* at 27–29.

[54] Kollen Direct Testimony at 27 and Wilson Direct Testimony at 43.

Flexibility of Case 2

The Attorney General and KIUC's witness, Lane Kollen, stated that Case 2 provides greater flexibility and opportunity for a potential new owner of Kentucky Power,[55] citing a recent announcement by AEP that is plans to divest itself of Kentucky Power.[56] Kollen suggested that a new owner will have a different asset base, cost structure, and customer base, that would therefore lead to significantly different alternatives and outcomes than those proposed by Kentucky Power in this case.[57] In addition, Kollen noted that a potential new owner would not be subject to the AEP Transmission Agreement, which would in turn likely result in lower transmission costs for Kentucky Power's customers.[58] Kollen concluded that even if Kentucky Power remains a subsidiary of AEP, Case 2 provides Kentucky Power and the Commission the greatest flexibility to assess Kentucky Power's economic options and resource mix,[59] while still being able to meet its PJM reserve requirements.[60]

Kentucky Power refuted the assertions made by Kollen, stating that they are both speculative and incorrect.[61] Kentucky Power stated that AEP has not "made the decision to divest the Company"[62] but is instead conducting a strategic review of its Kentucky

[55] Kollen Direct Testimony at 7.

[56] *Id.*

[57] Joint Response Brief of the Attorney General and KIUC at 13.

[58] *Id.*

[59] *Id.* at 14

[60] *Id.*

[61] Initial Brief of Kentucky Power at 35.

[62] Kollen Direct Testimony at 7.

assets that it expects to conclude by the end of 2021.[63] Kentucky Power stated that it is unknown at this time whether the review will result in a sale of Kentucky Power.[64] Kentucky Power's witness and President and Chief Operating Officer, Brent Mattison, stated in his rebuttal testimony that it would be inappropriate and potentially harmful for the Commission to make decisions in this case based on the hypothetical result of AEP's strategic review,[65] instead stating such decisions should be based on known and measurable facts and evidence.[66] Kentucky Power stated that when considering such facts and evidence, Case 1 is the best compliance option.[67]

Kentucky Power went on to state that Case 1 provides greater future flexibility in that the authorization of both CCR and ELG environmental compliance projects would allow Kentucky Power greater flexibility and optionality in optimizing its generation resource portfolio.[68] Kentucky Power asserted that limiting compliance projects to only CCR and retiring Mitchell in 2028 could result in a capacity shortfall with a short deadline to determine, obtain approval for, and acquire replacement resources.[69]

Decommissioning Rider

[63] Rebuttal Testimony of Brent Mattison (Mattison Rebuttal Testimony) (filed June 9, 2021) at 5.

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] Initial Brief of Kentucky Power at 35.

[68] Mattison Rebuttal Testimony at 5.

[69] *Id.*

Attorney General/KIUC's witness, Lane Kollen, proposed that the Commission could seek to "flatten" the recovery of the remaining net book value in the consideration of Case 2 by using a modified version of Kentucky Power's existing Decommissioning Rider[70] in response to Kentucky Power's assertion that there could be large increases in revenue requirement in 2029 associated with the recovery of the costs of replacement capacity.[71] Kollen stated that the immediate reduction in the recovery of the remaining net book value of Mitchell on a levelized basis instead of the present declining cost basis through base and ES rates would address Kentucky Power's concern.[72] Kollen noted that if such a rider were used to recover the costs of Mitchell, it would need to be modified to reflect a credit for the costs recovered in the base revenue requirement using a base-current methodology.[73] In addition, Kollen asserted that it would also be necessary to remove all costs associated with Mitchell from Kentucky Power's Tariff E.S. and include them in the Decommissioning Rider.[74]

Kentucky Power stated that the Commission should decline the suggestion made by Witness Kollen, stating the Company is not currently authorized to recover Mitchell Plant investment through the Decommissioning Rider, as Kollen points out.[75] Kentucky Power stated that the Decommissioning Rider currently only recovers coal-related

[70] Kollen Direct Testimony at 24.

[71] *Id.* at 24–25

[72] *Id.*

[73] Kollen Direct Testimony at 24.

[74] *Id.*

[75] Kollen Direct Testimony at 24.

retirement costs of Big Sandy Unit 1, the retirement costs of Big Sandy Unit 2, and other site-related retirement costs that will not continue.[76] Kentucky Power further asserted that Kollen did not provide an analysis of the potential impacts on customers or Kentucky Power,[77] and therefore it would be inappropriate for the Commission to modify Kentucky Power's Decommissioning Rider where no record has been developed.[78]

Kentucky Power went on to state that the record that has been established indicates that Kollen's proposal could be harmful to both it and customers,[79] citing that the proposal could shift the remaining cost of service associated with the remaining Mitchell net book value to customers who will not benefit from the asset.[80] Kentucky Power stated that such treatment would be inconsistent with cost of service ratemaking principles[81] as well as result in delayed cash flow to Kentucky Power, which would be harmful to its credit metrics and financial health.[82] Kentucky Power claimed that it plans to seek recovery of the remaining net book value of Mitchell in a future regulatory proceeding, where it plans to file a depreciation study, updates to depreciation rates, and other evidence in support of the request.[83]

---

[76] Mattison Rebuttal Testimony at 3.

[77] Initial Brief of Kentucky Power at 39.

[78] *Id.*

[79] *Id.*

[80] Mattison Rebuttal Testimony at 4.

[81] Whitney Rebuttal Testimony at 2.

[82] Mattison Rebuttal Testimony at 4.

[83] Initial Brief of Kentucky Power at 40.

Potential Securitization

In addition to the use of the Depreciation Rider, Kollen suggested that, while not currently an option under Kentucky law, securitization financing would result in approximately $156 million of net present value savings if Mitchell is retired in 2028.[84] Kollen states that such savings would not be available if the units are retired in 2040, and would therefore not be paid off through securitization financing and the revenue requirement would continue to include a grossed-up rate of return based on Kentucky Power's common equity and long-term debt financing.[85] Kollen noted that the financing costs associated with Mitchell sunk costs due to a retirement in 2028 would be less in Case 2 if the costs could be securitized.[86]

DISCUSSION AND FINDINGS

2021 Environmental Compliance Plan and CPCN

Based upon the case record and being otherwise sufficiently advised, the Commission finds, for the reasons discussed below, that Kentucky Power provided sufficient evidence to support a determination that there is a need to construct projects to comply with CCR rules, that the proposed CCR compliance project will not create a wasteful duplication of facilities, and that it is reasonable and cost-effective to construct the CCR compliance project. The Commission further finds, for the reasons discussed below, that Kentucky Power failed to carry its burden of proof that there is a need to construct projects to comply with ELG rules, that the proposed ELG compliance project

[84] Kollen Direct Testimony at 26.

[85] *Id.* at 25.

[86] *Id.*

will not create a wasteful duplication of facilities, and that the proposed ELG compliance project is reasonable and cost-effective. Therefore, the Commission finds that Kentucky Power's request for a CPCN and approval of its environmental compliance plan to construct projects to comply with the CCR rule as set forth in Case 2 should be granted. The Commission further finds that Kentucky Power's request for a CPCN and approval of its environmental compliance plan to construct projects to comply with both the CCR and ELG rules as set forth in Case 1 should be denied.

Case 2: CCR-Only Compliance Plan

The Commission finds that Kentucky Power provided sufficient evidence that Case 2 is needed to comply with CCR environmental regulations while providing safe, adequate, and reasonable service to Kentucky Power's customers, and will not create a wasteful duplication of facilities. We note that Kentucky Power, Attorney General, KIUC, and Sierra Club all asserted that Case 2 was necessary and should be approved to comply with the CCR rule.[87] The Commission is persuaded by the evidence of record that a pending capacity shortfall would exist if Mitchell were retired by October 2023, and that the capacity shortfall would result in a substantial inadequacy of service. For example, even with the EPA extension to October 2023, Kentucky Power would have 1,065 MW capacity after Rockport UPA terminates in December 2022 if Mitchell

[87] *See* Attorney General/KIUC's Response Brief (filed June 24, 2021) at 2–3 (arguing that qualitative factors weighed in favor of approving Case 2, including flexibility to craft a new resource capacity mix of fossil and renewable generation that promotes Kentucky's economic interests rather than providing economic development benefits for West Virginia). *Also see* Sierra Club's Response Brief (filed June 24, 2021) at 7 (noting that all of the intervening parties' witnesses assessed the option with Mitchell retirement in 2028 as "plainly and significantly more economical.").

continued to operate, but would only have a capacity of 285 MW after the Rockport UPA terminates if the Mitchell was retired in October 2023.[88]

The Commission finds that Kentucky Power provided sufficient evidence that it reviewed the reasonable alternatives, and that Case 2 is the most reasonable, least-cost alternative that will enable Kentucky Power to comply with CCR rules. Kentucky Power maintained that if Mitchell were retired in October 2023, then Kentucky Power would have to rely upon bilateral contracts or PJM Interconnection LLC (PJM) reliability pricing model (RPM) auction markets.[89] The Commission concludes that, because of the relatively short time frame in which to obtain replacement capacity, Kentucky Power would have to obtain capacity in the short-term through bilateral contracts or PJM RPM markets, which could subject to Kentucky Power to increased risk and price volatility.

Thus, for the above reasons, the Commission finds that Kentucky Power satisfied the requirements of KRS 278.020 and KRS 278.183, and therefore its request for a CPCN to construct CCR compliance projects at Mitchell and its 2021 Plan as set forth in Case 2 should be granted.

Case 1: CCR and ELG Compliance Plan

The Commission finds that Kentucky Power failed to provide sufficient evidence that the ELG project needed to comply with ELG environmental regulations while providing safe, adequate, and reasonable service to Kentucky Power's customers is necessary, and will not create a wasteful duplication of facilities because, as discussed below, Kentucky Power failed to provide sufficient evidence that it reviewed the

[88] Application at 3.

[89] Mattison Direct Testimony at 8.

reasonable alternatives, and therefore failed to convince the Commission that the ELG project is the most reasonable, least-cost alternative that will enable Kentucky Power to comply with ELG rules. For the same reason, the Commission further finds that Kentucky Power failed to provide sufficient evidence that the ELG project is reasonable and cost effective. Therefore, Kentucky Power failed to provide sufficient evidence that Case 1, which includes both the ELG and CCR project, satisfies the legal standards established in KRS 278.020 and KRS 278.183.

The Commission notes that, absent the ELG project, Mitchell would have to close in 2028, and that, if no further action is taken, Kentucky Power will have a capacity shortfall. However, unlike the evidence of record regarding the CCR project, Kentucky Power did not establish that there are no other reasonable alternatives to address the capacity shortfall than to construct the ELG project or that the ELG project is the least-cost alternative.

As noted above, Kentucky Power modeled Case 1 and Case 2 under three fundamental pricing forecasts, with two forecasts that excluded carbon pricing and one forecast that included carbon pricing. The results of the modeling reflected that complying with only CCR regulations was less costly under the forecast that included carbon costs. Even with the generous modeling assumptions, the NPVRR of Case 1 and Case 2 vary by less than 1 percent of the total costs, which is estimated to be $3.489-4.331 million through 2050.[90] As Kentucky Power noted in its most recent integrated resource plan (IRP), it considered potential costs from future regulation of carbon emissions "even though there is considerable uncertainty as to the timing and form future carbon regulation

[90] Mattison Direct Testimony at 5.

may take."[91] Ignoring the result of the scenario with carbon costs is unreasonable in light of Kentucky Power's inclusion of carbon costs in resource planning, and emerging environmental laws and policies, because it skews an analysis of whether the ELG project is the most reasonable, least-cost option. Nevertheless, the carbon scenario is not the exclusive basis for our decision.

Additionally, the Commission concurs with Attorney General, KIUC, and Sierra Club that Kentucky Power's modeling assumptions significantly overstated the projected cost of other generation resources, which artificially created the appearance that the ELG project is more cost-effective than the alternatives. Based on recent solar PPAs approved by the Commission and by EIA data contained in the case record, the Commission concludes that Kentucky Power's valuation of other generation resources is flawed because it overstates replacement energy and capacity costs, and therefore skews the outcome of the analysis.

Given the close results and Kentucky Power's exclusion of future enactment of environmental regulations, the Commission is not convinced that constructing the proposed ELG project in order to operate Mitchell between 2028 and 2040 is the least-cost option if any upgrades are required to comply with new environmental regulations, including, but not limited to, those that may be related to carbon dioxide emissions.[92] Between 1993 and 2020, Kentucky Power spent approximately $714 million on

[91] Case No. 2019-00443, *Electronic 2019 Integrated Resource Planning Report of Kentucky Power Company* (filed Dec. 20, 2019) at ES-1, and Section 1.5 at 5. Kentucky Power's IRP carbon proxy began in 2028 at $15/metric ton of CO_2 emissions and escalated at 3.5 percent per annum on a nominal basis.

[92] The Commission takes administrative notice of a recent decision in the U.S. Court of Appeals for the District of Columbia Circuit that vacated the Affordable Clean Energy Rule and remanded the matter to the Environmental Protection Agency for further proceedings to determine the best method to reduce emissions. *American Lung Assoc. v. EPA*, 985 F.3d 914 (D.C. Cir. 2021) (Petition for Certiorari pending before the U.S. Supreme Court).

environmental compliance projects, with approximately $708 million spent between 2005 and 2020.[93] The Commission notes that Kentucky Power acquired its interest in Mitchell in a previous matter as the least-cost option to meet long-term capacity and energy obligations "in light of known and emerging environmental regulations."[94] In that matter, Kentucky Power explicitly recognized the Commission's authority to challenge Kentucky Power's rates upon a finding that Mitchell was no longer a least-cost generation resource due to environmental regulations and to retire Kentucky Power's interest in Mitchell for ratemaking purposes.[95] Kentucky Power offers no such assurances in this matter.

Finally, Kentucky Power argued that the combined CCR and ELG projects are "the most technically feasible, least life cycle technology cost options," which is different from the legal standard for wasteful duplication, that a utility must demonstrate that a thorough review of all reasonable alternatives has been performed to determine the most reasonable, least cost option.[96]

Thus, for the reasons set forth above, the Commission finds that Kentucky Power failed to establish that the ELG project will not result in wasteful duplication, or that the

[93] Kentucky Power's Response to Commission Staff's Fourth Request for Information (Staff's Fourth Request) (filed June 2, 2021), Item 1.

[94] Case No. 2012-00578, *Application of Kentucky Power Company for (1) A Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power Company of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company's Efforts to Meet Federal Clean Air Act and Related Requirements; and (5) All Other Required Approvals and Relief* (Ky. PSC Oct. 7, 2013) at 17.

[95] *Id.* at 32.

[96] Sherrick Direct Testimony at 5. Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

ELG-related project is reasonable and cost-effective. Therefore, Kentucky Power failed to satisfy the requirements of KRS 278.020 and KRS 278.183, and its request for a CPCN to construct ELG compliance projects at Mitchell and its 2021 Plan as set forth in Case 1 should be denied.

SURCHARGE MECHANISM AND CALCULATION

Kentucky Power proposed amendments to its Tariff E.S.[97] Tariff E.S is intended to provide Kentucky Power a method of recovering the cost of certain approved environmental projects through a customer environmental surcharge.[98] In the event that the total monthly environmental costs to Kentucky Power exceed those already recovered in base rates, then customers are charged the difference through the environmental surcharge.[99]

The changes to Tariff E.S. include the addition of the 2021 Plan.[100] Kentucky Power updated the list of environmental equipment at the Mitchell Plant to include Project 22, and updated the list of environmental costs for the total company.[101] Kentucky Power sought to add construction work in progress (CWIP) to the environmental surcharge rate base until the new assets are placed in service, similar to the treatment of CWIP in its base rates.[102] Lastly, Kentucky Power requested that the costs already

[97] Application at 13.

[98] Scott Direct Testimony at 4.

[99] *Id.* at 4–5.

[100] *Id.* at 11.

[101] *Id.* at 11.

[102] *Id.* at 6.

incurred for the planning of Project 22 be recovered on a levelized basis through Tariff E.S. until the dry ash handling system is in service starting May 2023.[103]

Kentucky Power requested that a return on equity of 9.10 percent that was recently established in Case No. 2020-00174[104] be applied to all non-Rockport environmental compliance costs recovered through its Tariff E.S. The present proceeding and the final Order in Case No. 2020-00174 were filed within weeks of each other. Therefore, the Commission finds that it is reasonable to continue the use of 9.10 percent ROE for the purposes of recovering non-Rockport environmental compliance costs.

The Commission has reviewed Kentucky Power's proposed changes to its Tariff E.S. and finds that the updates to Tariff E.S. should be approved, as modified to only include language pertaining to the costs and equipment of Case 2 as approved in this Order.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's 2021 Plan, as set forth in Case 2 in its application, is approved.

2. Kentucky Power's request for a CPCN to construct environmental projects to comply with the CCR Rule as set forth in Case 2 in its application is approved.

3. Kentucky Power's request to construct environmental projects as set forth in Case 1 in its application is denied.

[103] *Id.* at 10.

[104] Case No. 2020-00174, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; and (5) All Other Required Approvals and Relief* (Ky. PSC Jan. 13, 2021).

4. Kentucky Power's environmental surcharge tariff is approved for service rendered on and after September 28, 2021.

5. Kentucky Power shall notify the Commission prior to performing any additional construction not expressly authorized by this Order.

6. Any deviation from the construction approved by this Order shall be undertaken only with prior approval of the Commission.

7. Kentucky Power shall file with the Commission documentation of the total costs of this project, including the cost of construction and all other capitalized costs within 60 days of the date that construction authorized under this CPCN is substantially completed. Construction costs shall be classified into appropriate plant accounts in accordance with the Uniform System of Accounts for electric utilities prescribed by the Commission.

8. Kentucky Power shall file a copy of the "as-built" drawings and a certified statement that the construction has been satisfactorily completed in accordance with the contract plans and specifications within 60 days of the substantial completion of the construction certificated by this Order.

9. Any documents filed in the future pursuant to ordering paragraphs 5, 6, 7, and 8 shall reference this case number and shall be retained in the post-case correspondence file.

10. The Executive Director is delegated authority to grant reasonable extensions of time for filing any documents required by this Order upon Kentucky Power's showing of good cause for such extension.

11. Within 20 days of the date of this Order, Kentucky Power shall file with the Commission, using the Commission's electronic Tariff Filing System, its revised Tariff E.S. as set forth in this Order reflecting that it was approved pursuant to this Order.

12. This case is now closed and removed from the Commission's docket.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

By the Commission

ENTERED
JUL 15 2021 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Executive Director

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Tanner Wolffram
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216

*Christen M Blend
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216

*Katie M Glass
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Jennifer J. Frederick
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Matthew Miller
Sierra Club
50 F Street, NW, Eighth Floor
Washington, DISTRICT OF COLUMBIA 20001

*Joe F. Childers
Childers & Baxter PLLC
300 Lexington Building, 201 West Sho
Lexington, KENTUCKY 40507

*J. Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*John G Horne, II
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Honorable Kurt J Boehm
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Honorable Mark R Overstreet
Attorney at Law
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

Attachment 2

Order, Case No. 2021-00370 (KY Investigation Case), October 8, 2021

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

O R D E R

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

BACKGROUND

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

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

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

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

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

[1] Case No. 2021-00004, *Electronic Application of Kentucky Power Company for Approval of a Certificate of Public Convenience and Necessity for Environmental Project Construction at the Mitchell Generating Station, an Amended Environmental Compliance Plan, and Revised Environmental Surcharge Tariff Sheets* (filed Feb. 8, 2021).

