

**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

Notice of Filing Of Ten-Day Status Update

Kentucky Power Company gives notice, in accordance with ordering paragraph 7 of the Commission's September 27, 2021 Order, of its filing as part of this notice of its April 5, 2022 supplemental response to KPSC\_RH\_1\_1 (ten-day update) in Case No. 2021-00004.

Also filed with the notice of filing are five attachments to the April 5, 2022 ten-day update.

Respectfully submitted,



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COUNSEL FOR  
KENTUCKY POWER COMPANY

Kentucky Power Company  
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**DATA REQUEST**

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

**RESPONSE**

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

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

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

**September 13, 2021 Update**

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

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

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

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

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

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

**September 23, 2021 Update**

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

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

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

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

**October 4, 2021 Update**

The Public Service Commission of West Virginia held an evidentiary hearing on September 24, 2021 in Case No. 20-1040-E-CN. The purpose of the hearing was to address the issues raised in Wheeling Power Company and Appalachian Power Company's September 8, 2021 "Petition to Reopen Case and to Take Further Action."

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

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

**October 13, 2021 Update**

On October 12, 2021 the Public Service Commission of West Virginia issued its Order regarding Wheeling Power Company and Appalachian Power Company's September 20, 2021 "Petition to Reopen Case and to Take Further Action" affirming the earlier order that the Companies proceed with ELG at all three plants.

Please see KPCO\_SR\_KPSC\_RH\_1\_1\_Attachment4 which provides a copy of the October 12, 2021 Order and all other documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN since October 2, 2021<sup>1</sup> through October 12, 2021.

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

**October 25, 2021 Update**

Wheeling Power Company is moving forward with CCR/ELG work at the Mitchell Generating Station given the recent action by the West Virginia Commission on the petition. Kentucky Power Company will work to bring the Commission a recommendation on how to handle the Mitchell operating agreement either in Case No. 2021-00370 or in a separate docket. The Company expects to make the operating agreement filing in fourth quarter 2021 and further plans to address through that filing that Kentucky Power will only pay for CCR-related costs associated with the CCR/ELG project.

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<sup>1</sup> The Commission Staff's data request 2-6 dated September 17, 2021 sought, as a continuing request, that the Company provide a copy of any documents filed by Wheeling Power or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN and to be provided in the Company's 10-day status reports. The Company's response to 2-6 provided these documents through October 1, 2021.

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

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN from October 13, 2021 through October 24, 2021.

**November 4, 2021 Update**

AEP has entered into an agreement to sell its Kentucky operations, which include Kentucky Power and AEP Kentucky Transco, to Liberty Utilities Corp., the regulated utility business of parent company Algonquin Power & Utilities Corporation. Liberty will own and obtain power from Kentucky Power's 50% portion of the Mitchell Plant through 2028. The sale is expected to close in the second quarter of 2022, pending regulatory approvals. The Company expects that an application for Commission approval of the transaction will be made in the fourth quarter 2021.

Kentucky Power Company will work to bring the Commission a recommendation on how to handle the Mitchell operating agreement either in Case No. 2021-00370 or in a separate docket. The Company expects to make the operating agreement filing in the fourth quarter 2021.

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

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN from October 25, 2021 through November 3, 2021.

**November 15, 2021 Update**

On November 5, 2021, Kentucky Power filed its notice of intent to file an application for approval of affiliate agreements related to the Mitchell Generating Station. The Commission assigned this proceeding Case No. 2021-00421. The Company will file its application before November 30, 2021. A comparable filing will be made at the same time in West Virginia.

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

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There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN from November 4, 2021 through November 14, 2021.

**November 24, 2021 Update**

On November 19, 2021, Kentucky Power filed its application for approval of its proposed Mitchell Plant Operations and Maintenance Agreement and Mitchell Plant Ownership Agreement (collectively the “New Mitchell Agreements”) in Case No. 2021-00421. Please see KPCO\_SR\_KPSC\_1\_1\_Attachment5 for a copy of the Company’s application, including the supporting testimonies of D. Brett Mattison and Timothy C. Kerns. A comparable filing was made contemporaneously in West Virginia under Case No. 21-0810-E-PC. Please see KPCO\_SR\_KPSC\_1\_1\_Attachment6 for a copy of this filing.

Additionally, American Electric Power Service Corporation (on behalf of Wheeling Power and Kentucky Power) filed the New Mitchell Agreements and cancellation of Rate Schedules No. 303 (current Mitchell Plant Operating Agreement) with FERC on November 19, 2021. Please see KPCO\_SR\_KPSC\_1\_1\_Attachment7 for a copy of this filing.