[2] Case No. 2021-00004, *Electronic Application of Kentucky Power Company for Approval of a Certificate of Public Convenience and Necessity for Environmental Project Construction at the Mitchell Generating Station, an Amended Environmental Compliance Plan, and Revised Environmental Surcharge Tariff Sheets* (Ky. PSC July 15, 2021).

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

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

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

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

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

[5] Application for a Declaratory Order at 8.

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

Application for Declaratory Order

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

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

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

[6] Application for a Declaratory Order at 9.

[7] *Id.* at 10.

[8] *Id.* at 11.

[9] *Id.*

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

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

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

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

[10] Application for a Declaratory Order at 13.

[11] *Id.* at 16.

[12] *Id.* at 16–17.

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

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

[13] Application for a Declaratory Order at 21.

[14] *Id.* at 23.

[15] *Id.* at 24.

[16] *Id.* at 25.

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

Response of the Sierra Club

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

The October 5, 2021 Hearing

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

[17] Application for a Declaratory Order at 25.

[18] *Id.*

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

[20] *Id.* at 2.

[21] *Id.* at 3.

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

DISCUSSION

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

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

(Emphasis added.)

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

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

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

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

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

IT IS THEREFORE ORDERED that:

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

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

By the Commission

ATTEST:

_____
Executive Director

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Honorable Mark R Overstreet
Attorney at Law
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Brett Mattison
COO
Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Kentucky Power Company
Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Carrie H Grundmann
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NORTH CAROLINA 27103

*Katie M Glass
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Joe F. Childers
Childers & Baxter PLLC
300 Lexington Building, 201 West Sho
Lexington, KENTUCKY 40507

*Matthew Miller
Sierra Club
50 F Street, NW, Eighth Floor
Washington, DISTRICT OF COLUMBIA 20001

*John Horne
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Honorable Kurt J Boehm
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

Attachment 3

Order, Case No. 2021-00421 (KY Mitchell Agreements Case), May 3, 2022

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY POWER COMPANY FOR APPROVAL OF AFFILIATE AGREEMENTS RELATED TO THE MITCHELL GENERATING STATION	))))	CASE NO. 2021-00421

O R D E R

On November 19, 2021, Kentucky Power Company (Kentucky Power) filed an application requesting Commission approval of an ownership agreement (Ownership Agreement), and operations and maintenance agreement (O&M Agreement) (jointly, Mitchell Agreements) between Kentucky Power and its affiliate, Wheeling Power Company (Wheeling Power), to replace an existing operating agreement (Operating Agreement) for the Mitchell Generating Station (Mitchell). The Mitchell Agreements transfer Kentucky Power's duties as the operator of Mitchell to Wheeling Power and establish terms for Wheeling Power's future buyout of Kentucky Power's interest in Mitchell. Kentucky Power requested approval of the Mitchell Agreements by February 17, 2022, but was advised that the Commission could not complete a robust investigation of the issues presented and enter an Order by that date.

The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General) and Kentucky Industrial Utility Customers, Inc. (KIUC) (jointly, Attorney General/KIUC) are intervenors in this matter and jointly sponsored witness testimony and data requests. The parties filed written testimony and responded to data requests. A formal hearing was held on March 1, 2022. An informal

conference was held on March 9, 2022, to discuss revisions to the Ownership Agreement proposed by Kentucky Power. On March 15, 2022, Kentucky Power filed an amended application that included a revised Ownership Agreement. A second formal hearing was held on March 30, 2022. Kentucky Power responded to post-hearing data requests. On April 14, 2022, Kentucky Power and Attorney General/KIUC filed their respective post-hearing briefs. On April 21, 2022, Kentucky Power and Attorney General/KIUC filed their respective response briefs. This matter now stands submitted for a decision.

LEGAL STANDARD

Kentucky Power stated that it filed its request to approve the Mitchell Agreements in accordance with the Commissions October 8, 2021 and October 28, 2021 Orders in Case No. 2021-00370.[1] In the October 8, 2021 Order, the Commission stated that Kentucky Power should "promptly seek modifications" to the existing Mitchell Operating Agreement should Wheeling Power begin construction of a project to comply with the federal effluent limitations guidelines (ELG). This is because in Case No. 2021-00004,[2] the Commission denied Kentucky Power's request to construct the ELG compliance project at Mitchell, and thus Kentucky Power was not authorized to recover any funds expended to construct the ELG compliance project.

In the October 28, 2021 Order, the Commission took administrative notice that Kentucky Power's parent, American Electric Power Company, Inc. (AEP), announced on

[1] Case No. 2021-00370, *Electronic Investigation of the Service, Rates and Facilities of Kentucky Power Company* (Ky. PSC Oct. 8, 2021), Order (October 8, 2021 Order); Case No. 2021-00370, Order (Ky. PSC Oct. 28, 2021) (October 28, 2021 Order).

[2] Case No. 2021-00004, *Electronic Application of Kentucky Power Company for Approval of a Certificate of Public Convenience and Necessity for Environmental Project Construction at the Mitchell Generating Station, an Amended Environmental Compliance Plan, and Revised Environmental Surcharge Tariff Sheets* (Ky. PSC July 15, 2021), Order (July 15, 2021 Order).

October 26, 2021, that it entered into an agreement to sell Kentucky Power to Liberty Utilities Co. (Liberty). Because of the Commission's statutory authority to ensure that Kentucky Power continues to provide safe, adequate, and reliable service, the Commission found that Kentucky Power should request Commission approval prior to any change to the Mitchell Operating Agreement.

KRS 278.2207, which governs transactions between a utility and an affiliate such as the potential sale of Kentucky Power's interest in Mitchell to Wheeling Power, requires that services and products provided to an affiliate by the utility be priced at the greater of net book value or market value, or, if applicable, priced in compliance with U.S. Department of Agriculture, Securities and Exchange Commission, or Federal Energy Regulatory Commission (FERC) approved cost allocation methodology.

BACKGROUND

Kentucky Power and Wheeling Power, both wholly owned subsidiaries of AEP, each own an undivided 50 percent interest in Mitchell, which is located in Moundsville, West Virginia. Kentucky Power's interest in Mitchell is subject to the jurisdiction of this Commission; Wheeling Power's interest in Mitchell is subject to the jurisdiction of the West Virginia Public Service Commission (WVPSC).[3]

The existing Mitchell Operating Agreement was effective on December 31, 2014, and governs the operation, maintenance, and joint ownership rights and obligations of Kentucky Power and Wheeling Power. Under the existing agreement, Kentucky Power is the Mitchell operator and most permits are held in Kentucky Power's name. Each utility

[3] Wheeling Power filed an application with the WVPSC for approval of the same Mitchell Agreements that are the subject of this proceeding. That proceeding, WVPSC Case No. 21-0810-E, is pending as of the date of this Order.

is entitled to an equal share of the Mitchell capacity and energy; each are responsible for all O&M costs, which are apportioned based on each utility's proportionate share of Mitchell dispatch; and each are responsible for capital improvements, apportioned on their percentage of ownership.

Kentucky Power asserted that the existing Mitchell Operating Agreement needed to be revised due to the Commission's October 8, 2021 and October 28, 2021 Orders in Case No. 2021-00370, and due to conflicting decisions by this Commission and WVPSC regarding projects to comply with coal combustion residuals (CCR) and ELG environmental rules. In Case No. 2021-00004, the Commission approved Kentucky Power's request for a Certificate of Public Convenience and Necessity (CPCN) for CCR facilities, and denied a CPCN for ELG facilities, prohibiting the recovery of any of the proposed ELG-related costs from Kentucky Power ratepayers.[4] The WVPSC approved CPCNs for both projects. Under revised ELG rules, Mitchell has to be compliant with ELG rules or retire by December 31, 2028. Kentucky Power asserted that Wheeling Power expected to continue operating Mitchell through 2040, which is the retirement date based upon Mitchell's service life.[5] Kentucky Power claimed that the Mitchell Agreements were necessary to designate Wheeling Power as operator and to transfer permits into Wheeling

[4] Case No. 2021-00004, (Ky. PSC July 15, 2021). The Commission found that Kentucky Power failed to meet its burden of proof to establish that the ELG compliance project was the most reasonable, least cost option, or that it was reasonable and cost-effective. Among other things, the Commission concluded that Kentucky Power's valuation of alternatives to the proposed ELG project overstated costs, and thus skewed the results to artificially depict the ELG project as the least cost alternative to address a capacity shortfall if Mitchell were to be retired in December 2028.

[5] Hearing Video Transcript (HVT) of the March 1, 2022 Hearing at 2:21:40.

Power's name to start construction on the ELG compliance project while complying with the Commission's Order in Case No. 2021-00004.[6]

Kentucky Power also asserted that the Commission required Kentucky Power and Wheeling Power to accelerate the approval of revisions to the Mitchell Operating Agreement in the October 8, 2021 and October 28, 2021 Orders in Case No. 2021-00370.

MITCHELL AGREEMENTS

The existing Operating Agreement includes provisions for operator responsibilities; apportionment of capacity and energy; facility replacements, additions, and retirements; working capital; fuel investment; apportionment of station costs; governance by an operating committee; and a dispute resolution process. The new O&M Agreement includes provisions for operator responsibilities; parties' obligations and rights; budgets and reports; limitations on authority; compensation and payment; and termination of the agreement. The new Ownership Agreement includes provisions for ownership and operations; apportionment of capacity and energy; plant replacements, additions, and retirements; working capital; fuel investment; apportionment of station costs; governance through an operating committee; transfers and buyouts; and dispute resolution. The new O&M and Ownership Agreements contain cross references to each other.

As initially proposed in the Ownership Agreement, Wheeling Power would purchase Kentucky Power's ownership interest in Mitchell on or before December 31, 2028, unless an earlier retirement occurred. If negotiations for a purchase price were not successful, the Ownership Agreement included a backstop mechanism that the purchase price for Kentucky Power's interest would be fair market value, minus a capital

[6] Direct Testimony of D. Brett Mattison (Mattison Direct Testimony) (filed Nov. 19, 2021) at 8–9.

expenditure (CapEx) adjustment, less decommissioning costs plus a coal inventory adjustment. The fair market value would be determined by a group of three appraisers, with dispute resolution provisions addressing the appointment of appraisers and appraiser valuations.

Kentucky Power would share in capital expenditures with an in-service date through December 31, 2028, including CCR upgrades, but capital expenditures with an in-service date after December 31, 2028, would be allocated entirely to Wheeling Power. If a non-ELG capital expenditure has a depreciable life that extends beyond December 31, 2028, the Ownership Agreement included a formula for Kentucky Power to pay a portion of the costs between the reasonably anticipated in-service date and December 31, 2028. A technical expert would be engaged to determine which capital expenditures are ELG related.

Other provisions include establishing a capital and operating budget between the effective date of the Mitchell Agreements and December 31, 2028; the ownership interest and voting rights remain 50/50; and the Mitchell Operating Committee continues to consist of three members: one representative each for Kentucky Power and Wheeling Power with voting rights; and an AEPSC representative, who is a non-voting member.

Under the proposed Operating Agreement, Wheeling Power would take over from Kentucky Power as operator of Mitchell, managing day-to-day operations, including dispatch, environmental and NERC compliance. The Operating Agreement addresses operator responsibilities, and budgeting and reporting processes.

Responding to parties' concerns regarding the fair market value buyout and decommissioning cost provisions, and to reduce the potential for inconsistent decisions

between this Commission and WVPSC, Kentucky Power proposed, in rebuttal testimony and in its amended application, an alternative buyout proposal that removed the fair market value provision as the backstop mechanism if negotiations failed and replaced it with a unit swap.[7]

Under the alternate proposal, if Kentucky Power and Wheeling Power are unable to execute an agreement for Wheeling Power to purchase Kentucky Power's interest by December 21, 2024, then the two Mitchell generating units would be divided with Kentucky Power taking one unit and Wheeling Power taking the other. Kentucky Power asserted that each of the units has the same nominal generating capacity of 800 MW each and that the Operating Committee could determine a fair division of the interests.[8] Under a unit swap proposal, the unit ownership would have to be finalized by May 2025 to meet the PJM Interconnection, LLC (PJM) capacity planning cycle.[9]

Kentucky Power explained that establishing the December 31, 2024 date for mutually accepted sale terms would allow the parties to obtain necessary regulatory approvals for unit disposition no later than May 1, 2025, which would allow the parties to meet the PJM capacity market auction rules, and allow the transaction to be consummated by December 31, 2028.[10]

The unit swap mechanism would be required under the following conditions: (1) if Kentucky Power and Wheeling Power cannot execute a buyout agreement by December

[7] Rebuttal Testimony of Stephen Haynes (Haynes Rebuttal Testimony) (filed Feb. 9, 2022) at R31-36; Kentucky Power Post-Hearing Brief (filed Apr. 14, 2022) at 17–18.

[8] Haynes Rebuttal Testimony at R33.

[9] Haynes Rebuttal Testimony at R33-34.

[10] Haynes Rebuttal Testimony at R33; Stephan T. Haynes Supplemental Testimony (Haynes Supplemental Testimony) (filed March 15, 2022) at 6 and 8.

31, 2024; (2) if the requisite regulatory approvals have not be received by May 1, 2025; or (3) if the parties terminate the buyout agreement.[11] The unit swap would be consummated no later than December 31, 2028, after receipt of applicable regulatory approvals.[12] The unit swap terms would be negotiated by the Operating Committee and, if the Operating Committee cannot reach an agreement, then Article 12 dispute process applies.[13]

The Article 12 dispute resolution process includes that, if the Operating Committee does not reach agreement May 1, 2025, the parties will refer the dispute to binding arbitration administered by American Arbitration Association. The arbitration judgment is final and binding upon parties and not subject to appeal or review and may be entered in any court having jurisdiction. The Ownership Agreement provides that the Article 12 dispute resolution process is the sole and exclusive remedy for unit swap disputes. Kentucky Power asserted that, once the arbitration judgment is reached, that it would bring the decision to this Commission and other regulatory bodies for necessary regulatory approval.[14]

In briefing, Kentucky Power stated that, just as Wheeling Power had with the WVPSC, that Kentucky Power offered to remove all provisions governing the transfer of Kentucky Power's interest in Mitchell that are contained in Section 9.6 and related provisions, such as Article 12 unit swap dispute resolutions and definitions. Kentucky

[11] Haynes Supplemental Testimony at 9.

[12] Haynes Supplemental Testimony at 9.

[13] Haynes Supplemental Testimony at 11; Kentucky Power's Response to Commission Staff's First Request for Information (filed Dec. 22, 2021), Item 9e.

[14] Kentucky Power's Post-Hearing Brief (filed Apr. 14, 2022) at 39–41.

Power explained that it made this new offer based upon concerns raised by Attorney General/KIUC and by the Commission at the March 30, 2022 hearing. Kentucky Power further explained that it recognized that it could be reasonable "to wait until there are more facts in the future, when the usefulness of the plant beyond 2028 is better known, before defining the commercial structure for any future transaction."[15] Under the latest alternative, the Ownership Agreement could be approved without the buyout provision, which would allow Wheeling Power to become the plant operator and the CCR/ELG projects to be constructed within the prohibitions on ratepayer funding of the ELG project in accordance with the July 15, 2021 Order in Case No. 2021-00004.

Kentucky Power also proposed that the Commission could approve both the unit swap proposal and the removal of the buyout provision as dual options to increase the likelihood that this Commission and the WVPSC would enter Orders that found some common agreement.

In their initial post-hearing brief, Attorney General/KIUC argued that the Commission should reject the O&M Agreement and reauthorize the existing Operating Agreement with limited, necessary modifications, which would be sufficient for Wheeling Power to continue to operate Mitchell.[16] Attorney General/KIUC further argued that, if Liberty's acquisition of Kentucky Power were approved, then the Operating Agreement would have to be amended to reflect necessary changes because Kentucky Power would no longer be an AEP affiliate. Attorney General/KIUC asserted that the Commission should deny the Ownership Agreement because it is unnecessary, given that Mitchell can

[15] Kentucky Power's Post-Hearing Brief at 47.

[16] Attorney General/KIUC's Post-Hearing Brief (filed Apr. 14, 2022) at 3–5.

continue to be operated under a modified Operating Agreement.[17] Attorney General/KIUC further asserted that it is premature to approve a buyout structure of a future transaction that, if it occurred today, would be between affiliates, but if the acquisition is approved, would be between non-affiliates, because Kentucky statutory law treats transactions between affiliates differently that transactions between non-affiliates.[18] Finally, Attorney General/KIUC argued that the Ownership Agreement leaves too much power in the hands of the Operating Committee, encroaches on Commission jurisdiction, and lacks necessary details, such as decommissioning costs and tax consequences of the buyout provision.

In their response brief, Attorney General/KIUC rejected Kentucky Power's offer to withdraw the buyout provisions from the Ownership Agreement, arguing that removing the buyout provisions fails to cure the flaws in the Ownership Agreement. Attorney General/KIUC asserted that this Commission should base its decision on whether Kentucky Power met its burden of proof and not on the "hope" that WVPSC would approve the same Ownership Agreement terms that this Commission approves.[19]

DISCUSSION AND FINDINGS

As an initial matter, the Commission notes that amendments to the existing Mitchell Operating Agreement would have sufficed and, had Kentucky Power filed only an amended Operating Agreement, the Commission could have reached its decision on or

[17] Attorney General/KIUC's Post-Hearing Brief at 5.

[18] Attorney General/KIUC's Post-Hearing Brief at 5–6.

[19] Attorney General/KIUC's Response Brief (filed Apr. 21, 2022) at 5.

near the February 2022 date requested by Kentucky Power.[20] Kentucky Power asserted that the Commission required Kentucky Power and Wheeling Power to accelerate the approval of both the Operating and the Ownership Agreements in Case No. 2021-00370, October 8, 2021 and October 28, 2021 Orders.[21] This is a misreading of the Orders. First, there is no existing ownership agreement between Kentucky Power and Wheeling Power, only the existing Operating Agreement.[22] The October 8, 2021 Order stated that Kentucky Power and Wheeling Power should "promptly seek modifications" to the existing Operating Agreement if Wheeling moved forward with the ELG project. The October 28, 2021 Order required Kentucky Power to obtain this Commission's approval prior to any change to the existing Operating Agreement. Second, as discussed at a hearing in Case No. 2021-00370, amending the existing Operating Agreement to make Wheeling Power the Mitchell Station operator would have addressed most outstanding issues related to Wheeling Power constructing the ELG project.[23] This is especially so given the pending acquisition of Kentucky Power by Liberty.

In hearing testimony, AEP representatives stated that the agreements were needed to determine cost allocation, to designate Wheeling Power as Mitchell operator, and for disposition of Kentucky Power's undivided interest by December 2028.[24] Also in hearing testimony, AEP agreed that revisions to the existing Operating Agreement could

[20] *See* HVT of the March 30, 2022 Hearing at 12:34:26.

[21] HVT of the March 1, 2022 Hearing at 10:17:33, 10:58:36, 11:01:53, and 12:01:41.

[22] HVT of the March 1, 2022 Hearing at 11:15:05. *Also see* Mattison Direct Testimony, at 4–5; and Kentucky Power's Response to the Attorney General/KIUC's First Request for Information (filed Dec. 22, 2021), Item 10.

[23] Case No. 2021-00370, HVT of the October 5, 2021 Hearing at 10:26:54.

[24] HVT of the March 1, 2022 Hearing at 12:01:38.

have addressed these issues, but that additional terms would have been needed.[25] The Commission concurs that changes to the existing Operating Agreement are needed regarding cost allocation and to designate Wheeling Power as operator. However, it is premature to address the disposition of Kentucky Power's undivided interest at this time. Rather than being necessary to comply with the Commission's orders, the Ownership Agreement is instead merely convenient for AEP to satisfy requirements it created as a result of its agreements related to the proposed Liberty Acquisition of Kentucky Power.

The Commission is concerned because this transaction was not the product of an arm's length agreement. Had the parties to the negotiation been Liberty, the entity who applied to purchase Kentucky Power, and Wheeling Power, the transaction might fairly be called an arm's length agreement because the transaction would have been between two unrelated and unaffiliated parties, acting independently and in their own self-interest. Here, however, the parties, Kentucky Power and Wheeling Power, are AEP affiliates, with overlapping management by Nicholas Akins, AEP and Kentucky Power CEO, and AEP EVP/COO Lisa Barton, who leads the activities of all AEP operating companies. Many of the terms regarding the future buyout are favorable to Wheeling Power at the expense of Kentucky Power and its ratepayers. Additionally, as has been noted in a separate proceeding, Kentucky Power's COO, who was actively involved in the negotiations of these documents, is not proposed to continue employment with Kentucky Power after the acquisition by Liberty, but rather, is expected to be reemployed by AEP.[26]

[25] HVT of the March 1, 2022 Hearing at 12:03:30.

[26] Case No. 2021-00481, *Electronic Joint Application of American Electric Power Company, Inc., Kentucky Power Company and Liberty Utilities Co. for Approval of the Transfer of Ownership and Control of Kentucky Power Company* (filed Jan. 4, 2022), Direct Testimony of David Swain at 10.

However, with Kentucky Power's offer to withdraw Section 9.6, which contains the buyout provisions, and to withdraw provisions related to the buyout provision, including the buyout provision dispute resolution in Article 12 and in definitions, the matter of the buyout provision is moot.

Based upon a review of the case record and being otherwise sufficiently advised, the Commission finds that the buyout provision contained in Article 9.6 of the revised Ownership Agreement, and related provisions, including the unit swap dispute resolution provisions in Article 12 and the buyout provision-related definitions, are not reasonable for the reasons discussed above that establishing the structure of a future sale of Kentucky Power's interest is premature in light of the pending acquisition of Kentucky Power by Liberty, because the buyout terms were not negotiated as an arm's length transaction, as they would be if they were negotiated between non-affiliates; because the terms for the future sale of Kentucky Power's interest were not required by the Commission in order to continue operating Mitchell; and because the buyout provision is based on assumptions regarding future circumstances that are likely to change closer to the December 31, 2028 date when Kentucky Power's interest in Mitchell must terminate in accordance with the July 15, 2021 Order in Case No. 2021-00004.

In light of Kentucky Power's offer to withdraw Article 9.6, and all other provisions that address the unit swap and buyout provisions, including but not limited to the unit swap dispute resolution provisions in Article 12 and the buyout provisions in the definitions, the Commission finds that the Ownership Agreement and the O&M Agreement are reasonable, subject to modifications explicitly addressing costs that will

be incurred to operate post-2028 but would not be incurred if Mitchell retired in 2028,[27] removing all references to the buyout provisions and including language that the Mitchell Agreements, and all terms related to future events, are subject to the jurisdiction of this Commission. With these modifications, the Commission finds that the Ownership Agreement and O&M Agreement are reasonable and should be granted.

The Commission is not persuaded by Attorney General/KIUC's argument that the Ownership Agreement awards too much power to the Operating Committee given that the Operating Committee's powers in the existing Operating Agreement are essentially the same in the Ownership Agreement in regards to Committee makeup, voting powers, scope of authority, and dispute resolution. Further, the Commission is not persuaded by Attorney General/KIUC's argument that the decommissioning costs should be addressed in greater detail in the Ownership Agreement. There is too much uncertainty regarding decommissioning costs to be reasonably determined at this time; the determination of decommissioning costs should be made when the costs are more certain, such as when sold or when Mitchell is decommissioned.

The Commission concurs with Attorney General/KIUC that the Ownership Agreement does not clearly provide for this Commission's jurisdiction in regulatory approvals needed in the future under the Ownership Agreement. Kentucky Power asserted that the revised Ownership Agreement expressly contains a broad statement in

[27] These costs were discussed in the direct testimony of Mark Becker in Case No. 2021-00004, wherein the analysis that the Commission based its decision to grant a CPCN for CCR compliance, but not ELG, "assumed . . . that other maintenance capital and landfill capital expense could be reduced in the 2023-2028 period immediately prior to retirement, creating customer savings." *See* Case No. 2021-00004, *Electronic Application of Kentucky Power Company for Approval of a Certificate of Public Convenience and Necessity for Environmental Project Construction at the Mitchell Generating Station, An Amended Environmental Compliance Plan, and Revised Environmental Surcharge Tariff Sheets* (filed Feb. 8, 2021), Direct Testimony of Mark A. Becker at 7.

Article 13.2 that Kentucky Power was required to obtain future approvals from this Commission, and the WVPSC, to effectuate future events arising from the Ownership Agreement.[28] Article 13.2 states, "This Agreement is subject to the regulatory authority of any State or Federal agency having jurisdiction." This language is not sufficiently clear that the terms contained in the Agreement are all subject to the regulatory authority of this Commission, or any State or Federal agency having jurisdiction. A plausible reading is that the approval of the Agreement is needed, but not for those provisions for future events not expressly subject to this Commission's authority, such as Article 12.6, which describes FERC jurisdiction. As set forth in the February 3, 2022 Order in Case No. 2021-00370, Kentucky Power and AEP have a history of pursuing FERC approval to preempt the Commission's jurisdiction, especially on issues that the Commission has ruled on that AEP believes were adverse to its private interest. For this reason, the Commission finds that the Ownership Agreement should be modified to reflect that the Ownership Agreement and all terms contained in the Agreement, including those addressing future events, are all subject to this Commission's jurisdiction.

Because Kentucky Power withdrew the proposal to use fair market value as a baseline for a purchase price for Kentucky Power's interest, the Commission will not address that issue. However, the Commission concurs with Attorney General/KIUC that KRS 278.2207 applies if Kentucky Power's interest in Mitchell is sold to Wheeling Power as an affiliate transaction.[29] For this reason, the Commission expects that, if Kentucky

[28] HVT of the March 30, 2022 Hearing at 12:23:26; Kentucky Power's Post-Hearing Brief at 39–41.

[29] In testimony filed in response to the original proposal, Attorney General/KIUC's witness, Lane Kollen, argued that basing the buyout price on the fair market value violated KRS 277.2207 because the buyout price did not establish a floor for the sale price as the greater of net book value or market value. *See* Direct Testimony of Lane Kollen (Kollen Direct Testimony) (filed Mar. 29, 2022) at 6–13.

Power's Mitchell interest is sold to Wheeling Power when both entities are affiliates, then the sale shall be priced at the greater of net book value or market value, with necessary adjustments, and is subject to the Commission approval. As evidenced in the case record, past sales of Mitchell among AEP affiliates were all made at net book value and AEP's cost allocation manual, which applies to both Kentucky Power and Wheeling Power, requires that sales between affiliates be at net book value.[30] Furthermore, given Kentucky Power's purchase of its interest in Mitchell at net book value, this Commission expects its sale to be at approximately net book value, as modified by necessity for certain capital costs related to Mitchell's joint ownership, including ELG costs. Given this expectation, this Commission believes it is reasonable for Kentucky Power to pay for its fair share of capital costs ahead of such a sale at net book value. To act otherwise would run the risk of making the transaction unfair to Wheeling Power and its customers. Kentucky Power customers should pay their fair share of capital costs between now and 2029, based on an expectation that Wheeling Power will buy Kentucky Power's interest in Mitchell at its remaining net book value post-2028. Any actions subsequent to this order that leads this Commission to believe its expectations regarding the sale of Mitchell will not occur at approximately net book value will require this Commission to reassess its position on the sharing, allocation and depreciation of costs and expenses subject to the relevant agreements discussed herein.

[30] Kollen Direct Testimony at 4 and 12–13. In Kentucky Power's Response to Attorney General/KIUC's Second Request for Information (filed Jan. 14, 2022), Item 1, Kentucky Power stated that there were three prior transfers of Mitchell between AEP subsidiaries and that all were made at adjusted net book value.

IT IS THEREFORE ORDERED THAT:

1. Kentucky Power's request for approval of the Mitchell Ownership Agreement and the Mitchell O&M Agreement, as contained in the March 15, 2022 amended application and the April 14, 2022 post-hearing brief, is granted subject to the modifications discussed in this Order.

2. Within 20 days of the date of this Order, Kentucky Power shall file the modified Mitchell Agreements, as approved in this Order, into the post-case correspondence file and reference this case number.

3. This case is closed and removed from the Commission's docket.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PUBLIC SERVICE COMMISSION

_____
Chairman

_____
Vice Chairman

_____
Commissioner

ENTERED
MAY 03 2022
rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

_____
Executive Director

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Christen M Blend
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216

*Katie M Glass
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Hector Garcia
Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*John C. Crespo
,

*J. Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Jody M Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*John G Horne, II
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Honorable Mark R Overstreet
Attorney at Law
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Honorable Kurt J Boehm
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Tanner Wolffram
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216

Attachment 4

Order, Case No. 20-1040-E-CN (WV CPCN Case), August 4, 2021

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 4th day of August 2021.

CASE NO. 20-1040-E-CN

APPALACHIAN POWER COMPANY
and WHEELING POWER COMPANY,
public utilities.

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

COMMISSION ORDER

The Commission grants a certificate of convenience and necessity, authorizes cost recovery through a surcharge, and denies a motion to supplement the record.

BACKGROUND

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

In support of the filing, the Companies provided the direct testimonies and exhibits of Christian T. Beam, Gary O. Spitznogle, Brian D. Sherrick, Connie S. Trecazzi, James F. Martin, Tyler H. Ross, and Ruby A. Greenhowe.

The Companies requested that the Commission issue a final order by July 31, 2021, with an Environmental Compliance Surcharge (ECS) to be effective on September 1, 2021.

On January 7, 2021, the Companies filed the revised testimonies of Christian T. Beam and James F. Martin.

On March 10, 2021, the Commission granted intervention to the Consumer Advocate Division (CAD), West Virginia Energy Users Group (WVEUG), The Sierra Club, West Virginia Citizens Action Group, Solar United Neighbors, and Energy Efficient West Virginia (CAG/SUN/EEWV), and the West Virginia Coal Association (WVCA). The Commission also scheduled the Evidentiary Hearing in this case for June 3 and 4, 2021.

On April 14, 2021, WVCA filed a Motion to Continue Evidentiary Hearing requesting that the evidentiary hearing in this case be moved to the hearing dates for Case No. 20-1012-E-P and vice versa.

On April 28, 2021, the Companies filed a Motion for Protective Treatment supported by the affidavit of James F. Martin. The Companies stated that certain redacted information contained in CAG 4-26 should be protected from public disclosure on the basis that it contains confidential trade secrets. The Companies filed addendums to the motion on May 11, 2021, May 13, 2021, and May 27, 2021.

On May 6, 2021, the Commission issued an Order granting the WVCA Motion to Continue Evidentiary Hearing and the West Virginia Attorney General (WVAG) Petition to Intervene.

Also on May 6, 2021, the parties filed direct testimony: (i) WVEUG filed the direct testimony of Stephen J. Baron, (ii) CAD filed the direct testimony of Emily S. Medine, (iii) the Sierra Club filed the direct testimony of Rachel Wilson, (iv) WVCA filed the direct testimony of Todd A. Myers and Dr. John Deskins, Ph.D., (v) WVCAG/SUN/EEWV filed the direct testimony of James F. Wilson and Sean O'Leary, and (vi) Staff filed the direct testimony of James C. Weimer and Geoffrey Cooke.

On May 20, 2021, the parties filed rebuttal testimony: (i) the Companies filed the rebuttal testimony of Christian T. Beam, James F. Martin, and Randall R. Short, (ii) WVCA filed the rebuttal testimony of Todd A. Myers, (iii) the Sierra Club filed the rebuttal testimony of Rachel Wilson, and (iv) WVCAG/SUN/EEWV filed the rebuttal testimony of James F. Wilson and Sean O'Leary.

Also on May 20, 2021, Staff filed the supplemental direct testimony of Geoffery M. Cooke.

A public comment hearing was held on June 2, 2021. The Commission heard twenty-five comments in favor of the certificate, particularly granting Alternative 1, and no comments against the certificate. Additionally, the Commission received 254 letters in support of the project and 335 letters opposing the project.

The Commission conducted an evidentiary hearing on June 8 and 9, 2021.

On June 25, 2021, the WVAG, Companies, WVEUG, CAD, Staff, Sierra Club, WVCA, and WVCAG/SUN/EEWV filed initial briefs. The same parties filed reply briefs on July 2, 2021.

On July 19, 2021, the Companies filed a Motion for Leave to Supplement the Evidentiary Record (Motion). In support of the Motion the Companies reported that the Kentucky Public Service Commission (Kentucky PSC) concluded that the coal combustion residuals (CCR) environmental compliance work should be performed at the Mitchell Plant but that the effluent limitation guidelines (ELG) environmental compliance should not.[1] The Companies stated that they presented in their evidence the costs to WPCo of two ELG scenarios, each premised on consistent regulatory outcomes in Kentucky and West Virginia. One scenario was based on this Commission and the Kentucky PSC rejecting ELG at Mitchell; the other one was based on both Commissions approving ELG at Mitchell and WPCo and Kentucky Power Company each bearing half of the ELG costs. There are two other conceivable scenarios, ELG work being done to permit only one of the two Mitchell units to operate beyond 2028 and ELG work being done for the entire Mitchell Plant, with all of the costs being borne by WPCo. The Companies stated that they would like to provide information on these additional cost scenarios to supplement the evidentiary record. Motion at 2-3.

On July 21, 2021, Intervenors CAG/SUN/EEWV filed a Response in Opposition to the Companies Motion (Response). CAG/SUN/EEWV argued that the Companies' Motion seeks to make material changes to the proposed Mitchell Plant ELG compliance work that increase their cost, beyond the cost previously noticed to the public. If the Companies seek to propose such changes, CAG/SUN/EEWV asserted that it would be more appropriate to do so through a petition to reopen the case, under Rule 10.3.3.f and 19.5.2 of the Commission Rules of Practice and Procedure, 150 C.S.R.1 (Procedural Rules) or through an application for further hearing under Procedural Rule 19.2. Response at 1.

CAG/SUN/EEWV also asserted that submission of new evidence, months past the testimony deadline and after both the evidentiary hearing and post-hearing briefing, would violate the Commission's rules and would violate all other parties' due process rights to examine evidence through discovery and cross-examination. CAG/SUN/EEWV asked that the Commission set a new procedural schedule to allow the public, and the other parties, time to digest, question, conduct discovery, and respond to the Companies' proposed changes to the Mitchell ELG Compliance Work if the Companies' Motion is granted. Id. at 1-2.

[1] See: In the Matter of: Electronic Application of Kentucky Power Company for Approval of a Certificate of Public Convenience and Necessity for Environmental Project Construction at the Mitchell Generating Station, an Amended Environmental Compliance Plan, and Revised Environmental Surcharge Tariff Sheets, Kentucky Public Service Commission Case No. 2021-00004, Order, July 15, 2021.

On July 23, 2021, the CAD filed a Response to the Companies' Motion. The CAD asserted that the proper course of action is for the Commission to proceed to issue an Order based on the current evidentiary record, without supplement. The CAD asserted that if the Companies wish to provide information and alternatives for the Commission's consideration, any such evidence should instead be presented in a new or re-opened case after the Commission issues its decision based on the existing evidentiary record.

DISCUSSION

Certificate of Convenience and Necessity

In adjudicating cases before it, including applications for certificates of convenience and necessity (CN), the Commission 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). When weighing these interests, the Commission 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).

The Companies petitioned the Commission for a CN to make improvements to the Plants to bring them into compliance with federal Environmental Protection Agency (EPA) rules. To remain open, the Plants must comply with EPA rules to regulate the disposal and beneficial re-use of CCR including fly ash and bottom ash created from coal-fired generating units and flue gas desulfurization (FGD) gypsum generated at some coal-fired plants. 40 C.F.R. §§ 257 and 261. The Plants also must be in compliance with an EPA rule revising effluent limitation guidelines for electric generating facilities that establishes limits on FGD wastewater, fly ash and bottom ash transport water, and flue gas mercury control wastewater. 40 C.F.R. § 423. Petition at 2-3.

The Companies seek to modify the Plants in order to retain critical generating capacity to meet the needs of their customers. Petition at 3. The Companies presented two alternative proposals to comply with the EPA rules: Alternative 1 - modifications to Amos, Mountaineer, and Mitchell to comply with CCR and ELG rules allowing the Plants to remain open until 2040; and Alternative 2 - modifications under CCR to all three Plants but ELG modifications only to Amos and Mountaineer. The Companies chose not to take a position on which alternative would be appropriate given the Commission's responsibilities to assess a range of interests pursuant to W. Va. Code § 24-1-1(a) and (b). Petition at 4; Transcript of June 8, 2021 Hearing (Tr.) at 30-31 (Mr. Beam testimony).

According to the Companies' filing certain environmental control construction is necessary to comply with two federal EPA rules to prevent premature retirement of the Amos, Mountaineer and Mitchell power plants.

In 2015, the federal EPA published a proposed rule to regulate the disposal or re-use of CCR. These residuals including ash created from coal-fired generating units and gypsum created by FGD. The rule imposes construction and operating obligations, including location restrictions, liner criteria, and structural integrity requirements for impoundments containing CCR. The rule also imposes certain operating criteria and additional groundwater monitoring requirements. Meeting the CCR rule would allow the Plants to remain in service throughout their remaining life, which is estimated to be at least to 2040.

Also, in 2015, the EPA issued an initial rule revising ELG for electric generating facilities. The rule established limits on FGD wastewater, fly ash and bottom ash transport water, and flue gas mercury control wastewater. According to the Companies, the revised requirements effectively eliminate the use of the existing bottom ash ponds at the Plants and require the installation of dry bottom ash handling systems and bioreactor wastewater treatment systems. The revised ELG rule also has a retirement option that would allow continued discharges in exchange for a commitment to retire the affected Plants by December 31, 2028.

The construction of the CCR and ELG facilities (CCR Controls or ELG Controls) can be performed on individual Plants without regard to the other Plants.

The filing presented two alternatives for consideration. Alternative 1 includes construction of both the CCR and ELG Controls at Amos, Mountaineer, and Mitchell and would allow each of those plants to operate until 2040. Alternative 2 includes CCR and ELG Control modifications at Amos and Mountaineer but CCR Controls only at Mitchell and ceasing operation of Mitchell in 2028 (Alternative 2).

The Companies project the total company investment cost of Alternative 1 to be:

Amos	$177,100,000
Mountaineer	$ 72,900,000
Mitchell	$133,500,000
Total	$383,500,000

The Companies project the total company investment cost of Alternative 2 to be:

Amos	$177,100,000
Mountaineer	$ 72,900,000
Mitchell	$ 35,090,000
Total	$285,090,000

Cos. Exh. BDS-D at 11 and Attachments D1 – D3 and D7.

The only difference between Alternative 1 and Alternative 2 is the elimination of ELG Controls on Mitchell under Alternative 2. This reduces the investment cost at Mitchell and the overall investment at all three Plants by approximately $103 million.