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

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN from November 15, 2021 through November 23, 2021.

**December 3, 2021 Update**

On November 30, 2021 an informal meeting was held following the hearing in Case No. 2021-00370 to discuss a procedural schedule for Case No. 2021-00421. The Commission entered an Order on December 3, 2021 in Case No. 2021-00421 establishing the procedural schedule for Case No. 2021-00421.

As of December 2, 2021 a procedural schedule has not been established in the comparable filing made in West Virginia (21-0810-E-PC).

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) are filed as KPCO\_SR\_KPSC\_1\_1\_Attachment8 and KPCO\_SR\_KPSC\_1\_1\_Attachment9 respectively.

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

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period November 24, 2021 through December 2, 2021.

**December 13, 2021 Update**

On December 13, 2021, the Commission established a hearing date in Case No. 2021-00421. The hearing is to be held on March 1, 2022 through March 3, 2022.

As of December 12, 2021 a procedural schedule has not been established in the comparable filing made in West Virginia (21-0810-E-PC).

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) are filed as KPCO\_SR\_KPSC\_1\_1\_Attachment10 and KPCO\_SR\_KPSC\_1\_1\_Attachment11 respectively.

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

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period December 3, 2021 through December 12, 2021.

**December 22, 2021 Update**

The Company will be filing its responses to the first set of discovery requests in Case No. 2021-00421 today.

As of December 21, 2021 a procedural schedule has not been established in the comparable filing made in West Virginia (21-0810-E-PC).

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) are filed as KPCO\_SR\_KPSC\_1\_1\_Attachment12 and KPCO\_SR\_KPSC\_1\_1\_Attachment13 respectively.

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

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period December 13, 2021 through December 21, 2021.

**January 3, 2022**

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period December 22, 2021 through December 31, 2021.

On December 22, 2021 the Staff of the Public Service Commission of West Virginia issued its initial memorandum and first set of data requests in Case No. 21-0810-E-PC. The proceeding seeks approval of the Mitchell Plant Operations and Maintenance Agreement and the Mitchell Plant Ownership Agreement. Copies of the filed memo and the data requests are attached as KPCO\_SR\_KPSC\_1\_1\_Attachment14 and KPCO\_SR\_KPSC\_1\_1\_Attachment15 respectively. As of December 29, 2021 a procedural schedule has not be established in Case 21-0810-E-PC.

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) are filed as KPCO\_SR\_KPSC\_1\_1\_Attachment16 and KPCO\_SR\_KPSC\_1\_1\_Attachment17 respectively.

**January 13, 2022**

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period January 1, 2022 through January 12, 2022.

Responses to the Staff of the Public Service Commission of West Virginia's first set of data requests in Case No. 21-0810-E-PC were filed on January 11, 2022. A copy of these responses is attached as KPCO\_SR\_KPSC\_1\_1\_Attachment18. As of December 29, 2021 a procedural schedule has not be established in Case 21-0810-E-PC.

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) are filed as KPCO\_SR\_KPSC\_1\_1\_Attachment19 and KPCO\_SR\_KPSC\_1\_1\_Attachment20 respectively.



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**January 24, 2022**

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period January 13, 2022 through January 23, 2022.

A proposed procedural schedule was filed by West Virginia Staff in Case No. 21-0810-E-PC on January 14, 2022. On January 20, 2022 the "Objections of Appalachian Power Company and Wheeling Power Company to the Consumer Advocate Division's First Request for Information" were filed. A copy of these documents are attached as KPCO\_SR\_KPSC\_1\_1\_Attachment21 and KPCO\_SR\_KPSC\_1\_1\_Attachment22.

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) beginning November 24, 2021 are filed as KPCO\_SR\_KPSC\_1\_1\_Attachment23 and KPCO\_SR\_KPSC\_1\_1\_Attachment24 respectively.

**February 3, 2022**

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period January 24, 2022 through February 2, 2022.

The West Virginia Commission's procedural order in Case No. 21-0810-E-PC was entered on January 25, 2022. Appalachian Power Company's and Wheeling Power Company's responses to the Consumer Advocate Division and the West Virginia Energy Users Group first data requests were filed on January 26, 2022. A copy of these documents are attached as KPCO\_SR\_KPSC\_1\_1\_Attachment25 through KPCO\_SR\_KPSC\_1\_1\_Attachment27.

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) beginning December 4, 2021 are filed as KPCO\_SR\_KPSC\_1\_1\_Attachment28 and KPCO\_SR\_KPSC\_1\_1\_Attachment29 respectively.