None of the Company witnesses specified the allocation of the above investments to West Virginia jurisdictional operations. Neither did any witness specifically detail or identify the revenue requirements of the above investments on a West Virginia jurisdictional basis. We can derive from the record, however, that approximately 41.108 percent of the investments at Amos and Mountaineer would be allocated to West Virginia jurisdictional operations. Cos. Exh. RAG-D at attachment D2. Because WPCo currently owns 50.0 percent of Mitchell, a 50.0 percent allocation would assign approximately $66.8 million of the Alternative 1 CCR and ELG Controls at Mitchell to WPCo and recovery of the entire amount from West Virginia customers of APCo and WPCo. If Alternative 2 is approved, a 50.0 percent allocation would assign $15.3 million of the CCR Control investment to WPCo and recovery of that amount from West Virginia customers of APCo and WPCo.

Under either alternative, the full revenue requirements of the total approved Control modifications would not be included in rates immediately because the Control modifications would be installed over a construction schedule of approximately four years. The filing indicates that under Alternative 1, upon completion of CCR and ELG Controls at all three Plants, the annual West Virginia revenue requirement would be $23.5 million, or a 1.62 percent rate increase for West Virginia customers. Petition at Notice of Filing. The phase-in of cost recovery over the extended construction schedule results in approximately $4.8 million, or a rate increase of approximately 0.33 percent to meet the annual West Virginia revenue requirement as calculated by the Companies for the period September 1, 2021, through August 30, 2022. Cos. Exh. RAG-D at attachment D2. Under Alternative 2, without construction of ELG Controls at Mitchell, the West Virginia revenue requirement for the period September 1, 2021, through August 30, 2022 is approximately $3.9 million, or a rate increase of approximately 0.27 percent. Cos. Exh. RAG-D at attachment D6.

In considering the costs of Alternative 2 as compared to Alternative 1, the Commission has reviewed the multiple scenarios run by the Companies to compare the

net present value (NPV) of each alternative under possible power supply future market conditions. Company witness James F. Martin described the scenario analyses and NPV calculations as:

> The NPV effects of the compliance decision here largely rest on the incremental cost of CCR and ELG compliance, plus the future cost profile of these plants versus the next best option to replace them if they retire in 2028 without making certain compliance investments. A 2028 retirement of any one of the six units at these three plants, the smallest of which is approximately 800 MW, will likely create a need for replacement capacity to cover the Companies' peak load obligations. Thus, this analysis necessarily requires an evaluation of other capacity options compared to continued operation of these plants.

Cos. Exh. JFM-D at 5.

The NPV of the West Virginia jurisdictional revenue requirement of installing CCR and ELG controls at all three Plants calculated through 2040 is $250 million for investment at Amos and Mountaineer and $67 million at Mitchell. Cos. Exh. JFM-D at 6. If the Companies do not install ELG controls at Mitchell, the revenue requirement NPV drops by only $49 million. The reduced revenue requirement is offset by costs of alternatives unless APCo uses available capacity to replace the capacity that would be lost by retirement of Mitchell in 2028. As described by Mr. Martin:

> The modeling suggests that 480 MW of natural gas-fired combustion turbines (CTs) would likely be the least-cost new resource option to replace most of Mitchell. Under scenarios including either a carbon tax or lower sustained power prices, the CCR only alternative is slightly better for customers.

Cos. Exh. JFM-D at 8.

We agree with the analyses and conclusions reached by Company witness Martin. Foregoing ELG Control investment at either Amos or Mountaineer and retiring the plants in 2028 would require billions of dollars of replacement capacity and additional energy costs beginning in 2028. The replacement costs would take the form of rate based investments or purchased power agreements, and would eclipse the cost of the additional ELG Controls. The cost of the next best capacity option, therefore, is greater than the cost of compliance and continued operation of Amos and Mountaineer. Cos. Exh. JFM-D at 5-13.

The Companies' analyses show that when considering the cost of replacement capacity for Mitchell on a stand-alone basis, ELG Controls at Mitchell are a cost effective

alternative to closing Mitchell in 2028. Mr. Martin testified however that under Alternative 2 it may not be necessary to replace the Mitchell capacity if it is prematurely retired. This is because the projections show that APCo will have excess capacity that would be sufficient to accommodate the combined load of WPCo and APCo. Cos. Exh. JFM-D at 28-30.

The Commission is not persuaded that prematurely shutting down Mitchell in 2028 based on expected APCo excess capacity is a prudent decision. WPCo stand-alone modeling shows 480 MW of replacement capacity would be needed to replace a large portion of Mitchell in all cases. Cos. Exh. JFM-D at 24. Only 212 MW of excess APCo capacity would be available on a West Virginia allocation basis to meet that 480 MW shortfall. Id. at 28. That still leaves a 268 MW deficiency that would have to be made up through new rate base capacity or purchased capacity in 2028. Cos. Exh. JFM-D at 30. Sufficient excess capacity does not exist, therefore, to fully cover the Mitchell capacity that would be lost in 2028. Thus, the Companies would need to make some additional capacity purchases or acquire additional resources if the ELG Controls are not installed at Mitchell.

The Companies estimate that reducing the amount of stand-alone replacement capacity by using the APCo excess capacity reduces the revenue requirement of the stand-alone Mitchell retirement by $27 million per year. Cos. Exh. JFM-D at 29. We find that estimate to be overstated because Companies' witness Martin arrived at the $27 million by assuming that APCo excess capacity will replace one-half of the $54 million replacement cost of 480 MW that WPCo will need if Mitchell is prematurely retired in 2028. If only 212 MW excess APCo capacity is available, however, as Mr. Martin testified, then excess capacity would replace only 44 percent of the 480 MW needed. Thus, the portion of the $54 million that could be saved by using excess APCo capacity would be $23.8 million, not $27 million. Moreover, there is no certainty that there will be even 200 or more MW of excess APCo capacity allocable to West Virginia in 2028. Furthermore, even if excess capacity is allocable to West Virginia in 2028, there is no certainty that it would be available for the entire period 2028 to 2040. Mr. Martin hedged on the availability of excess APCo capacity in his testimony:

> This shows that, if in fact APCo has ~200 MW of capacity length for an extended period of time that customers are already paying for, that retiring Mitchell in 2028 without incurring the ELG compliance cost is far less costly than continuing to operate it through 2040.

Cos. Exh. JFM-D at 30. In consideration of Mr. Martin's testimony that "[I]f in fact Apco has [about] 200 MW of [excess] capacity" the Commission is not confident in the availability of excess APCo capacity that would justify an irreversible decision to prematurely retire the Mitchell plant. We do not find sufficient evidence of excess APCo capacity to rely on "approximately" or "about" 200 MW of excess capacity being

available for an extended period of time after 2028 to economically make up a portion of the shortfall that would be created by foregoing the ELG Control investment at Mitchell.

Even if APCo capacity is available, retiring the Mitchell plant will reduce the amount of energy available from Mitchell to serve internal load and to make off-system sales. Prematurely shutting down the Mitchell plant would exacerbate shortfalls that occur during periods of time when APCo and WPCo are short of energy to meet their internal loads, such as during their traditional winter peaks. The shortfall would require the Companies to increase their reliance on purchased power from a volatile energy market or premium fixed-priced bilateral purchased power contracts. Cos. Exhs. CTB-D at 6 and JFM-D at 20-1.

The Commission is also concerned with the uncertainty of the type and location of transmission upgrades that the Companies estimated would be required if Mitchell is retired in 2028. Mr. Martin testified that $100 million of transmission upgrades would be required if the Companies do not install ELG Controls at Mitchell. Roughly half of those upgrades would be required in the American Electric Power (AEP) Zone of PJM and half would be required in the Allegheny Zone. While $100 million in transmission upgrades may be small compared to the size of the AEP or Allegheny Zones, creating the need for unknown transmission upgrades that might include construction in sensitive areas is another reason to accept and approve the known costs and localized construction requirements of ELG Controls at Mitchell. Cos. Exh. JFM-D at 31.

The Commission has carefully reviewed testimony and exhibits provided by Sierra Club and others and appreciates the efforts of the Sierra Club to inform the Commission of alternatives to keeping the three Plants operating past 2028. The Sierra Club and CAG/SUN/EEWV advocate approval of the CCR Control investments at Amos, Mountaineer and Mitchell, but deny the ELG Control investments at all three Plants. This would mean retiring the Plants in 2028. The Sierra Club presented alternative cost/benefit models to justify its recommendation. CAG/SUN/WVEE Exh. SO-D and Sierra Club Exh. RW-D generally.

We are concerned that the Sierra Club's cost analyses and cost savings analyses are heavily tilted to reliance on generation resources that are less reliable and less resilient than base load power plants with inventories of on-site fuel supplies. Witness Rachel Wilson, testifying for the Sierra Club relied on availability of intermittent wind and solar resources of sufficient capacity to warrant substituting them for power plants that are capable of scheduling and operating as traditional base load generation units. Sierra Club Exh. RW-D generally. The Commission does not find sufficient evidence of cost savings to customers to offset our reliability concerns with regard to alternative generation resources or the negative impact of plant retirement on the employment levels and economy of the State. WVCA Exh. JD-D at 6-7 and attachments; CAD Exh. ESM-D at 5 and 17; and Cos. Exhs. CTB-D at 5 and JFM-D generally. We recognize that in the

future, for new power supply resources, we may have to rely more on intermittent resources such as wind and solar and enhance their load serving capabilities with extensive and expensive battery resources. It is premature, however, to begin abandoning our traditional base load power supply resources which can be upgraded to meet environmental requirements.

We also agree with the WVAG that future Combustion Turbine capacity may be much more expensive than the projections presented by various witnesses. In a greatly expanded carbon restriction environment, allowing new sources to use fossil fuels without carbon reduction requirements may be off the table. The WVAG concluded in its Initial Brief that investing in CCR and ELG Controls:

> [T]he Companies can secure capacity without any risk of a Section 111(b) new stationary source standard or a preconstruction permitting requirement imposing unexpected roadblocks. Accordingly, considering the Companies' forecasts alongside the risks associated with the "next best" option of replacing Mitchell's capacity demonstrates why it is essential for the Commission to decide in favor of preserving Mitchell's continued operation as an active electricity generation facility beyond 2028.

WVAG Initial Brief at 6.

If the WVAG's concerns shed doubt or greatly increase the cost of any new fossil-fueled source, without the capacity of Mitchell, Amos, and Mountaineer after 2028 the only available options for the Companies may be intermittent resources or reduced demand. We find that either option carries reliability risks and cost that are unacceptable as compared to the cost of upgrading the existing power plants.

In contrast to the position taken by the Sierra Club and CAG/SUN/EEWV, the CAD recommends that the Commission approve the CCR and ELG Control investment at all three plants. The CAD believes that the Companies analyses understate the costs and risks to ratepayers of retiring Mitchell in 2028. In its Initial Brief, the CAD lists multiple reasons to approve the CCR and ELG at Mitchell:

> If the Commission were to rule Mitchell should be retired in 2028, instead of permitting the Companies to make the necessary ELG investments, the CAD is very concerned about the risk that would present to ratepayers.
>
> First, the cost to the Companies of obtaining replacement capacity for Mitchell by 2028 is, according to the Companies' analysis, 10 time greater than is the cost of ELG compliance. The CAD believes that the Companies' analysis understated the full extent of those costs.

Second, by retiring Mitchell in 2028, the Companies' options for obtaining replacement capacity necessary to serve their customers are narrow. A premature retirement of the plant in 2028 forecloses any number of options for alternative generation that may arise between then and 2040.

...

1. The Companies potentially understated future generation likely to be produced by Mitchell as a result of leakage from Pennsylvania upon joining the Regional Greenhouse Gas Initiative ("RGGI").

2. The Company understated the economic benefit to ratepayers by focusing on a 30-year net present value ("NPV") analysis rather than focusing on a 20-year NPV. The 20-year NPV showed considerably higher savings and benefits for the ELG investment in Mitchell than did the 30-year results. Costs, load, and regulatory requirements beyond year 20 are hypothetical at best and do not provide meaningful guidance in the context of the Mitchell analysis.

3. The Companies' exclusion of sunk costs in its analysis ignored the impact of the "double" charge to customers for the un-depreciated costs of capacity if the plants were to be closed prematurely. While retired, the un-depreciated cost of capacity remains the obligation of ratepayers, in addition to the cost of the replacement capacity.

4. Replacement combustion turbines ("CTs") may not be viable assets if a new regulatory regime requires Net Zero carbon emissions by 2035 or 2040 CAD witness Medine believes it is more appropriate to consider a shorter time period over which to amortize the costs.

5. The Companies failed to quantify the physical energy hedge benefits of having on-site inventory available when needed. Recent events have shown both the speed and magnitude of price changes when reliability is threatened.

6. The Companies understated the cost to ratepayers of the replacement CT option by failing to include the costs associated with natural gas transportation. These transportation expenses would be necessary to support CT's as a full reserve resource, as the Companies confirmed during the evidentiary hearing.

CAD Initial Brief at 4-6 (emphasis in original).

We find these and other arguments made by the CAD are persuasive and effectively offset the contrary positions taken by the Sierra Club and CAG/SUN/EEWV.

WVCA likewise opposed the position taken by CAG/SUN/EEWV and the Sierra Club.

> Earthjustice and the Sierra Club, being the only dissenting parties, counter with insufficient and speculative, hypothetical arguments promoting the substitution of unreliable wind-and solar-generated facilities backed by battery storage under assumed reduced costs.

WVCA Initial Brief at 2.

Economic Impact

In addition, WVCA stated that with regard to closing the Mitchell facility alone, Dr. John Deskins, Ph.D., Director of the West Virginia University Bureau of Business and Economic Research, testified that closure will result in the loss of hundreds of jobs, including jobs at the Plants and in the mining industry, loss of millions of dollars in wages, loss of revenues and business revenues, massive losses in indirect employment, and the loss of millions of dollars in state and local tax revenue. WVCA Initial Brief at 2. In his direct testimony, Dr. Deskins stated that the economic benefits of the Mitchell plant as follows:

In 2019, the Mitchell plant:

- generated more than five million MWh of electricity in 2019, providing an estimated direct economic output in 2019 of around two hundred seventy-five million dollars ($275,000,000);
- generated around $143 million in secondary output impact, resulting in a total economic impact of more than $418 million output in the West Virginia economy;
- directly employed 185 workers;
- had a 476 secondary employment impact;
- total employment impact of more than 660 direct and indirect jobs equaled nearly $65 million in employee compensation; and
- contributed estimated state and local tax revenue of nearly $9 million.

WVCA Exh. JD-D at 7.

Dr. Deskin did not provide similar economic data for Amos and Mountaineer in his direct testimony. We note that the capacity of Mountaineer is approximately 80 percent of the Mitchell plant. At comparable capacity factors it is reasonable to estimate

that the Mountaineer plant would have economic impacts of 80 percent of those of Mitchell. Because the capacity factor at Mountaineer was far greater than Mitchell in 2019, however, it is likely that coal burn, jobs and taxes paid to state and local government exceeded the levels that Dr. Deskin attributed to Mitchell. The capacity of Amos is approximately 180 percent of the Mitchell capacity and Amos also operates at a greater capacity factor than Mitchell. Thus, it is likely that the economic benefit of Amos to the state and local economy was also far greater than the economic benefits of Mitchell.

The Sierra Club offered rebuttal testimony to Dr. Deskins' direct testimony of the economic benefits of Mitchell to the state and local economy. Mr. O'Leary objected to the fact that the economic benefits of Mitchell outlined by Dr. Deskins were limited to 2019. Sierra Club Exh. SO-R at 2. He opined that those benefits would decline in the future. Id. at 3-5. Mr. O'Leary acknowledged that AEP had provided him with an economic impact evaluation that was similar, but not identical to the testimony of Dr. Deskins. Id. at 2.

Mr. O'Leary testified that if the Mitchell plant operates at even lower capacity factors it would burn less coal and employ fewer people. He opined that the results of operating at lower capacity factors meant that the loss of jobs and other economic benefits of retaining the plant beyond 2028 is far less than the figures cited by Dr. Deskins. He further testified that focusing on other potential industries could result in an influx of alternative industrial operations in the area that would contribute more jobs and economic benefits than those being contributed by a power plant or coal mining. Sierra Club Exh. SO-R at 7.

The Commission is not persuaded that the economic contribution of Mitchell will decline in the future to such an extent that the economic benefits will be insignificant in relationship to the cost of the CCR and ELG Control investment needed to keep the plant operating beyond 2028. While Mr. O'Leary opined that the Plant will be reduced to a capacity resource with little generation relative to its capability, it is also possible that the need for coal-fired power plants to provide base load generation to ensure grid stability, reliability and resilience will increase in the future as the interconnected electric grid relies more and more on intermittent resources and resources with limited on-site fuel stockpiles.

The Commission is directed by the Legislature to consider the jobs and economic activity from continued operation of coal-fired power plants. The West Virginia Code states that the Commission has a duty to "[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." W.Va. Code § 24-1-1(a)(3).

In a much broader finding related to power plants and coal, the Legislature has stated that:

(1) Over 600 coal-fired electric units nationally have been forced to close;

(2) Eighteen coal-fired electric units within West Virginia's borders have been forced to close;

(3) Markets for West Virginia coal have been severely diminished due to the closure of regional coal plants to the point that West Virginia coal shipments have been reduced from 162 coal plants a decade ago to only 43 plants today;

(4) West Virginia coal mines are forced to close, resulting in West Virginia coal miners being out of work, compromising homeland security and defense measures, and threatening grid stability and resiliency;

(5) It is imperative the State of West Virginia take immediate steps to reverse these undesirable trends to ensure that no more coal-fired plants close, no additional jobs are lost, and long-term state prosperity is maintained;

(6) Throughout the past decade, no group has been hit harder by the decline of coal than West Virginia's coal miners and their families. Many coal miners are struggling to make ends meet and provide for their families;

(7) In addition to working toward sustaining coal employment levels and coal-based, electric generation, the State of West Virginia should take immediate steps to provide education, training, and retraining opportunities for displaced coal miners and their families;

(8) West Virginia coal-fired power plants should continue to provide base load generation critical for maintaining slow, steady generation that produces power on a continuous cycle, ensures grid stability, and protects against overloads and power shortages;

(9) West Virginia coal and electricity generated in West Virginia are relied upon throughout a multi-state region, thus playing a vital role in regional homeland security;

(10) West Virginia's coal fleet, comprised of nine individual plants and 25 units, is fueled on average by a total of 25 million tons annually; accounts for over $2 billion of economic activity; and sustains approximately 3,500

> mining jobs, 2,000 plant worker jobs, thousands of downstream and indirect local and surrounding county jobs, and hundreds of millions of dollars of payroll and tax dollars;
>
> (11) The role of West Virginia and West Virginia coal in regional homeland security is of paramount importance; thus, it is incumbent for our state to continue to provide leadership in this increasingly critical area in order to sustain and protect our regional electric supplies; and
>
> (12) Public electric utilities in West Virginia should be encouraged to operate their coal-fired plants at maximum reasonable output and for the duration of the life of the plants.

W. Va. Code § 24-1-1d.

Mr. O'Leary supports discouraging the operation of coal-fired power plants at maximum reasonable output for the duration of the life of the plants. He does so with the hope that industries will be attracted to the State that will provide greater economic benefits than those provided by power plants and the coal industry. We are not convinced that it is reasonable to discount the economic benefits of power plants, coal mining and other indirect jobs as we consider the impact of our decision on the economy of the State. Mr. O'Leary suggested that losing those jobs related to Mitchell, and even more jobs related to Mountaineer and Amos should be viewed as a benefit for the West Virginia economy because the losses will create an opportunity to dedicate our state economic development resources to bringing in industries that will offer even greater benefits per dollar of direct economic output. The Commission also hopes for diversification of industrial development in the State and expansion of economic activity into new technologies related to the power and other sectors. We, however, are faced with the reality of existing direct power plant jobs, existing related coal mining jobs, and existing indirect jobs related to operating power plants that will certainly cease to exist if we deny the Companies the authority to upgrade those plants to comply with CCR and ELG Control requirements.