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**February 14, 2022**

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period February 3, 2022 through February 13, 2022.

In Case No. 21-0810-E-PC, Appalachian Power Company's and Wheeling Power Company's response to the Consumer Advocate Division's motion to compel was filed on February 7, 2022. On February 8, 2022 the West Virginia Commission granted intervention two petitions to intervene: 1) West Virginia Coal Association and 2) West Virginia Citizens Action Group, Solar United Neighbors, and Energy Efficient West Virginia. A copy of these documents are attached as KPCO\_SR\_KPSC\_1\_1\_Attachment30 through KPCO\_SR\_KPSC\_1\_1\_Attachment31.

On February 7, 2022 American Electric Power Service Corporation on behalf of Kentucky Power and Wheeling Power Company filed a motion to withdraw the rate filing submitted on November 19, 2021 in dockets ER22-452-000 and ER22-453-000.

**February 24, 2022**

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN or Case No. 21-0810-E-PC during the period February 14, 2022 through February 23, 2022.

**March 7, 2022**

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period February 24, 2022 through March 6, 2022.

The Company inadvertently omitted from its last 10-day status update that in Case No. 21-0810-E-PC, Appalachian Power Company's and Wheeling Power Company's responses to West Virginia Energy Users Group second set of data requests were filed on February 23, 2022. A copy of these responses is attached as KPCO\_SR\_KPSC\_1\_1\_Attachment32.

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The Commission held a hearing in Case No. 2021-00421 on March 1, 2022. After that hearing, the Kentucky Public Service Commission issued an order requiring the Company to notify the Commission whether or not the Company intended to file a proposed amendment to the Mitchell Ownership Agreement concerning the Company's alternate proposal to divide the Mitchell units between Kentucky Power and Wheeling Power. The Company is evaluating this option and will file its response regarding such a proposal as soon as is practical before March 16, 2022.

**March 16, 2022**

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period March 7, 2022 through March 15, 2022.

In Case No. 21-0810-E-PC, on March 8, 2022 the West Virginia Commission granted two requests for admission Pro Hac Vice of West Virginia Citizens Action Group, Solar United Neighbors and Energy Efficient West Virginia. On March 9, 2022, Appalachian Power Company and Wheeling Power Company filed a response to the third set of data requests from West Virginia Energy Users Group. A copy of the response is attached as KPCO\_SR\_KPSC\_1\_1\_Attachment33. On March 11, 2022 the West Virginia Commission approved the Consumer Advocate Division's (CAD) Motion to Compel. A copy of the Order is attached as KPCO\_SR\_KPSC\_Attachment34.

**March 28, 2022**

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period March 16, 2022 through March 27, 2022.

In Case No. 21-0810-E-PC, on March 16, 2022, Appalachian Power Company and Wheeling Power Company filed responses to CAD's first set of data requests as required by the Public Service Commission of West Virginia's order granting CAD's motion to compel. A copy of the public responses are attached as KPCO\_SR\_KPSC\_1\_1\_Attachment35. On March 17, 2022 Appalachian Power Company and Wheeling Power Company filed their response to CAD's motion to amend the procedural schedule. A copy of the response is attached as KPCO\_SR\_KPSC\_1\_1\_Attachment36. On March 18, 2022 Appalachian Power Company and Wheeling Power Company filed supplemental direct testimony of Christian Beam. A copy of the supplemental testimony is attached as KPCO\_SR\_KPSC\_1\_1\_Attachment37. On March 18, 2022 the Public Service Commission of West Virginia issued an Order amending the procedural schedule. A copy of this Order is attached as KPCO\_SR\_KPSC\_1\_1\_Attachment38. On March

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23, 2022, Appalachian Power Company and Wheeling Power Company filed a motion for protective treatment. A copy of this motion is attached as KPCO\_SR\_KPSC\_1\_1\_Attachment39.

**April 5, 2022**

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period March 28, 2022 through April 6, 2022.

In Case No. 21-0810-E-PC, on March 28, 2022, the Staff of the Public Service Commission of West Virginia filed the direct testimonies of James Weimer, P.E., and Geoffrey M. Cooke. A copy of these testimonies is attached as KPCO\_SR\_KPSC\_1\_1\_Attachment40.

On March 31, 2022 the Public Service Commission of West Virginia issued an Order granting the request for admission *Pro Hac Vice* of Melissa Anne Legge. A copy of the Order is attached as KPCO\_SR\_KPSC\_Attachment41.