Conclusion as to the Public Convenience and Necessity

The cost analyses performed under various scenarios by the Companies show that adding CCR and ELG controls at Amos and Mountaineer have a significant NPV cost saving for West Virginia customers when compared to alternative costs that would be incurred if both plants were required to retire in 2028. The Commission concludes that the alternatives presented by the Sierra Club and CAG/SUN/EEWV rely on power supply options that are speculative and less reliable than continued operation of the three plants beyond 2028. The stand-alone cost analysis for Mitchell shows that the costs of alternatives offset the savings of foregoing ELG investment at Mitchell. Tr. at 249; CAD

Initial Brief at 6. Considering the NPV benefits of adding both CCR and ELG controls at Amos and Mountaineer as compared to alternatives and the relatively small NPV costs of the ELG investment at Mitchell as compared to alternatives particularly when spread over the years of the analysis, and considering the benefits to the economy of West Virginia from continued operations of Amos, Mountaineer and Mitchell beyond 2028, as discussed herein, we find that Alternative 1 is prudent, cost effective, and in the best interest of current and future utility customers, the general interest of the State's economy, and the interests of the Companies.

In balancing the state's interests pursuant to W. Va. Code § 24-1-1(b) including reliable utility service and development of utility resources, including coal, the Commission finds that the proposed Alternative 1 is necessary for the interests of current and future utility service customers, the general interests of the state's economy, and the interests of the Companies.

Surcharge

The Companies proposed using a 5.71 percent annual depreciation rate for full CCR/ELG investments at the Plants using the same retirement date, 2040, included in the settlement agreement in Case Nos. 18-0646-E-42T and 18-0645-E-D. Cos. Exh. THR-D at 9. The Commission will authorize the use of the 5.71 percent depreciation rate, subject to modification by the Commission in future rate cases in which depreciation of the CCR/ELG facilities is a cost element.

The Companies propose to record Allowance for Funds Used During Construction (AFUDC) from the time CCR/ELG construction expenditures are recorded to Construction Work in Progress (CWIP) (FERC Account 107) through August 31, 2021, just prior to the Companies' proposed ECS rate year. The Companies then propose to record AFUDC by debiting a regulatory asset (FERC Account 182.3) and crediting FERC Account 432 and 419 for the income statement impacts of debt and equity AFUDC respectively. Cos. Exh. THR-D at 6.

Once CWIP is included in rates, AFUDC normally ceases. The Commission will review the rate base associated with the CCR/ELG plant investments in future rate cases. The Companies must demonstrate that AFUDC after August 31, 2021 is not included in the plant accounts or rate base for purposes of West Virginia rates. In addition, AFUDC is normally part of depreciable plant. As such, AFUDC recorded prior to September, 2021 should be depreciated at the same depreciation rate as is approved for other investments in CCR and ELG controls.

The Companies propose to use the capital structure and cost of capital to calculate a weighted average cost of capital (WACC) rate including an authorized return on equity of 9.75 percent. Cos. Exh. THR-D at 7. The Commission recently addressed a return on

equity (ROE) component for prospective surcharges related to rate base. Case No. 20-1012-E-P. For the same reasons discussed in that case, we will authorize a return on equity of 9.25 percent for the CCR/ELG surcharge calculations.

The Companies propose to recover costs associated with Alternative 1 through an ECS beginning September 1, 2021. The Companies propose this date to coincide with the annual ENEC update because, they argue, the ECS is similar to a construction surcharge component that was reflected in past ENEC cases. Cos. Exh. RAG-D at 3.

The Commission will authorize a surcharge effective September 1, 2021, based on the first year projected average costs of the CCR/ELG projects, adjusted to reflect a 9.25 percent ROE and depreciation of AFUDC recorded prior to September 2021 as discussed herein. The Companies shall calculate the surcharge increment and file the proposed September 1, 2021 increment within 10 days of the date of this Order.

Waivers

In the Petition, the Companies sought waivers of the requirement to provide a certificate of existence as required by Procedural Rule 10.3.3.a. (Form No. 4) and financial information required by Rule 20.1 of the Rules for the Government and Filing of Tariffs (Tariff Rules), 150 C.S.R. 2. Because the creation and authority of the Companies, as well as their financial conditions is known to the Commission and this filing is not a rate filing that requires the detailed financial information required by Tariff Rule 20.1, we will waive the requirement to file this information in this case.

Motion to Supplement the Record and Regulatory Approvals in Other States

Subsequent to the submission of this case for decision, the Companies filed a request to supplement the record based on the decision of the Kentucky PSC. The Companies' motion was filed after the discovery process was complete, the evidentiary hearing had concluded, and briefs had been filed. As CAG/SUN/EEWV argued in its response, no further opportunity exists for parties to question the Companies' supplemental information. CAD suggested in its response that the Commission issue an order based on the current evidentiary record.

The Commission agrees with the CAD that we should rule on the case based on the evidence before us. The costs/benefits data and alternative cost data in the record does not change on a relative basis depending on the percentage of ownership or allocation of costs for West Virginia jurisdictional purposes. The decisions in this order are based on and supported by the record before us.

As pointed out by the Companies, the extent of the environmental compliance work to be undertaken at the Mitchell Plant, jointly owned by WPCo and Kentucky

Power Company, will be determined by this Commission and the Kentucky PSC. Moreover, the West Virginia share of costs and output from continued operation of Amos and Mountaineer have always depended on decisions of the Virginia State Corporation Commission (VSCC). The Alternative scenarios provided by the Companies did not include scenarios in the event of rejection of the ELG compliance work by Kentucky PSC, rejection of ELG compliance at Amos or Mountaineer by the VSCC, or any other decisions of those commissions that did not coincide with our decisions.

The possibility of changing ownership or allocations of costs does not change the overall benefits of adding the CCR and ELG controls at all three Plants. In this proceeding, the Companies presented the costs of retiring the Plants in 2028 and the costs of alternative power supply options on a total company basis for both APCo and WPCo. Those costs do not change on a relative basis depending on the percentage of ownership or allocation of costs for West Virginia jurisdictional purposes. If there are changes in ownership or allocation of costs and output of any of the three Plants, the Companies should present the nature and effect of such changes to the Commission in an appropriate proceeding. We have always faced the possibility of changes in allocation of costs or ownership shares of jointly-owned plants and have not delayed decisions based on the possibility of such changes. Based on the extensive record before us, we find 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. We will approve Alternative 1 along with a modified cost recovery mechanism as discussed herein.

FINDINGS OF FACT

1. Proposed Alternative 1 is necessary to comply with EPA rules and keep the Plants open and generating electricity through 2040.

2. The Companies estimate that the total cost for Alternative 1 would be $383.5 million.

3. Although the Companies did not provide an estimate of West Virginia's jurisdictional share of the total costs for Alternative 1, the Commission estimates that it would be $169.55 million given a fifty percent ownership interest in Mitchell and a 41.1 percent allocation of investments in Amos and Mountaineer.

CONCLUSIONS OF LAW

1. The Commission is "charged with the responsibility for appraising and balancing the interests of current and future utility customers, the general interests of the state's economy and the interests of the utilities subject to the jurisdiction in its deliberations and decisions." W.Va. Code § 24-1-1(b).

2. The Alternative 1 projects will provide for the availability of adequate, economical, and reliable utility services throughout the state and develop 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. W.Va. Code § 24-1-1(a)(2) and (3).

3. The public convenience and necessity require the projects proposed in Alternative 1 and they should be approved.

4. The Commission should authorize a surcharge effective for all services rendered on and after September 1, 2021, based on the first year projected average costs of the CCR/ELG projects adjusted to reflect a 9.25 percent ROE and depreciation of AFUDC recorded prior to September 2021 as discussed in this Order.

5. The Commission should waive the requirements for the Companies to file Tariff Rule 20.1 information and a certificate of existence because the financial condition and creation of the Companies is known to the Commission.

6. Because the record of this proceeding supports approval of the projects based on the total costs and benefits regardless of ownership or allocations of costs of the Plants, the Commission should issue its order based on that record.

7. If there are changes in ownership or cost allocations that are required by decision in other States, the Companies should bring such changes to the attention of the Commission in an appropriate future case.

ORDER

IT IS THEREFORE ORDERED that Appalachian Power Company and Wheeling Power Company are granted a certificate of convenience and necessity to make the necessary compliance modifications to the Plants under Alternative 1 that will enable the three Plants to continue to generate electricity through 2040.

IT IS FURTHER ORDERED that Appalachian Power Company and Wheeling Power Company are authorized to implement a surcharge effective for all services rendered on and after September 1, 2021, based on the first year projected average costs of the CCR/ELG projects adjusted to reflect a 9.25 percent ROE and depreciation of AFUDC recorded prior to September 2021 as discussed in this Order.

IT IS FURTHER ORDERED that within ten days of this Order Appalachian Power Company and Wheeling Power Company file tariff sheets stating the surcharge effective on September 1, 2021.

IT IS FURTHER ORDERED that the Motion to Supplement the Record filed by the Companies is denied.

IT IS FURTHER ORDERED that the Companies are not required to file certificates of existence or Tariff Rule 20.1 information.

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

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

A True Copy, Teste,

Connie Graley

Connie Graley, Executive Secretary

SMS/pb
201040cc.doc

Attachment 5

Order, Case No. 20-1040-E-CN (WV CPCN Case), October 12, 2021

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 12th day of October 2021.

CASE NO. 20-1040-E-CN

APPALACHIAN POWER COMPANY
and WHEELING POWER COMPANY,
public utilities.

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

COMMISSION ORDER

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

BACKGROUND

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

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

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

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

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

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

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

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

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

DISCUSSION

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

A. Granting a Certificate of Convenience and Necessity.

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CAD Exh. ESM-D at 21.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Operation and Maintenance Costs and Additional Investments.

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

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

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

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

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

B. CAG/SUN/EEWV Witness Identification.

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

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

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

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

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

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

ORDER

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

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

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

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

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

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

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

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

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

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

A True Copy, Teste,

Connie Graley

Connie Graley, Executive Secretary

SMS/pb
201040cf.doc

Attachment 6

Order, Case No. 21-0810-E-PC (WV Mitchell Agreements Case), July 1, 2022

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 1st day of July 2022.

CASE NO. 21-0810-E-PC

APPALACHIAN POWER COMPANY and
WHEELING POWER COMPANY,
public utilities.

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

COMMISSION ORDER

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

BACKGROUND

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

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

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

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

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

An evidentiary hearing was held on April 7, 2022. Prior to the evidentiary hearing, the Companies filed supplemental direct testimony on March 18, 2022, and Staff, CAD, and CAG/SUN/EEWV filed direct testimony of witnesses on March 28, 2022.[2] The Companies filed rebuttal testimony on April 4, 2022. On April 15, 2022, the Companies filed Commission Post-Hearing Exhibits (Commission PHE) 1 through 3 and CAD Post-Hearing Exhibits (CAD PHE) 1 through 3. The Companies filed portions of Commission PHE 1 and 3, and CAD PHE 3 under seal. All parties filed initial briefs. Filings, April 19, 2022. CAG/SUN/EEWV, CAD, and the Companies filed reply briefs. Filings, April 26, 2022.

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Motion for Protective Treatment

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

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

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

ORDER

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

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

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

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

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

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

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

A True Copy, Teste,

Karen Buckley

Karen Buckley, Executive Secretary

SMS/pb/ksf
210810cd

APPENDIX A

MITCHELL OPERATING AGREEMENT

KENTUCKY POWER COMPANY

WHEELING POWER COMPANY

and

AMERICAN ELECTRIC POWER SERVICE CORPORATION, AS AGENT

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

WITNESSETH:

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

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

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

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

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

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

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

ARTICLE ONE

FUNCTION OF WPCo ~~KPCO~~ AND AGENT

1.1 WPCo ~~KPCO~~ shall operate and maintain the Mitchell Plant in accordance with good utility practice ~~consistent with procedures employed by KPCO at its other generating stations, and~~ in conformity with the terms and conditions of this Agreement.

1.2 WPCo ~~KPCO~~ shall keep all necessary books of record, books of account and memoranda of all transactions involving the Mitchell Plant, and shall make computations and allocations on behalf of the Owners, as required under this Agreement. The books of record, books of account and memoranda shall be kept in such manner as to conform, where so required, to the Uniform System of Accounts as prescribed by the Federal Energy Regulatory Commission ("FERC") for Public Utilities and Licensees ("Uniform System of Accounts"), and to the rules and regulations of other regulatory bodies having jurisdiction as they may from time to time be in effect.

1.3 The Owners shall establish such bank accounts as may from time to time be required or appropriate.

1.4 As soon as practicable after the end of the month, WPCo ~~KPCO~~ shall furnish to KPCo ~~WPCO~~ a statement setting forth the dollar amounts associated with the operations and maintenance of the Mitchell Plant as allocated hereunder to KPCO and WPCO for such month. The Owners shall, on a timely basis, deposit sufficient dollar amounts in the appropriate bank accounts to cover their respective allocations of such costs.

1.5 WPCo ~~KPCo~~ shall be responsible for the day to day operation and maintenance of the Mitchell Plant. WPCo ~~KPCo~~ shall obtain such materials, labor and other services as it considers necessary in connection with the performance of the functions to be performed by it hereunder from such sources or through such persons as it may designate.

1.6 Agent, as directed by the Operating Committee and consistent with Agent's service agreements with KPCo and WPCo, shall provide services necessary for the safe and efficient operation and maintenance of the Mitchell Plant.

ARTICLE TWO
APPORTIONMENT OF CAPACITY AND ENERGY

2.1 The Total Net Capability of the Mitchell Plant at the Mitchell Unit 1 and Unit 2 low-voltage busses, after taking into account auxiliary load demand, is 1,560,000 kilowatts. The Owners may from time to time modify the Total Net Capability of the Mitchell Plant as they may mutually agree.

2.2 The Total Net Generation of the Mitchell Plant during a given period, as determined by the requirements of KPCo and WPCo, shall mean the electrical output of the Mitchell Plant generators during such period, measured in kilowatt hours by suitable instruments, reduced by the energy used by auxiliaries for the Mitchell Unit 1 and Unit 2 during such period.

2.3 Except as set forth in Section 7.6 (including Section 7.6 Subsections), in any hour, KPCo and WPCo shall share the minimum load responsibility of Mitchell Unit 1 and Unit 2 in respective amounts proportionate to their ownership interests in the Mitchell Plant at such time. Each Owner may independently dispatch its share of the generating capacity between minimum and full load.

2.4 In any hour during which the Mitchell Units are out of service, the energy used by the out-of-service Units' auxiliaries during such hour shall be provided by KPCo and WPCo in

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

ARTICLE THREE
REPLACEMENTS, ADDITIONS, AND RETIREMENTS

3.1 WPCo ~~KPCO~~ shall from time to time make or cause to be made any additions to, replacements of, and retirements of, capitalizable facilities associated with the Mitchell Plant in accordance with the approved annual budget.

3.2 The dollar amounts associated with any additions to, replacements of, or retirements of, capitalizable facilities associated with the Mitchell Plant shall be allocated to KPCo and WPCo in respective amounts proportionate to their ownership interests in the Mitchell Plant at the time such additions, replacements, or retirements are made.

ARTICLE FOUR
WORKING CAPITAL REQUIREMENTS

4.1 KPCo and WPCo shall periodically mutually determine the amount of funds required for use as working capital in meeting payrolls and other expenses incurred in the operation and maintenance of the Mitchell Plant, and in buying materials and supplies (exclusive of fuel) for the Mitchell Plant.

4.2 KPCo and WPCo shall from time to time provide their share of working capital requirements in respective amounts proportionate to their ownership interests at such time in the Mitchell Plant.

ARTICLE FIVE
INVESTMENT IN FUEL

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

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

5.2 Except as provided in Section 5.1 for an Owner to elect to procure coal for its own interest, the Owners shall make such monthly investments in the common coal stock piles associated with the Mitchell Plant as are necessary to maintain the number of tons in such coal stock piles, after taking into account the coal consumption from the common coal stock piles by Mitchell Unit 1 and Unit 2 during such month.

5.3 At any time, KPCo's and WPCo's respective shares of the investment in the common coal stock piles shall be proportionate to their ownership interests in the Mitchell Plant, unless an Owner elects to procure its own coal as provided in Section 5.1, in which case inventories will be separately maintained for accounting purposes.

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

ARTICLE SIX
APPORTIONMENT OF STATION COSTS

6.1 Except in the case where an Owner has elected to purchase coal for its own interest as provided for in Section 5.1 (in which case the allocation to the Owners of fuel expense shall be in accordance with procedures and processes approved by the Operating Committee), the allocation to the Owners of fuel expense associated with Mitchell Unit 1 and Unit 2 shall be determined by WPCo ~~KPCo~~ and Agent as follows:

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

(b) The number of tons of coal consumed by the Mitchell Plant in each calendar month from the Mitchell Plant common coal stock piles shall be determined

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

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

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

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

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

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

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

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

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

(b) In each calendar month, the maintenance of boiler plant expenses as recorded in FERC Account 512, and maintenance of electric plant expenses as recorded in FERC Account 513, shall be directly assigned to Mitchell Unit 1 or Unit 2 or designated as a common expense attributable to both units. In each calendar month, KPCo's and WPCo's respective shares of these expenses shall be proportionate to each Owner's capacity entitlement as adjusted pursuant to Section 7.9. ~~dispatch of the applicable unit, or both units in the case of common expenses, over the previous sixty (60) calendar months. Dispatch is assumed to have been allowed fifty percent (50%) to each Owner for months that are prior to this Agreement.~~

(c) Prior to (date when generation must cease but for ELG and other WPCo investments) i~~I~~n each calendar month, KPCo's and WPCo's respective shares of all other operations, maintenance, administrative and general expenses shall be proportionate to their respective ownership interests. After (date) these expenses will be assigned proportionate to each Owner's capacity entitlement as adjusted pursuant to Section 7.9.

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

ARTICLE SEVEN
OPERATING COMMITTEE AND OPERATIONS

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

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

7.2 The Operating Committee shall have the following responsibilities:

(a) Review and approval of an annual budget and annual operating plan, including determination of the emission allowances required to be acquired by KPCo and WPCo. If the Operating Committee fails to approve an annual budget, the approved annual budget from the previous year will continue to apply until such time as the new annual budget is approved.

(b) Establishment and review of procedures and systems for dispatch, notification of dispatch, and unit commitment under this Agreement, including any commitment of Called Capacity pursuant to Section 7.6.2.

(c) Establishment and monitoring of procedures for communication and coordination with respect to the Mitchell Plant capacity availability, fuel-firing options, and scheduling of outages for maintenance, repairs, equipment replacements, scheduled inspections, and other foreseeable cause of outages, as well as the return to availability following an unplanned outage.

(d) Decisions on capital expenditures, including unit upgrades and re-powering.

(e) Determinations as to changes in the unit capability and decisions on unit retirement.

(f) Establishment and modification of billing procedures under this Agreement.

(g) Approval of material contracts for fuel, transportation or consumable supply. Establishment of specification of fuels, oversight of fuel inspection and certification procedures, management of fuel inventories, and allocation of rights under fuel supply, transportation and consumable contracts.

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

(h) Establishment of, termination of, and approval of any change or amendment to the operating arrangements between KPCo and Agent or any replacement third party with respect to the Mitchell Plant generating units; provided, however, that Agent or any replacement third party shall participate in discussions pursuant to this subsection 7.2(h) only if and to the extent requested to do so by both Owners.

(i) Review and approval of plans and procedures designed to ensure compliance with any environmental law, regulation, ordinance or permit, including procedures for allocating and using emission allowances or for any programs that permit averaging at more than one unit for compliance.

(j) Other duties as assigned by agreement of the Owners.

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

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

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

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

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

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

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

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

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

7.7 KPCo and WPCo shall be individually responsible for any fees charged by FERC on the basis of the sales or transmission by each of capacity or energy at wholesale in interstate commerce.

7.8 Emission Allowances. On the Transfer Date pursuant to the ACA, AEPGR, the previous owner of WPCo's interest in the Mitchell Plant, will assign to WPCo all Emission Allowances allocated to AEPGR for the Mitchell Plant for each vintage year after 2014, issued by the U.S. Environmental Protection Agency ("USEPA") pursuant to Title IV of the Clean Air Act Amendments of 1990 and any regulations thereunder, and any other

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

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

7.9 Capital repairs and improvements to the Mitchell Plant will be determined by the Operating Committee pursuant to the annual budgeting process set forth in Section 7.10. Expenditures that the Operating Committee determines have been or will be incurred exclusively for one Owner shall be assigned exclusively to that Owner. To the extent that capacity and energy production would not be available but for the investments and costs assigned exclusively to one owner, such capacity and energy production shall be assigned solely to the owner to which the costs are assigned.

7.10 At least 90 days before the start of each operating year, WPCo ~~KPCo~~ and Agent shall submit to the Operating Committee a proposed annual budget with respect to the Mitchell Plant, a proposed annual operating plan, and an estimate and schedule of costs to be incurred for major maintenance or replacement items during the next six-year period. The annual budget shall be presented on a month-by-month basis for each month during the next operating year, and shall include an operating budget, a capital budget, an estimate of the cost of any major repairs that are anticipated will occur during such operating year with respect to the Mitchell Plant, and an itemized estimate of all projected non-fuel variable operating expenses relating to the operation of the Mitchell Plant during that operating year. The members of the Operating Committee will meet and work in good faith to agree upon the final annual budget and final annual operating plan. Once approved, the annual budget and annual operating plan shall remain in effect throughout the applicable operating year, subject to such changes, revisions, amendments, and updating as the Operating Committee may determine.

ARTICLE EIGHT
EFFECTIVE DATE AND TERM

8.1 Subject to receipt of necessary regulatory approvals ~~FERC approval or acceptance for filing,~~ the Effective Date of this Agreement shall be _____ ~~December 31, 2014.~~

8.2 Subject to necessary regulatory approvals ~~FERC approval or acceptance, if necessary,~~ this Agreement shall remain in force until such time as (i) KPCo or WPCo has divested itself

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

ARTICLE NINE

GENERAL

9.1 This Agreement shall inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns, but this Agreement may not be assigned by any signatory without the written consent of the others, which consent shall not be unreasonably withheld.

9.2 This Agreement is subject to the regulatory authority of any State or Federal agency having jurisdiction.

9.3 The interpretation and performance of this Agreement shall be in accordance with the laws of the State of West Virginia ~~Ohio~~, excluding conflict of laws principles that would require the application of the laws of a different jurisdiction.

9.4 This Agreement supersedes all previous representations, understandings, negotiations, and agreements, either written or oral between the signatories or their representatives with respect to operation of the Mitchell Plant, and constitutes the entire agreement of the signatories with respect to the operation of the Plant. Notwithstanding the foregoing, this Agreement does not supersede any previous agreements among any of the signatories allocating or transferring rights to capacity and associated energy, or ownership, of the Mitchell Plant.

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

KENTUCKY POWER COMPANY

_____

President & CEO

Attn:_____

Phone:_____

Facsimile:_____

E-Mail:_____

WHEELING POWER COMPANY

_____

President

Attn:_____

Phone:_____

Facsimile:_____

E-Mail:_____

AMERICAL ELECTRIC POWER
SERVICE CORPORATION

_____

Executive Vice President – Generation

Attn:_____

Phone:_____

Facsimile:_____

E-Mail:_____

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

ARTICLE TEN

LIMITATION OF LIABILITY

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

~~ARTICLE ELEVEN~~

~~DISPUTE RESOLUTION~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

KENTUCKY POWER COMPANY

By:_____

Title: President & CO

WHEELING POWER COMPANY

By:_____

Title: President

AMERICAN ELECTRIC POWER SERVICE CORPORATION

By:_____

Title: Executive Vice President – Generation

APPENDIX B

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

[RATE SCHEDULE NO. 303]

MITCHELL PLANT OWNERSHIP AGREEMENT

KENTUCKY POWER COMPANY

and

WHEELING POWER COMPANY

TABLE OF CONTENTS

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

WITNESSETH:

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

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

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

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

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

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

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

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

ARTICLE ONE

OWNERSHIP AND OPERATIONS

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

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

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

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

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

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

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

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

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

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

ARTICLE TWO

APPORTIONMENT OF CAPACITY AND ENERGY

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

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

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

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

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

ARTICLE THREE

REPLACEMENTS, ADDITIONS, AND RETIREMENTS

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

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

ARTICLE FOUR

WORKING CAPITAL REQUIREMENTS

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

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

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

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

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

ARTICLE FIVE

INVESTMENT IN FUEL

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

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

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

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

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

ARTICLE SIX

APPORTIONMENT OF STATION COSTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE SEVEN

OPERATING COMMITTEE AND OPERATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE EIGHT

EFFECTIVE DATE AND TERM

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

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

ARTICLE NINE TRANSFERS

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

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

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

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

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

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

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

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

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

ARTICLE TEN

DEFAULTS AND REMEDIES

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

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

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

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

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

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

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

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

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

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

ARTICLE ELEVEN

LIMITATION OF LIABILITY

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

ARTICLE TWELVE

DISPUTE RESOLUTION

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

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

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

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

~~12.4 Unit Interest Swap Dispute.~~

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

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

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

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

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

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

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

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

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

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

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

ARTICLE THIRTEEN

GENERAL

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

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

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

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

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

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

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

KENTUCKY POWER COMPANY

[___]_____

[___]_____

Attn: _____

Phone:[_____]_____

Email:[_____]_____

WHEELING POWER COMPANY

[___]_____

[___]_____

Attn: _____

Phone:[_____]_____

Email:[_____]_____

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

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

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

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

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

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

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

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

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

ARTICLE FOURTEEN

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"FPA" means the Federal Power Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"WVPSC" shall mean the Public Service Commission of West Virginia

[*Signature pages follow.*]

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

KENTUCKY POWER COMPANY

By: _____

Title:

WHEELING POWER COMPANY

By: _____

Title:

Solely with respect to Section 13.4:

AMERICAN ELECTRIC POWER SERVICE CORPORATION

By: _____

Title:

Exhibit A

Capital Budget, Initial Budgets and Forecast

[To Be Attached as of the Effective Date.]

Exhibit B

Form of Monthly Sample Report

[To Be Attached as of the Effective Date.]

~~Exhibit C~~
~~Unit Interest Swap Transaction Implementation~~

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

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

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

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

March 23, 2022

Bill Mast
DIR Projects
American Electric Power Service Corporation for
Kentucky Power and Wheeling Power Companies
1 Riverside Plaza
Columbus, OH 43215

Re: Mitchell Plant CCR/ELG Cost Allocation Summary

Dear Mr. Mast:

Burns & McDonnell has been hired to assess the environmental compliance project associated with Environmental Protection Agency's (EPA's) inter-related rules for 1) disposal of coal combustion residuals (The CCR Rule[1] under 40 CFR Part 257) and 2) the revised effluent limitations guidelines and standards (The ELG Rule[2] under 40 CFR Part 423). Specifically, Burns & McDonnell has been tasked with aligning the current project scope and resulting cost estimates prepared by others into two specific categories: CCR Compliance and ELG Compliance for Kentucky and Wheeling Power, AEP operating companies (AEP). This is a complicated matter that relies on site-specific evaluation of potential compliance solutions.

General CCR and ELG Compliance

The CCR Rule requires utilities to cease receipt of CCR and non-CCR wastestreams and retrofit or close unlined ponds or ponds failing to meet location restrictions (see 40 CFR 257.101(a)(1) and (b)(1)). A practical consequence of this rule is that if the impoundments must close to comply with the CCR Rule, additional treatment capacity must be implemented to meet the prior best practicable control technology (BPT) limits for wastewater (including limits for Total Suspended Solids (TSS) and oil and grease as defined in 40 CFR 423.12(b)(11)) and replace the surface impoundment treatment capacity prior to closing the impoundment (particularly for units that fail location restriction criteria; and therefore, are not eligible for composite liner retrofits, or for units that cannot provide adequate treatment of flows for continued plant operation during a CCR surface impoundment retrofit installation). This could include the implementation of dry ash handling systems to cease receipt of CCR wastestreams in CCR surface impoundments and allowing the utility to initiate impoundment closure. In fact, EPA allows for utilities to seek an extension to perform such measures and develop alternate

[1] The Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities; Final Rule, April 2015 and referred to herein as "CCR Rule".
[2] Steam Electric Power Generating Effluent Guidelines and Standards, November 2015 (and revised after reconsideration in October 2020) and referred to herein as "ELG Rule".

disposal capacity if no other treatment alternatives are available onsite or offsite (see 40 CFR 257.103(f)(1)). Conversion to dry handling is recognized as a preferred CCR-compliance strategy by EPA within the preamble of the Part A Final Rule (see 85 Fed Reg 53523). This was also evaluated in the cost impacts for the rule (see 85 Fed Reg 21459).

The ELG rule implements additional best available technology (BAT) limits on the future discharge of wastestreams which are more stringent than the existing BPT limits described above (see 40 CFR 423.13(i) for FGD wastewater and 40 CFR 423.13(k) for bottom ash transport water). Many of these limits require specific technology solutions, such as high recycle systems for bottom ash sluicing systems, “dry” bottom ash handling systems, or biological or membrane treatment of FGD wastewater. These projects are complicated further by prior CCR Rule compliance efforts, which were underway before the ELG rule was finalized. In the preamble of the Final ELG Rule (after reconsideration), EPA recognized *the challenges of operating a truly closed-loop system, discussed above, are compounded by the requirements of the CCR rule…According to reports provided to EPA and conversations with electric utilities, several plants have already begun (or even completed) the transition away from impoundments*. 85 Fed Reg 64671.

As recognized by EPA, the CCR and ELG rules are inter-related and achieve common goals, including the conversion to dry ash handling technologies before the ELG rule was finalized. The following text is from the preamble of the final ELG rule (emphasis added): *Furthermore, the record since the 2015 rule shows that* ***plants have continued to convert away from surface impoundments to the types of technologies described above, either voluntarily or due to the CCR rule****, and in 2018, the U.S. Court of Appeals for the District of Columbia vacated that portion of the 2015 CCR rule that allowed both unlined and clay-lined surface impoundments to continue operating. USWAG v. EPA, No. 15–1219 (D.C. Cir. 2018).* ***Since very few CCR surface impoundments are composite lined, the practical effect of this ruling is that many plants with operating impoundments likely will cease sluicing waste to these impoundments in the near future****. In the 2015 CCR rule, EPA estimated that it would be less costly for plants to install under-boiler or remote drag chain systems and send BA to landfills rather than continue to wet sluice BA and replace unlined impoundments with composite lined impoundments.* 85 Fed Reg 64672-64673.

CCR/ELG Cost Allocation

Burns & McDonnell understands the overall need for this evaluation of CCR and ELG related costs is driven by the inter-related rules and regulatory proceedings in multiple jurisdictions. Within the 2020 reconsideration rule, the ELG Rule would have allowed AEP to agree to

permanent cessation of coal combustion by December 31, 2028, make the necessary certification outlined at 40 CFR 423.19(f), and meet the existing BPT limits for TSS for FGD wastewater and bottom ash transport water (as outlined in 40 CFR 423.13(g)(2)(i) and 40 CFR 423.13(k)(2)(ii), respectively). Consequently, AEP would not have needed to install BAT and meet the revised ELG limits if coal combustion were ceased by the end of 2028; however, AEP would still have been required to comply with the CCR Rule and meet any additional water quality criteria implemented on the remaining plant discharges in their next NPDES permit for the remaining period of plant operation. For the purposes of this study, Burns & McDonnell has reviewed the project scope through such a lens, identifying the items required for compliance through 2028 as the "CCR compliance" scope and any additional items as the "Post-2028/ELG compliance" scope.

Mitchell Compliance Project Scope

The Mitchell plant operates a CCR landfill and a CCR surface impoundment, referred to as the bottom ash pond (BAP), which AEP determined is an eligible, unlined surface impoundment (as defined at 40 CFR 257.53), meaning the impoundment is unlined but that it does meet location restrictions, safety factor assessments, and has not impacted groundwater (as of November 30, 2020). Therefore, AEP was required to "cease placing CCR and non-CCR wastestreams into such CCR surface impoundment and either retrofit or close the CCR unit in accordance with the requirements of § 257.102" as soon as technically feasible, but not later than April 11, 2021 (see 40 CFR 257.101(a)(1)). AEP prepared and submitted a Part A demonstration of no alternative disposal capacity according to 40 CFR 257.103(f)(1) and requested a site-specific compliance deadline of April 21, 2023, to cease receipt of wastestreams (after construction of the new disposal capacity is completed). EPA has determined that the demonstration is complete, effectively tolling[3] the April 11, 2021, deadline to initiate closure until a decision on the site-specific deadline is published.

The ELG Rule requires additional treatment equipment to 1) reduce the discharge of bottom ash transport water through use of a high recycle rate system or conversion to dry ash handling and 2) reduce the discharge of contaminants in FGD wastewater through use of a biological treatment and ultrafiltration system.

[3] Tolling refers to the stopping of the running of a time period, especially a time period set by a statute of limitations. In this case, it refers to the case that the April 11, 2021, deadline is not applicable until such time that the US EPA makes a judgement on the Part A Demonstration.

The following key documents were relied upon during Burns & McDonnell's review of the Mitchell project scope.

Table 1: Key AEP Documents provided for review

Document Number	Date	Description
ML-BAP-SIAlternateCapacityInfeasibleNotice-11302020	11/30/2020	Demonstration Request to Develop Alternative Disposal Capacity for the Bottom Ash Pond CCR Management Unit
MLP-00-0-910-E0-DB-001 Rev B	3/12/2020	Design Basis
MLP-PR-0-180-EC-SK002-002 Rev B	3/11/2020	Site Development Sketches – Sequence of Closure and Construction of Ponds
MLP-PR-0-180-EC-SK002-003 Rev B	3/11/2020	Site Development Sketch – Pond Sections and Details[4]
MLP-PR-0-600-EN-LI-001 Rev B	3/11/2020	Water Balance and Ponds Enhancement
MLP-BA-0-492-EM-SK305-001 Rev B	3/11/2020	Bottom Ash Conversion Flow Diagram[5]
WV0005304	8/25/2021	Draft Discharge Permit

Based on our review of the Part A demonstration prepared by AEP and submitted to EPA on November 30, 2020, the CCR surface impoundments must cease receipt of the wastestreams outlined in Table 2 prior to retrofitting or closing. Alternately, these flows could be managed during construction of alternate disposal capacity through additional treatment and appropriate construction sequencing of pond modifications in compliance with applicable regulations.

[4] AEP clarified the 3" concrete revetment indicated in the typical liner detail was not included in the final project scope and will not be installed in the wastewater pond(s).
[5] This drawing package shows that the bunker sump returns flow to the existing boiler sump; however, AEP has confirmed that this flow is pumped to the cooling tower basin as described in the Part A Demonstration.

BURNS McDONNELL

Table 2: Mitchell Plant CCR and Non-CCR Wastestreams

Wastestream	**Flow Rate (gallons per day)**
Bottom Ash Transport Water	1,000,000
Fly Ash Silo Sumps & Landfill Leachate	109,000
Chloride Purge System	730,000
Cooling Tower Blowdown	1,590,000
U1 & U2 ESP Sumps	140,000
U1 & U2 WW Sumps	3,800,000
Pyrite Sluice Water	860,000
Non-chemical metal cleaning wash	430,000 (intermittent, twice per year)
Metal Cleaning Waste	45,000 (intermittent, over 10 days every ~18 months)
Gypsum Building Sump	Intermittent
Transfer House 6/7 Sump	Intermittent

Based on AEP's review of the CCR and ELG regulations, the following alternative disposal capacity was selected and subsequently AEP engaged Worley Parsons to provide engineering, design, and procurement services to support:

- Dry Bottom Ash Handling System

- Installation of an under hopper drag chain conveyor (UHDC) system and associated equipment to collect and dewater bottom ash from Unit 1 and Unit 2[6].
- Installation of a common transfer conveyor and ash bunker for Units 1 and 2 to collect and temporarily store CCR material from the UHDC.
- Installation of a sump at the ash bunker to collect stormwater and excess quench water and return flow to the cooling tower basin.
- Material from the ash bunker will either be hauled to the Mitchell landfill for disposal or beneficially reused.
- Piping modifications for continued operation of the cooling tower blowdown system once ash sluicing ceases.

- Bottom Ash Pond Closure by Removal
  - All CCR material, including the existing liner system and one foot of over-excavated material within the existing BAP will be removed via dewatering and mechanical excavation. All CCR material will either be hauled to the Mitchell CCR landfill for disposal or beneficially reused.
  - A third-party engineer will certify the removal of CCR upon completion (in accordance with 40 CFR 257.102(c)). Certification will be performed in phases across the BAP.
  - After certification of removal of all CCR within a given area of the existing BAP, construction of the new lined non-CCR wastewater pond (WWP) will proceed.

- New Non-CCR WWP
  - New (4-acre) lined East WWP constructed within the eastern footprint of the existing BAP to treat non-CCR wastestreams generated at the plant.

[6] No modifications to the pyrites system are expected at Mitchell since pyrites are already sluiced to the boiler hoppers.

BURNS McDONNELL

- AEP must complete closure by removal prior to constructing a new impoundment within the BAP footprint, which requires confirmation that Appendix IV constituents remain below groundwater protection standards. Based on conversations with AEP, the site is in assessment monitoring (at the time of this letter) but has not yet triggered corrective action; therefore, closure by removal should be completed at Mitchell once the CCR material has been removed and the adjacent soils are decontaminated.
- Design groundwater level at ~630 (normally 622-625), ponds excavated to ~656.
- Typical liner section includes a double membrane liner with leak detection system.

o New (3-acre) lined West WWP constructed within the western footprint of the existing BAP to receive effluent from the East WWP. The West WWP will discharge to the existing Clearwater Pond, which in turn will continue to discharge to the Ohio River through NPDES Permit WV No. WV0005304 Outlet 001.

o Installation of tank-based chemical treatment system with appropriate retention time to provide proper mixing of chemicals to meet plant discharge requirements for Outlet 001 once the pond chemistry changes because of the pond modifications[7]/dry ash handling conversion.

- FGD wastewater treatment system – Discharge from existing Phys/Chem system will be routed to new systems designed for ELG compliance:

o Bioreactor

[7] Note the treatment systems are installed at the beginning of the pond construction sequence to allow for continued receipt of wastestreams (and adequate treatment of flows) while portions of the pond system are removed from service to support closure required by the CCR Rule and construction of the new non-CCR wastewater basins.

- Pressure Ultrafiltration System

- Landfill leachate will be rerouted to the new FGD wastewater treatment system, and the draft permit reflects this in the permit limits at Outlet 201. AEP has indicated that relocating this leachate to the new treatment system avoided the addition of mercury and selenium discharge limits at Outlet 001.