On April 1, 2022, the Staff of the Public Service Commission of West Virginia filed the supplemental direct testimony of James Weimer, P.E. A copy of the supplemental direct testimony is attached as KPCO\_SR\_KPSC\_1\_1\_Attachment42.

On April 4, 2022 Appalachian Power Company and Wheeling Power Company filed the Rebuttal Testimony of Christian T. Beam. A copy of Mr. Beam's rebuttal testimony is attached as KPCO\_SR\_KPSC\_1\_1\_Attachment43. Mr. Beam's Rebuttal Testimony covered the particulars of Section 9.6 and the Unit Interest Swap option contained in the amended proposed Mitchell Plant Ownership Agreement. Mr. Beam also supported the remaining elements of the agreements overall.

**Of special note in Mr. Beam's Rebuttal Testimony was an alternative offered by Appalachian Power and Wheeling Power to the West Virginia Commission to remove in its entirety the provisions governing the transfer of Kentucky Power's plant interest by 2028 (Section 9.6 and related provisions and definitions) and rather focus the agreements on the operation of and investment in the plant between now and December 31, 2028.**

The Rebuttal Testimony recognizes the Kentucky Commission's Order that Kentucky Power not invest in ELG, and the Kentucky Commission's discussions at its recent hearing in Case No. 2021-00421 concerning the potential need for a certificate of public convenience and necessity in the future should Kentucky Power wish to keep Mitchell in its generation mix past December 31, 2028.

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The Rebuttal Testimony also recognizes the Kentucky Commission's requirement to update the Kentucky Commission on the West Virginia proceeding every 10 days, and recognizes these updates as an avenue for informing the Commission about the West Virginia proceeding.

Ultimately, though, the Rebuttal Testimony requests that the West Virginia Commission find acceptable *both options presented*: the Unit Interest Swap option *and* the removal of Section 9.6 (and associated provisions) in its entirety, in order to provide flexibility and to reduce the potential for inconsistent decisions between the Kentucky and West Virginia Commissions, and to increase the potential that the agreements are found acceptable by both commissions.

As presented in the Rebuttal Testimony, the West Virginia Commission could authorize Wheeling Power to enter into the agreements except for Section 9.6 of the Mitchell Ownership Agreement (including associated definitions and provisions such as the arbitration clause in Section 12.4 that are specific to that clause) if it finds that to be reasonable. That could also facilitate Kentucky Power entering into the agreements on those same terms, assuming that the Kentucky Commission approves the agreements absent Section 9.6 and authorizes Kentucky Power to enter into the agreements on the same basis. If the West Virginia Commission sees both options as reasonable, it could issue an order finding it reasonable for Wheeling Power to enter into an agreement containing either option to facilitate consistency.

Finally, a hearing is set for April 7, 2022 on Appalachian Power and Wheeling Power's application in 21-0810-E-PC. On April 4, 2022 Appalachian Power and Wheeling Power filed an agreed order of witnesses for the April 7, 2022 hearing. A copy of this document is attached as KPCO\_SR\_KPSC\_1\_1\_Attachment44.

Witness: Deryle B. Mattison

03:18 PM MAR 28 2022 EXEC SERV DIV

## Public Service Commission of West Virginia

201 Brooks Street, P.O. Box 812  
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Phone: (304) 340-0300  
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March 28, 2022

Karen Buckley, Acting Executive Secretary  
Public Service Commission  
Post Office Box 812  
Charleston, West Virginia 25323

Re: **CASE NO. 21-0810-E-PC**  
**Appalachian Power Company and**  
**Wheeling Power Company**

Dear Ms. Buckley:

Enclosed for filing is an original and twelve copies of the *Prefiled Direct Testimony of James Weimer, P.E. and Prefiled Direct Testimony of Geoffrey M. Cooke* in the above-referenced proceeding.

A copy has been served upon all parties of record.

Sincerely,

A handwritten signature in black ink, appearing to read "Lucas R. Head".

Lucas R. Head,  
Staff Attorney  
West Virginia State Bar I.D. No. 11146

LRH/vm

Attachments

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**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**CASE NO. 21-0810-E-PC  
Appalachian Power Company  
And Wheeling Power Company**

**CERTIFICATE OF SERVICE**

I, LUCAS ROBERT HEAD, Staff Attorney for the Public Service Commission of West Virginia, do hereby certify that a copy of the foregoing "*Prefiled Direct Testimony of James Weimer P.E and Prefiled Direct Testimony of Geoffrey M. Cooke*" has been served today upon the following parties of record by First Class, United States Mail; postage prepaid this 28<sup>th</sup> day of March 2022.

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\_\_\_\_\_  
LUCAS HEAD  
WV State Bar No. 11146





APPALACHIAN POWER COMPANY  
AND WHEELING POWER COMPANY  
CASE NO. 21-0810-E-PC

PREPARED DIRECT TESTIMONY BY

JAMES WEIMER P.E.  
ENGINEERING DIVISION

ON BEHALF OF THE STAFF OF THE  
PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

\*\*\*\*\*

MARCH 17, 2022



201 Brooks Street, P.O. Box 812, Charleston, WV 25323

DIRECT TESTIMONY OF JAMES C WEIMER, P.E.

*Page 1*

1 **Q: What are your name, employer and business address?**

2

3 **A:** My name is James Weimer and I am employed in the Engineering Division of  
4 the Public Service Commission of West Virginia. The address is 201 Brooks  
5 Street, PO Box 812, Charleston, WV 25323.

6

7 **Q: What is your job title?**

8

9 **A:** My title is "Engineer".

10

11 **Q: What are your professional qualifications?**

12

13 **A:** I hold a license as a Registered Professional Engineer to practice in the State  
14 of West Virginia and the State of Pennsylvania. I have a Masters Degree in  
15 Mechanical Engineering with an emphasis on fluid mechanics and heat  
16 transfer. My first employment was in the power industry performing  
17 efficiency studies on coal and nuclear facilities and participating in outage  
18 maintenance activities. I have more than forty (40) years of pertinent  
19 engineering experience with the last 20 years of my experience having been in  
20 the field of public water and sewer utility regulation. I entered the field of  
21 electric utility regulation in 2021 as a large part of my pre Commission  
22 experience was in maintenance and engineering with responsibility for  
23 electrical transmission equipment design, installation and maintenance in the  
24 mining industry.

25

26 **Q: How long have you been employed at the Public Service Commission?**

27

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DIRECT TESTIMONY OF JAMES C WEIMER, P.E.

*Page 2*

1 **A:** Almost (22) years.

2

3 **Q:** **What is the purpose of your current testimony?**

4

5 **A:** To provide my comments concerning the filing by Appalachian Power  
6 Company (APCO) owner of the Wheeling Power Company (WPCO) which  
7 owns a 50% share of the Mitchell power plant and the Kentucky Power  
8 Company (KPCO) owner of the remaining 50% of the Mitchell Power plant,  
9 jointly the Companies. All three Companies are wholly owned subsidiaries of  
10 American Electric Power (AEP). The filing by is requesting approval for the  
11 proposed sale or transfer of the KPCO 50 % (percent) ownership interest in  
12 the Mitchell power plant to a new owner or to WPCO as well as the removal  
13 of American Electric Service Corporation from the current Mitchell  
14 Operating Agreements to accommodate the new ownership arrangement.

15

16 **Q:** **Please define what you have done to prepare for your testimony in this**  
17 **case.**

18

19 **A:** After being assigned to the Case, I prepared several questions to be addressed  
20 by APCO related to sale or transfer and the answers provided as well as the  
21 review of the entire Case filing and associated testimony and filings by other  
22 parties.

23

24 **Q:** **What is your understanding of the case before you?**

25

26 **A:** On November 19, 2021 a Joint Application was filed by the Appalachian  
27 Power Company and Wheeling Power Company for a review of the revised

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*Page 3*

1 Operating Agreements due to the proposed sale of the KPCO 50% ownership  
2 in the Mitchell plant to Liberty Utilities Corp (Liberty) a division of  
3 Algonquin Power & Utilities Corp. or a second option for WPCO to purchase  
4 the KPCO share. The change in ownership was necessary due to a conflict in  
5 the differing decisions of the two regulatory agencies responsible for  
6 approving all plant investments related to the approval of new EPA related  
7 Effluent Limit Guidelines (ELG) and Coal Combustion Residuals (CCR).  
8 Wherein, the WVPSC approved the ELG and CCR investment in both  
9 Mitchell plants and the KPSC approved only the CCR investment in the  
10 combined plants. It is a physical impossibility to separate the ELG work based  
11 on the integrated condition of the entire plant site and plant operations. The  
12 WVPSC desired plant operation to continue beyond a 2028 which made the  
13 ELG investment a necessity. The WVPSC decision also required that, if  
14 necessary, West Virginia ratepayers would fund the ELG investment in the  
15 KP owned interest in Mitchell. Thus, an unresolved conflict existed which led  
16 to the filing of the instant case to change the Operating Agreements pending a  
17 possible KPCO ownership transfer. The summary of the Mitchell plant current  
18 operational status and the changes the new EPA requirements mandated which  
19 require new investment in the Mitchell plant was defined in Case 20-1040-E-  
20 CN as follows;

21  
22 ***MITCHELL DESCRIPTION***

- 23  
24 • *Two turbine units two rated at 770MW and 790MW supercritical*  
25 *steam, pulverized coal boilers, one cooling tower plant built 1971*

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DIRECT TESTIMONY OF JAMES C WEIMER, P.E.