Mitchell Scope Analysis

Within their Demonstration submitted for compliance with 40 CFR 257.103(f)(1), AEP has documented that an ash handling conversion is necessary for compliance with both the CCR and ELG Rules at Mitchell. The compliance schedules for a composite liner retrofit project (CCR compliance only) and a dry ash handling conversion (CCR and ELG compliant solution) are similar for this site (see Table 3 on pages 7 and 8 of the submitted Demonstration).

Since the Mitchell BAP is an eligible, unlined CCR surface impoundment meeting the necessary location restrictions and not currently impacting groundwater, a CCR-only compliance solution would have required a composite liner retrofit involving the following scope (from 40 CFR 257.102(k)):

- Remove all CCR, including any contaminated soils and sediments

- Install a composite liner, or alternative composite liner system

- Continue all other CCR compliance efforts, including corrective action (if triggered in future groundwater evaluations)

These retrofit steps are very similar to the impoundment closure and liner steps associated with repurposing the bottom ash pond complex as a non-CCR unit. Had a slightly different liner system been installed, the plant could conceivably still sluice to the BAP and comply with the CCR Rule. The conversion to dry ash handling would not have been required for CCR compliance alone at Mitchell but this is the selected solution for ELG compliance at the site. The bunker associated with the dry ash conversion is required to avoid the new stackout pile from being regulated as a CCR pile under the CCR Rule; however, this bunker would not have been required for the CCR-only compliance effort associated with a composite liner retrofit.

Based on our review of the project scope, and the prior discussions of CCR and ELG compliance, it is our opinion that the Mitchell scope items (and associated capital, operations, and maintenance costs) fall under each of the regulations as described in Table 3.

BURNS McDONNELL

Table 3: Mitchell CCR and ELG Scope Split

CCR Compliance	Post-2028 Operation/ELG Compliance
Removing ash (and any underlying impacted soils) from Bottom Ash Pond	Modifications to the bottom ash handling systems including installation of submerged grind conveyor systems, transfer conveyor, and new ash bunker/sump
Construct new lined wastewater ponds in place of the existing Bottom Ash Pond (similar to what would have been required for a composite liner retrofit under a CCR-only compliance option)	Installation of new FGD wastewater treatment equipment (Biological Treatment System with Ultrafiltration)
Installing a chemical treatment system for non-CCR wastewater streams to meet permitted discharge limits during/after pond repurposing	Leachate treatment within new biological treatment system (comingled with FGD wastewater)
Leachate piping modifications to relocate this flow away from Outlet 001 and avoid selenium and mercury limits for the new pond system.	

Please reach out if you have additional questions or would like to discuss this matter further.

Sincerely,

Jason Eichenberger, PE*
Associate Civil Engineer
*Licensed in KS, LA, and MI

cc: Kathy Milenkovski, AEP Legal
Mike Roush, PE Burns & McDonnell
Mark Rokoff, PE Burns & McDonnell

Kentucky Power Company
KPSC Case No. 2021-00370
AG-KIUC's Second Set of Data Requests
Dated January 16, 2024

DATA REQUEST

AG-KIUC 2_5 Attachment 1 to the response to KIUC 2-1 in Case 2021-00481 provides a list of the affiliate agreements to which the Company is a party. That list does not include a Mitchell Plant Ownership Agreement. Confirm there presently is no Mitchell Plant Ownership Agreement. If denied, then provide a copy of the Mitchell Plant Ownership Agreement.

RESPONSE

Confirmed, there is no agreement termed "Mitchell Plant Ownership Agreement." The Mitchell Plant's ownership rights and obligations are governed by the Mitchell Plant Operating Agreement.

Witness: Timothy C. Kerns

Kentucky Power Company
KPSC Case No. 2021-00370
AG-KIUC's Second Set of Data Requests
Dated January 16, 2024

DATA REQUEST

AG-KIUC 2_6 Provide a copy of the Mitchell Operating Agreement and each consent agreement, resolution, and/or minutes wherein the Mitchell Operating Committee actually or effectively modified or clarified the Mitchell Operating Agreement since the initial version dated December 31, 2014.

RESPONSE

Please see KPCO_R_AG_KIUC_2_6_Attachment1, which is the Mitchell Plant Operating Agreement – FERC Rate Schedule No. 303. There are no documents responsive to the remainder of this request.

Preparer: Counsel

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 KPCo and WPCo, or both of them, as the case may be.

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

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

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

Allowances to satisfy the Emission Allowances required because of its dispatch of energy from the Mitchell Plant, and the Emission Allowances required to satisfy the Emission Allowance surrender obligations attributable to the Mitchell Plant imposed under the Consent Decree between USEPA and Ohio Power Company entered on December 10, 2007, in Civil Action No. C2-99-1182 and consolidated cases by the U.S. District Court in the Southern District of Ohio. On or before January 10 of each year, Agent shall determine and notify KPCo and WPCo of the number of additional annual Emission Allowances consumed by each of them through December 31 of the previous year, and KPCo and WPCo shall each transfer into the Mitchell Plant U.S. EPA Allowance Transfer System account that number of Emission Allowances with a small compliance margin by January 31 of that year. For seasonal Emission Allowance programs, Agent shall determine and notify KPCo and WPCo of the number of additional seasonal Emission Allowances consumed by each of them during the applicable compliance period by the 10th day of the first month following the end of the compliance period, and KPCo and WPCo shall each transfer into the appropriate Mitchell Plant U.S. EPA Allowance Transfer System Account that number of Emission Allowances with a small compliance margin by the last day of the first month following the end of the compliance period. In the event that KPCo or WPCo fails to surrender the required number of Emission Allowances by January 31 or the last day of the first month following any seasonal compliance period, Agent shall purchase the required number of Emission Allowances, and KPCo or WPCo, as the case may be, shall reimburse Agent for such purchases, with interest at the Federal Funds Rate (as published by the Board of

Governors of the Federal Reserve System as from time to time in effect) running from the date of such purchases to the date of payment. The Operating Committee will develop procedures to be implemented after the end of each calendar year to account for the Emission Allowances required by the use of the Mitchell Plant by KPCo and WPCo and to correct any imbalance between Emission Allowances supplied and Emission Allowances used through the end of the preceding year by settlement or payment.

7.9 Capital repairs and improvements to the Mitchell Plant will be determined by the Operating Committee pursuant to the annual budgeting process set forth in Section 7.10. Expenditures that the Operating Committee determines have been or will be incurred exclusively for one Owner shall be assigned exclusively to that Owner.

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:

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 11.1within 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

Kentucky Power Company
KPSC Case No. 2021-00370
AG-KIUC's Second Set of Data Requests
Dated January 16, 2024

DATA REQUEST

AG-KIUC 2_7 Describe the AEP ESG goals and provide a copy of all internal documents, including, but not limited to, planning documents, and a copy of all external presentations that address AEP's ESG goals, strategies to achieve those goals, and/or the role of the Company, including the operation of its generating units and AEP's PJM bidding strategies for those generating units, in achieving AEP's ESG goals.

RESPONSE

The Company objects to this request on the basis that it is vague, ambiguous, unintelligible, overly broad, unduly burdensome, and not reasonably calculated to the discovery of admissible evidence. Subject to and without waiving these objections, the Company states that there are no ESG goals or objectives, at either the AEP or the Kentucky Power level, that impact the Company's PJM bidding strategies or operations of its generating units.

Preparer: Counsel (as to the objection)

Witness: Alex E. Vaughan

Kentucky Power Company
KPSC Case No. 2021-00370
AG-KIUC's Second Set of Data Requests
Dated January 16, 2024

DATA REQUEST

AG-KIUC 2_8 Describe specifically how the AEP ESG goals have affected (historically since January 2020) and presently affect the operation and maintenance of and the capital investment in the Company's Rockport and Mitchell coal-fired generating units. Provide a copy of all internal documents, including, but not limited to, planning documents; budgets, including assumptions and sensitivities; minutes and resolutions of the Mitchell Operating Committee; presentations; reports; internal correspondence, such as emails; and target and actual ESG metrics monitored and reported at the generating unit, generating plant, Company, and AEP levels, and any other monitoring and/or reporting level, such as fuel type or source; along with all related notes, commentary, and other internal correspondence, such as emails.

RESPONSE

The Company objects to this request on the basis that it is vague, ambiguous, and not reasonably calculated to the discovery of admissible evidence. The Company further objects to the extent the request seeks documents and information not in the Company's custody and control. The Company does not have, and has not ever had, a property interest in the Rockport Generating Units. It also has never had control over their operation and maintenance. Subject to and without waiving these objections, the Company states that there are no ESG goals or objectives that impact the operation and/or maintenance or capital investment in its generation facilities.

Witness: Alex E. Vaughan

Witness: Timothy C. Kerns

Preparer: Counsel (as to the objections)

Kentucky Power Company
KPSC Case No. 2021-00370
AG-KIUC's Second Set of Data Requests
Dated January 16, 2024

DATA REQUEST

AG-KIUC 2_9 Describe specifically whether and if so, how, AEP's allocation of capital and expenses to the Company through the budget process, ESG targets, and/or other means, have constrained or otherwise resulted in limitations on the ability of the Company and/or Wheeling Power Company and/or AEPSC and/or any other AEP affiliate to prudently and reasonably manage the operation, maintenance, and capital investment in its coal-fired generating units since January 2020. Provide a copy of all documentation of such constraints or limitations and the effects on the operation, maintenance, and capital investment in the coal-fired generating units since January 2020. If there have been no AEP constraints or limitations, then so state.

RESPONSE

The Company objects to this request on the basis that it is vague, ambiguous, and not reasonably calculated to the discovery of admissible evidence. Subject to and without waiving these objections, the Company states: No, there have been no AEP constraints or limitations. Please also see the Company's response to AG-KIUC 2-7 and 2-8.

Witness: Timothy C. Kerns

Witness: Brian K. West

Preparer: Counsel (as to the objections)

Kentucky Power Company
KPSC Case No. 2021-00370
AG-KIUC's Second Set of Data Requests
Dated January 16, 2024

DATA REQUEST

AG-KIUC 2_10 Provide a copy of all documentation of plans and/or programs since January 2020 that demonstrate the intent and actions necessary and/or taken by AEP, AEPSC, the Company, and/or Wheeling Power Company to improve the performance and output of the Company's coal-fired generating units, including, but not limited to, the implementation of specific target performance metrics. If none, then so state.

RESPONSE

The Company engages in ongoing and continuous activities to improve the performance and output of the Company's coal-fired generating units as reflected in its Capital Project investments, and Operation and Maintenance activities during its Planned Outages. Other examples of continuous improvement activities include investments made on the boilers at Mitchell generating station to improve their efficiency.

Please see KPCO_R_AG_KIUC_2_10_Attachment1 for information related to investments on the boilers at Mitchell generating station.

The Company also reserves the right to supplement this response to the extent additional information is identified.

Witness: Timothy C. Kerns

Preparer: Counsel (as to the objections)

Mitchell							
Year	**Unit**	**Project Description**	**Type**	***O&M Costs**	***Capital Investment**	**Availability Improvement**	**Cycle Efficiency Improvement**
2021	1	Boiler Inspection	O&M	$ 290,000		X	
2021	2	Boiler Inspection	O&M	$ 369,000		X	
2021	2	U-2 Replace Burner Nozzles	O&M	$ 45,000		X	
2022	1	MLU1 11F Burner Nozzle Tip & Thermocouple Replacement	Capital Project		$ 17,000.00	X	
2022	1	MLU122F Boiler Inspection	O&M	$ 167,000		X	
2022	2	MLU2 Install Weld Overlay in Lower Furnace	Capital Project		$ 1,388,000.00	X	
2022	2	MLU2 Install Isomebrane in Steam Generator Penthouse to replace Penetration Seals	Capital Project		$ 547,000.00	X	
2022	2	MLU2 Penthouse Seal Air Fan Outlet Exp Jnt Replace	Capital Project		$ 69,000.00	X	
2022	2	MLU222F Boiler Inspection	O&M	$ 552,000		X	
2022	1,2	Pulverizer Testing/Tuning U1 & U2	O&M	$ 25,000		X	
2023	1	Boiler Inspection	O&M	$ 44,000		X	

Note: Costs reflect Direct Costs.

Kentucky Power Company
KPSC Case No. 2021-00370
AG-KIUC's Second Set of Data Requests
Dated January 16, 2024

DATA REQUEST

AG-KIUC 2_11 Provide a copy of all monthly and other operating reports prepared by and/or for the plant managers at Rockport and Mitchell since January 2020 that show, among other things, the Company's target and actual performance metrics, commentaries on variances between target and actual performance, and remedial plans to improve performance and output. If none, then so state.

RESPONSE

The Company objects to this request on the basis that it is vague, ambiguous, argumentative, unintelligible, and not reasonably calculated to the discovery of admissible evidence. The Company further objects to the extent the request seeks documents and information not in the Company's custody and control. The Company does not have, and has not ever had, a property interest in the Rockport Generating Units, nor control over their operation and maintenance.

Without waiving these objections, the Company states as follows:

Please see KPCO_R_AG_KIUC_2_11_Attachment1 for available information for 2023.

Please see KPCO_R_AG_KIUC_2_11_Attachment2 for available information for 2022.

Please see KPCO_R_AG_KIUC_2_11_Attachment3 for available information for 2021.

Please see KPCO_R_AG_KIUC_2_11_Attachment4 for available information for 2020.

Information not related to Kentucky Power has been redacted from the above attachments.

Witness: Timothy C. Kerns

Preparer: Counsel (as to the objections)

Top 20 GADS Event Descriptions ending 2023 YTD December

(All AEP Operated Units excluding nuclear, wind, solar)

Cause Description	Sum of NERC MWH Loss	Count of Events	Percent of Total
[redacted]			
Grand Total of Top Twenty			
Grand Total of All GADS Events			

GADS Events ending in December 2023 over 10,000 MWhs Loss
(Excludes 2022 Equivalent Hours & MWH loss from events started in 2022)

Utility Name	Unit Name	Outage or Derate	Event Start Timestamp	Event End Timestamp	Component Name	Cause Description	Event Description	Sum of NERC Equivalent Hours	Total(NERC MWH Loss)
[redacted]									

GADS Events ending in November 2023 over 10,000 MWhs Loss
(Excludes 2022 Equivalent Hours & MWH loss from events started in 2022)

Utility Name	Unit Name	Outage or Derate	Event Start Timestamp	Event End Timestamp	Component Name	Cause Description	Event Description	Sum of NERC Equivalent Hours	Total(NERC MWH Loss)
[redacted]									

GADS Events ending in October 2023 over 10,000 MWhs Loss
(Excludes 2022 Equivalent Hours & MWH loss from events started in 2022)

Utility Name	Unit Name	Outage or Derate	Event Start Timestamp	Event End Timestamp	Component Name	Cause Description	Event Description	Sum of NERC Equivalent Hours	Total(NERC MWH Loss)
[redacted]									

GADS Events ending in September 2023 over 10,000 MWhs Loss
(Excludes 2022 Equivalent Hours & MWH loss from events started in 2022)

Utility Name	Unit Name	Outage or Derate	Event Start Timestamp	Event End Timestamp	Component Name	Cause Description	Event Description	Sum of NERC Equivalent Hours	Total(NERC MWH Loss)
[redacted]									

GADS Events ending in August 2023 over 10,000 MWhs Loss
(Excludes 2022 Equivalent Hours & MWH loss from events started in 2022)

Utility Name	Unit Name	Outage or Derate	Event Start Timestamp	Event End Timestamp	Component Name	Cause Description	Event Description	Sum of NERC Equivalent Hours	Total(NERC MWH Loss)
[redacted]									
Wheeling Power Co. (AEP)	Mitchell 1	Outage	7/27	8/6	Boiler Tube Leaks	Waterwall (Furnace wall)	Steam Generator Tube Leak	249.8	192,358.1
Wheeling Power Co. (AEP) Total								249.8	192,358.1
[redacted]									

GADS Events ending in July 2023 over 10,000 MWhs Loss
(Excludes 2022 Equivalent Hours & MWH loss from events started in 2022)

Utility Name	Unit Name	Outage or Derate	Event Start Timestamp	Event End Timestamp	Component Name	Cause Description	Event Description	Sum of NERC Equivalent Hours	Total(NERC MWH Loss)
Wheeling Power Co. (AEP)	Mitchell 1	Derate	7/7	7/8	Slag and Ash Removal	Fly Ash Removal System (not precipitators, s	Dry Flyash System i/r.	19.3	14,891.7
			7/24	7/27	Boiler Tube Leaks	Waterwall (Furnace wall)	Steam Generator Tube Leak	48.2	37,083.3
Wheeling Power Co. (AEP) Total								67.5	51,975.0

GADS Events ending in June 2023 over 10,000 MWhs Loss
(Excludes 2022 Equivalent Hours & MWH loss from events started in 2022)

Utility Name	Unit Name	Outage or Derate	Event Start Timestamp	Event End Timestamp	Component Name	Cause Description	Event Description	Sum of NERC Equivalent Hours	Total(NERC MWH Loss)
[redacted]									
Wheeling Power Co. (AEP)	Mitchell 1	Outage	6/15	6/23	Boiler Tube Leaks	Waterwall (Furnace wall)	Tube Leak	183.3	141,185.0
	Mitchell 2	Outage	5/31	6/8	Valves	Control valves	EHC Issues	188.6	148,992.2
Wheeling Power Co. (AEP) Total								371.9	290,177.2
[redacted]									

GADS Events ending in May 2023 over 10,000 MWhs Loss
(Excludes 2022 Equivalent Hours & MWH loss from events started in 2022)

Utility Name	Unit Name	Outage or Derate	Event Start Timestamp	Event End Timestamp	Component Name	Cause Description	Event Description	Sum of NERC Equivalent Hours	Total(NERC MWH Loss)
[redacted]									
Wheeling Power Co. (AEP)	Mitchell 1	Outage	5/12	5/19	Condensate System	Feedwater chemistry (not specific to condens	Conductivity issues	157.4	121,226.6
			5/19	5/20	Feedwater System	Other feedwater pump problems	Reason Unknown	14.5	11,166.5
Wheeling Power Co. (AEP) Total								171.9	132,393.0
[redacted]									

GADS Events ending in April 2023 over 10,000 MWhs Loss
(Excludes 2022 Equivalent Hours & MWH loss from events started in 2022)

Utility Name	Unit Name	Outage or Derate	Event Start Timestamp	Event End Timestamp	Component Name	Cause Description	Event Description	Sum of NERC Equivalent Hours	Total(NERC MWH Loss)
[redacted]									
Wheeling Power Co. (AEP)	Mitchell 1	Derate	3/21	4/6	Boiler Fuel Supply from Bunkers t	Pulverizer feeders	#14 Pulverizer Coal Feeder Gear Box o/s.	29.4	22,650.0
	Mitchell 2	Outage	3/23	4/4	Feedwater System	Feedwater pump drive - main shaft	Feedwater Pump Thrust Bearing Failure	292.8	231,396.9
Wheeling Power Co. (AEP) Total								322.2	254,046.9
[redacted]									

GADS Events ending in March 2023 over 10,000 MWhs Loss
(Excludes 2022 Equivalent Hours & MWH loss from events started in 2022)

Utility Name	Unit Name	Outage or Derate	Event Start Timestamp	Event End Timestamp	Component Name	Cause Description	Event Description	Sum of NERC Equivalent Hours	Total(NERC MWH Loss)
[redacted]									
Wheeling Power Co. (AEP)	Mitchell 1	Derate	2/24	3/15	Boiler Fuel Supply from Bunkers	Pulverizer feeders	#14 pulverizer Coal Feeder Gear Box	36.2	27,891.0
Wheeling Power Co. (AEP) Total								36.2	27,891.0
[redacted]									