Page 4

- 1 • *Electrostatic precipitator in flue gas, flue gas desulphurization*
- 2 *(FGD) for sulfur control with selective catalytic reduction (SCR)*
- 3 *FGD water sent to impoundment*
- 4 • *Low NOx burners*
- 5 • *Dry fly ash handling, ash sent to landfill*
- 6 • *Boiler bottom ash wet transport water (BATW) joined with other*
- 7 *wastewaters to an impoundment which is then dredged with material*
- 8 *transported to a landfill*
- 9 • *Final discharge of clear settled water to Ohio River*
- 10 • *Drywall grade gypsum from plant FGD sold to Certainteed*

11  
12  
13 ***EPA REQUIRE CHANGES TO OPERATE BEYOND 2028 ELG&CCR***

- 14
- 15 • *Converting from wet bottom ash system to dry handling system,*
- 16 *using an under hopper drag chain conveyor (UHDC).*
- 17
- 18 • *Closure of the BAP by CCR material removal.*
- 19
- 20 • *Constructing new non-CCR wastewater ponds (WWP) within the*
- 21 *footprint of the closed BAP*
- 22

23 And the detailed project scope was listed as;

24  
25 ***Dry Bottom Ash Handling System***

- 26
- 27 • *Installation of a UHDC and associated equipment to collect and*
- 28 *dewater bottom ash from Unit 1 and Unit 2.*

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28

- *Installation of a common ash bunker for Units 1 and 2 to collect and temporarily store material from the UHDC.*
- *Installation of a sump at the ash bunker to collect storm water and excess quench water and return flow to the cooling tower basin*
- *Material from ash bunker will either be hauled to the Mitchell landfill for disposal or beneficially reused.*

***Bottom Ash Pond Closure by Removal***

- *All CCR material within the existing BAP will be removed via dewatering and mechanical excavation. All CCR material will either be hauled to the Mitchell landfill for disposal or beneficially reused.*
- *A third-party engineer will certify the removal of CCR upon completion. 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 Non-CCR WWP will proceed.*

***New Non-CCR WWP***

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Page 6

- 1                                   • *New (4-acre) lined East WWP constructed within the eastern*  
2                                   *footprint of the existing BAP to treat non-CCR waste streams*  
3                                   *generated at the plant.*
  
- 4
- 5                                   • *New (3-acre) lined West WWP constructed within the western*  
6                                   *footprint of the existing BAP to receive effluent from the East*  
7                                   *WWP. The West WWP will discharge to the existing Clearwater*  
8                                   *Pond, which in turn will continue to discharge to the Ohio River*  
9                                   *through NPDES Permit WV No. WV0005304 Outfall 001.*
  
- 10
- 11                                  • *Installation of tank-based chemical treatment system with*  
12                                  *appropriate retention time to provide proper mixing of chemicals*  
13                                  *to facilitate settling to meet plant discharge requirements at the*  
14                                  *new Non-CCR wastewater ponds as necessary to meet plant*  
15                                  *discharge requirements.*
  
- 16

17                   The schedule for the Mitchell work was projected to be completed after the  
18                   2023 operating year.

19

20   **Q:   What did you learn from the data request which you prepared for**  
21   **issuance to APCO?**

22

23   **A:**   Several things are worthy of discussion. First, while I understand that while  
24           Liberty has an interest in a purchase of the KPSCO interest, the other filings I  
25           read do not appear that is in the near term if at all. Second, I am concerned  
26           about the interactions between the Technical Expert and the KPSC ability to  
27           agree to costs which the KPSC may determine is excessive based on either  
28           that agencies review of the cost distribution details or the method used for

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1 determination of the cost allocations. In my opinion, there must be a  
2 preliminary detailed outline provided by the Technical expert which defines,  
3 in advance, the cost allocation likely for isolating ELG costs based on the  
4 design drawings, the existing site configuration and the contractor scheduling.  
5 It would be understood that issues which occur during construction could  
6 change the costs and a final full detailed evaluation which results in additional  
7 cost would be required for each cost determination. With the experience noted  
8 for the Technical Expert providing an upfront detail for review should be a  
9 simple matter to help both owners understand the allocations. The Technical  
10 Expert should also provide the initial detail for the O&M cost estimate in  
11 advance of the project initiation based on the design drawings and the Experts  
12 experience with other projects. Also, since the Technical Expert is a new cost  
13 addition, that new cost should be reflected in the new total cost estimate for  
14 the project which will affect the ELG costs. It is noted that, based on the  
15 design and construction schedules provided in the Mitchell Demonstration to  
16 EPA dated November 30, 2020, that construction site costs which require  
17 evaluation by the yet to be hired Technical Expert are already being incurred.  
18 Those costs will then be subject to challenge since no Technical eyes will be  
19 onsite.

20  
21 **Q: Were there any significant issues you noted during your review of the**  
22 **filings in the Case?**

23  
24 **A:** Several things are a concern after reading the Ownership and Operating  
25 Agreements (Agreements) submitted by the Companies. Besides the expected  
26 financial and management arrangements between WPCO and KPCO that  
27 KPCO and/or a new owner will be required to support. There is a significant



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1 discussion about Emission Allowances in both which all owners are required  
2 to adhere to. The USEPA Clean Air Act and the Cross-State Air Pollution  
3 Rule designate the amount of pollutants which the plant can emit and how  
4 emission trading between owners and additional market purchases can be  
5 made by either WPCO or KPCO for allowances greater than provided by the  
6 USEPA for the plants. The allowable levels (listed as lbs of specific pollutant  
7 per MWh) were determined by a 1990 Consent Order from the USEPA which  
8 has been revised three times with the latest being 2013. The Federal Order  
9 was the result of lawsuits filed against AEP for SO<sub>2</sub> pollution by five (5)  
10 Northeastern States. In addition, the WVDEP Air Quality Division also issued  
11 a Consent Order against the Mitchell plant in 2019 as the only point source in  
12 Marshall County for SO<sub>2</sub> emissions. The issue of emissions trading or sale  
13 has the potential to become a more serious concern and dispute among the  
14 owners should EPA list CO<sub>2</sub> as a regulated pollutant. In addition, the  
15 Agreements provide authority for one owner desiring to repower one of the  
16 plants. That possible change has the potential to remove nearly all concerns for  
17 emission trading should combined cycle gas be seen as a viable option. With  
18 that possibility, all ELG generation from such a plant would cease. Also, a  
19 future CO<sub>2</sub> emission limitation would easily be met with the 70% reduction  
20 provided by repowering as a combined cycle gas plant and very little SO<sub>2</sub>  
21 would be produced. However, such a change could be a major step in the  
22 meeting the CO<sub>2</sub> reductions target set by the parent company, AEP. It would  
23 also provide a LCOE, and a full depreciation of the majority of the existing  
24 KPCO steam plant through 2050 or longer should hydrogen in quantities  
25 becomes available as a primary fuel source for turbines. (see Exhibit I)  
26 The Operating Agreement seems to indicate that a repowering decision,  
27 because it would require a large capital investment 75% of which would

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DIRECT TESTIMONY OF JAMES C WEIMER, P.E.

*Page 9*

1 require approval by an Owners Representative (a member of the Operating  
2 Committee) it could be denied. This appears to provide another opportunity  
3 for significant disagreement if a new private utility owner has a different  
4 interest and operating methodology than the former public utility owner.  
5 Given that private funds are invested, any disagreement should favor the  
6 private owner. In support of a private owner purchase of the KPCO interest,  
7 the Operating Agreement also defines the method for determination of Fair  
8 Market Value or a possible full decommissioning cost via a liability transfer  
9 Agreement similar to other AEP plant decommissioning processes.

10  
11 **Q: After your review of the filings by the Company do you have any**  
12 **comments to offer?**

13  
14 **A:** Yes. First, it is clear that the determination of cost sharing for the CCR and  
15 ELG is going to present a significant area of dispute despite the extensive  
16 amount of written procedures outlined in the filing. Cost determination will  
17 always be a final opinion of a Technical Expert. With engineering costs  
18 already incurred prior to a Technical Expert evaluation or input, it appears  
19 likely a dispute may arise. The future large construction related activities and  
20 the resulting work site changes which always occur has the potential for many  
21 additional challenges. Thus, the formation of a detailed document by the  
22 Technical Expert outlining what process will be utilized to allocate costs is a  
23 must. In my judgment, intense continuous onsite presence will be needed by  
24 the Technical expert to provide a high level of certainty for cost decisions  
25 presented. Second, the final Engineering and construction costs should reflect  
26 the cost of a number of onsite evaluators with the Technical expert to be able  
27 to provide accurate cost decisions to the Owners. Third, should a new owner

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1 choose to re-power the plant, there should be a credit identified for coal  
2 inventory not consumed and for operation of unneeded ancillary emission  
3 control and coal handling equipment. Fourth, all decisions made regarding the  
4 disposition of the two plants should be based on energy security, employment  
5 for all affected interests, environmental requirements and expense to  
6 ratepayers.