GADS Events ending in February 2023 over 10,000 MWhs Loss
(Excludes 2022 Equivalent Hours & MWH loss from events started in 2022)

Utility Name	Unit Name	Outage or Derate	Event Start Timestamp	Event End Timestamp	Component Name	Cause Description	Event Description	Equivalent Hours	Total(NERC MWH Loss)
Wheeling Power Co. (AEP)	Mitchell 1	Outage	1/24	2/3	Boiler Piping System	Startup bypass system valves	UMO-1 PSO Outlet Valve packing failed.	244.3	188,135.4
	Mitchell 2	Derate	2/15	2/21	Boiler Fuel Supply from Bunkers	Pulverizer feeder motor	25 pulverizer gearbox issues	13.2	10,462.9
Wheeling Power Co. (AEP) Total								257.5	198,598.3

GADS Events ending in January 2023 over 10,000 MWhs Loss
(Excludes 2022 Equivalent Hours & MWH loss from events started in 2022)

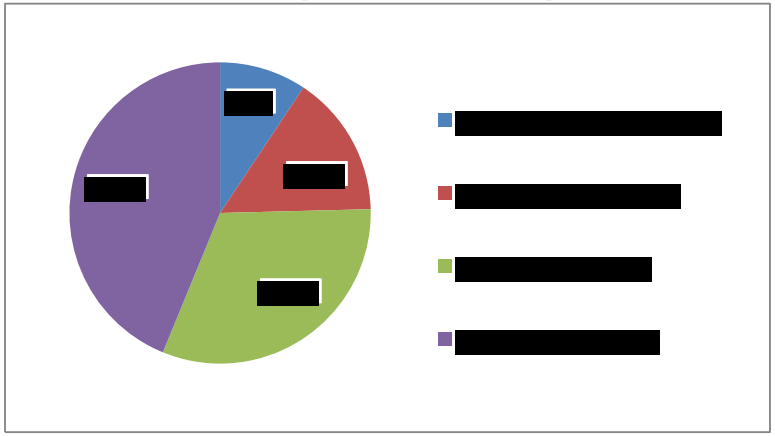
Utility Name	Unit Name	Outage or Derate	Event Start Timestamp	Event End Timestamp	Component Name	Cause Description	Event Description	Sum of NERC Equivalent Hours	Total(NERC MWH Loss)
[redacted]									
Wheeling Power Co. (AEP)	Mitchell 2	Derate	12/29	1/7	Stack Emission	Opacity - fossil	Opacity	66.5	52,560.0
Wheeling Power Co. (AEP) Total								66.5	52,560.0
[redacted]									

EFOR Event Analysis - 2022 YTD December

*Data includes only the major assets driving ICP EFORd & EFORv metric (AM, MT, ML, RP, DR1, FC, NE1, NE3, PRK, Stall, TRK, WSH)

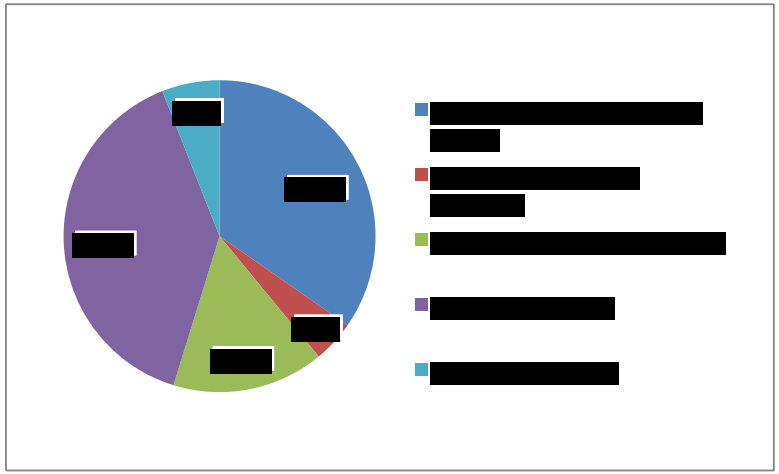
Top 10 of 216 GADS Cause Descriptions	# of Events	Lost MWH
[redacted]		

Plant Defense Improvement Areas (% Lost MWH)



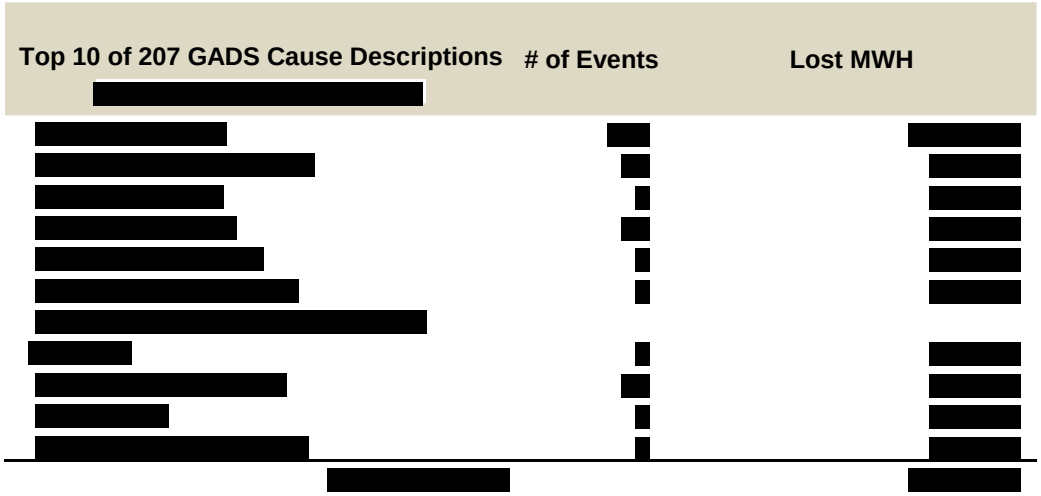
Primary Cause of Focus Events	*% of SubTot*	*Major Unit Issues (Emergent Issues)*
Equipment/Material	[redacted]	*ML2 Safety/Relief Valve* [redacted]
Design/Install of Equipment & Process	[redacted]	[redacted]
Operation/Control of Equipment	[redacted]	[redacted]
Human Performance	[redacted]	[redacted]
Maintenance, Repair & Inspection	[redacted]	[redacted]

Primary Cause Areas (% Lost MWH)

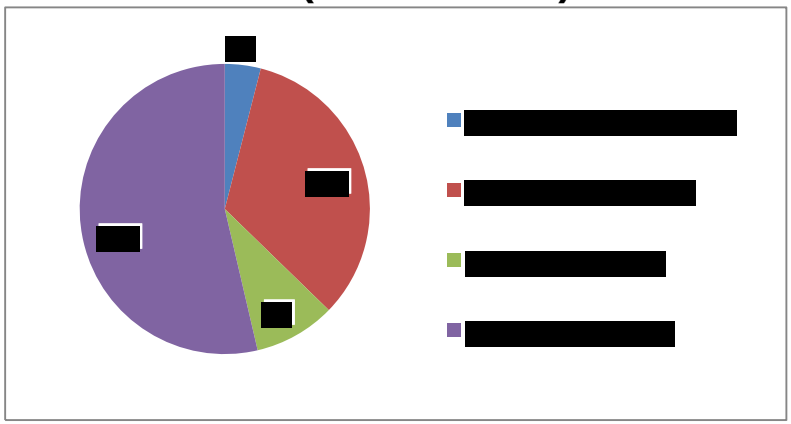


EFOR Event Analysis - 2021 YTD December

*Data includes only the major assets driving ICP EFORd & EFORv metric (AM, MT, ML, RP, DR1, FC, NE1, NE3, PRK, Stall, TRK, WSH)

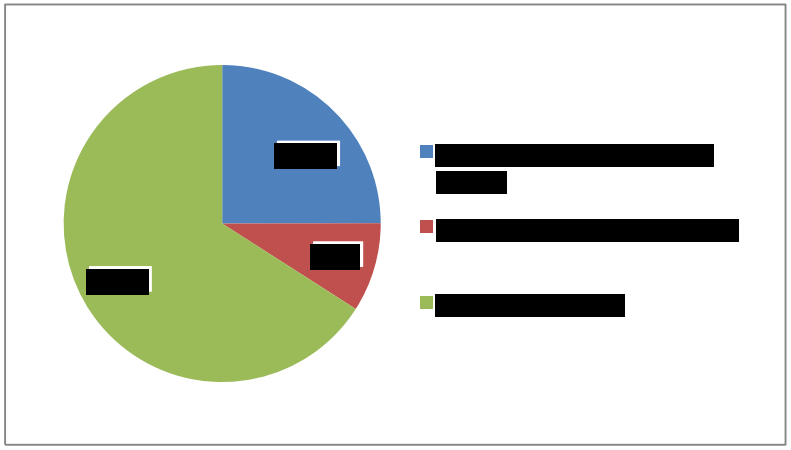


Plant Defense Improvement Areas (% Lost MWH)



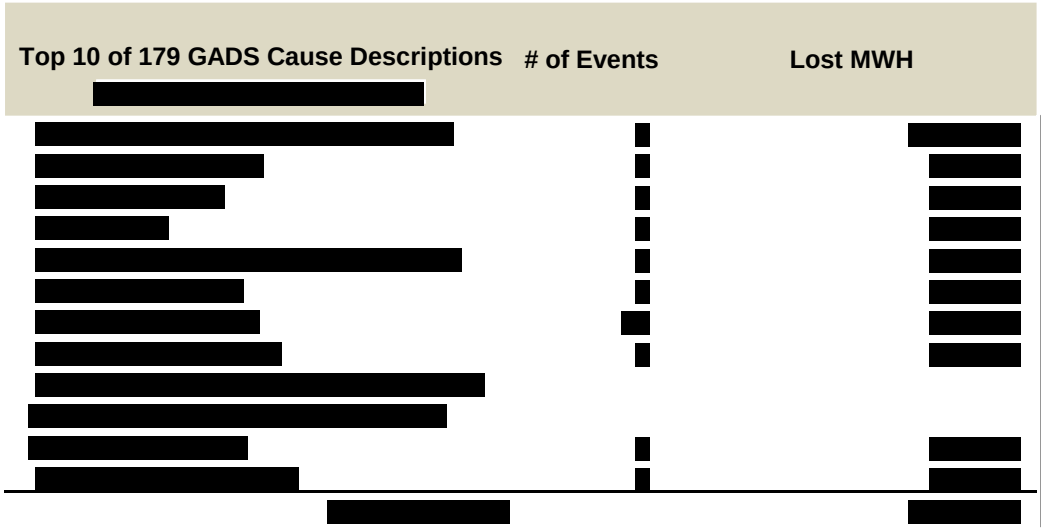
Primary Cause of Focus Events	*% of SubTot*	*Major Unit Issues (Emergent Issues)*
Equipment/Material		*ML1 Main Transformer* *ML1 Waterwall*
Design/Install of Equipment & Process		*ML1 Generator Bearing* *ML2 FGD Chimney Flue*
Operation/Control of Equipment		

Primary Cause Areas (% Lost MWH)

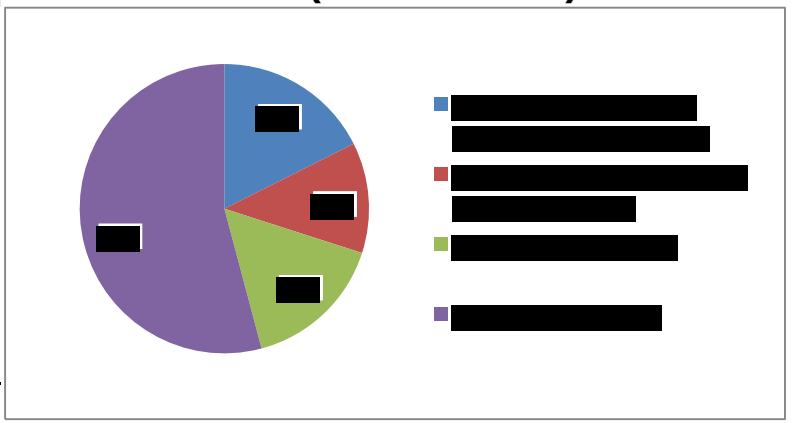


EFOR Event Analysis - 2020 YTD December*

* Data includes only the major assets driving ICP EFORd & EFORv metric (AM, MT, ML, RP, DR1, FC, NE1, NE3, PRK, Stall, TRK, WSH)

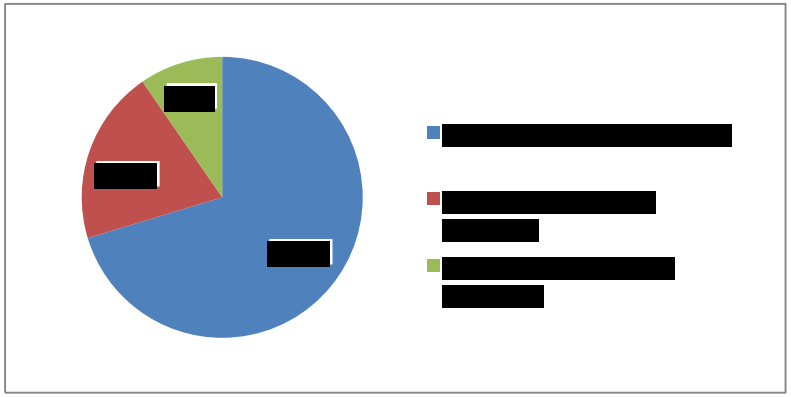


Plant Defense Improvement Areas (% Lost MWH)



Primary Cause of Focus Events	*% of SubTot*	*Major Unit Issues (Emergent Issues)*
Design of Equipment & Process		*ML1 Generator Bearings
Maintenance, Repair & Inspection		*ML1&2 FGD Agitators *ML1 Condenser Tube Leaks *ML2 Economizer Piping
Operation and Control of Equipment		

Primary Cause (% Lost MWH)



Kentucky Power Company
KPSC Case No. 2021-00370
AG-KIUC's Second Set of Data Requests
Dated January 16, 2024

DATA REQUEST

AG-KIUC 2_12 Confirm that AEP's achievement of ESG goals and/target metrics are components of AEP's executive incentive compensation under the LTIP and/or other forms of incentive compensation. If confirmed, describe each of these components, the target metrics, and how each component affects AEP executive incentive compensation.

RESPONSE

The Company objects to this request on the basis that it is vague, ambiguous, outside the scope of this proceeding and not reasonably calculated to the discovery of admissible evidence. In support of this objection, the Company states that the request is not reasonably calculated to the discovery of admissible evidence as the components of LTIP or other compensation are not relevant to the stated purpose of this docket, which is to determine whether the Company has provided adequate service to its customers.

Preparer: Counsel

Kentucky Power Company
KPSC Case No. 2021-00370
AG-KIUC's Second Set of Data Requests
Dated January 16, 2024

DATA REQUEST

AG-KIUC 2_13 Provide a detailed description of the status of discussions and/or negotiations between and among AEP, the Company, and Wheeling Power Company regarding the continuing ownership, capacity entitlements, and/or energy entitlements of the Company to its 50% undivided ownership interests in the Mitchell units after December 31, 2028. Provide a copy of all documents and analyses, draft or otherwise, developed by AEP and/or exchanged among the parties and/or that address these issues.

RESPONSE

The Company objects to this request on the basis that it is vague, ambiguous, argumentative, unintelligible, overly broad, unduly burdensome, and not reasonably calculated to the discovery of admissible evidence. The Company further objects to the extent the request seeks documents and information not in the Company's custody and control. Consistent with the Commission's Order in Case No. 2021-00004 ("the ELG case") dated July 15, 2021 ("the ELG Order"), the Company does not have Commission authorization to make the necessary investments to upgrade the Mitchell Generating Units to comply with federal environmental requirements beyond December 31, 2028. Therefore, the terms "the continuing ownership, capacity entitlements, and/or energy entitlements of the Company to its 50% undivided ownership interests in the Mitchell units after December 31, 2028" are unintelligible. The Company construes the request to refer to the period subsequent to the Commission's ELG Order. The Company further objects to the request to the extent it calls for a legal conclusion or legal analysis, which are not the appropriate subject of discovery.

Preparer: Counsel

Kentucky Power Company
KPSC Case No. 2021-00370
AG-KIUC's Second Set of Data Requests
Dated January 16, 2024

DATA REQUEST

AG-KIUC 2_14 Confirm that the allocations of the ELG and CCR construction costs 100% to Wheeling Power Company does not and will not affect the Company's 50% undivided ownership interests in the capacity and energy entitlements in the Mitchell units either prior to January 1, 2029 or after December 31, 2028. If this is not correct in any respect, then provide a corrected statement, describe how the allocations of the ELG and CCR construction costs affect or will affect the Company's 50% undivided ownership interest in the capacity and energy entitlements in the Mitchell units, including the dates when those effects have or will occur, and provide all documents and other evidence relied on for your response.

RESPONSE

The Company objects to this request on the basis that it is outside the scope of this proceeding and not reasonably calculated to the discovery of admissible evidence. The Company objects to this request to the extent it seeks a legal conclusion or legal analysis, which are not the appropriate subject of discovery. In support of these objections, the Company states that the future of the Mitchell Plant is not relevant to the scope of this proceeding, which relates to whether the Company has provided adequate service to its customers. Subject to and without waiving these objections, the Company states:

Please see the Company's response to KPSC 2-12.

Preparer: Counsel (as to the objections)

Witness: Brian K. West

VERIFICATION

The undersigned, Timothy C. Kerns, being duly sworn, deposes and says he is the Senior Vice President of Fossil Hydro Generating Assets, for American Electric Power Service Corporation, 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.

Timothy C. Kerns

Commonwealth of Kentucky)
)
County of Boyd)

Case No. 2021-00370

Subscribed and sworn to before me, a Notary Public in and before said County and State, by Timothy C. Kerns, on February 5, 2024

Marilyn Michelle Caldwell

Notary Public

MARILYN MICHELLE CALDWELL
Notary Public
Commonwealth of Kentucky
Commission Number KYNP71841
My Commission Expires May 5, 2027

My Commission Expires May 5, 2027

Notary ID Number KYNP71841

VERIFICATION

The undersigned, Alex E. Vaughan, being duly sworn, deposes and says he is the Managing Director for Renewables and Fuel Strategy for American Electric Power Service Corporation, 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.

Alex E. Vaughan

Franklin County)
Ohio)
) Case No. 2021-00370

Subscribed and sworn to before me, a Notary Public in and before said County and State, by Alex E. Vaughan, on February 7 2024

Notary Public

NOTARIAL SEAL STATE OF OHIO

Paul D. Flory
Attorney At Law
Notary Public, State of Ohio
My commission has no expiration date
Sec. 147.03 R.C.

My Commission Expires Never

Notary ID Number NA

VERIFICATION

The undersigned, Brian K. West, being duly sworn, deposes and says he is the Vice President, Regulatory & Finance for Kentucky Power, that he has personal knowledge of the matters set forth in the foregoing responses and the information contained therein is true and correct to the best of his information, knowledge, and belief..

Brian K. West

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

Subscribed and sworn to before me, a Notary Public in and before said County and State, by Brian K. West, on February 6, 2024

Marilyn Michelle Caldwell
Notary Public

My Commission Expires May 5, 2027

Notary ID Number KYNP71841

MARILYN MICHELLE CALDWELL
Notary Public
Commonwealth of Kentucky
Commission Number KYNP71841
My Commission Expires May 5, 2027