7  
8 **Q: What are you recommending in this Case?**

9  
10 **A:** The agreements filed should be approved with the concerns noted above  
11 addressed and the Companies should proceed with the CCR&ELG project.  
12 Also, should the proposed sale of KPCO to a private utility proceed, the  
13 Agreements should be modified to note the new owner and KPCO authority to  
14 operate the plants transferred to WPCO.

15  
16 **Q: Does this conclude your testimony for this Case?**

17  
18 **A:** Yes it does.  
19  
20  
21  
22

**Figure 1: Estimated levelized cost of electricity (LCOE) for plants entering service in 2022**  
*Estimated LCOE (2016 \$/MWh) for new generation resources for plants entering service in 2022. (NOTE: simple average of regional values for dispatchable technologies, weighted average of regional values based on projected capacity additions for non-dispatchable technologies.)*

U.S. average LCOE (2016 \$/MWh) for plants entering service in 2040								
Plant type	Capacity factor	Levelized capital cost	Fixed O&M	Variable O&M (including fuel)	Transmission Investment	Total system LCOE	Levelized tax credit <sup>1</sup>	Total LCOE including tax credit
<b>Dispatchable Technologies</b>								
<b>Coal-fired</b>								
Conventional Coal	85%	67.4	5.6	25.7	1.2	99.9	NA	99.9
Advanced Coal	85%	74.7	7.2	26.7	1.2	109.8	NA	109.8
Coal 30% with carbon sequestration <sup>2</sup>	85%	94.9	9.3	34.6	1.2	140	NA	140
Coal 90% with carbon sequestration <sup>2</sup>	85%	78	10.8	33.1	1.2	123.2	NA	123.2
<b>Natural Gas-fired</b>								
Conventional Combined Cycle	87%	13.9	1.4	40.8	1.2	57.3	NA	57.3
Advanced Combined Cycle	87%	15.8	1.3	38.1	1.2	56.5	NA	56.5
Advanced Nuclear	90%	73.6	12.6	11.7	1.1	99.1	NA	99.1
<b>Non-Dispatchable Technologies</b>								
Wind – Onshore	41%	39.8	13.1	0	2.9	55.8	-11.6	44.3
Solar PV <sup>4</sup>	25%	59.8	10.1	0	3.8	73.7	-15.6	58.1

Would be lower with abundant gas

*The U.S. coal sector  
 Recent and continuing challenges*

**EXHIBIT I**

**CASE NO. 21-0810-E-PC  
APPALACHIAN POWER COMPANY  
AND WHEELING POWER COMPANY**

**PREPARED DIRECT TESTIMONY BY**

**GEOFFERY M. COOKE  
UTILITIES ANALYST  
UTILITIES DIVISION**

**ON BEHALF OF THE STAFF OF THE  
PUBLIC SERVICE COMMISSION OF WEST VIRGINIA**

**March 28, 2022**

**201 Brooks Street, P.O. Box 812, Charleston WV 25323**

**Appalachian Power Company and Wheeling Power Company**  
**Case No. 21-0810-E-PC**  
**Direct Testimony of Geoffery M. Cooke**  
**Page 1 of 7**

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

3  
4 **A.** My name is Geoffery M. Cooke and my business address is 201 Brooks Street,  
5 Charleston, West Virginia 25301. I am a Utilities Analyst for the Utilities Division  
6 of the Public Service Commission of West Virginia (Commission).

7  
8 **Q. WHAT ARE YOUR RESPONSIBILITIES IN YOUR CURRENT**  
9 **POSITION?**

10  
11 **A.** I am responsible for analyzing and making recommendations to the Commission  
12 regarding filings made by public utilities operating within the State of West  
13 Virginia.

14  
15 **Q. PLEASE STATE YOUR EDUCATIONAL AND PROFESSIONAL**  
16 **BACKGROUND.**

17  
18 **A.** I received a Bachelor of Science degree from Concord University (major in  
19 comprehensive mathematics) in 2013 and a Master of Science degree from West  
20 Virginia University (area of emphasis in pure mathematics) in 2017. I have been  
21 employed by the Public Service Commission of West Virginia since April 2019.

22  
23 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS CASE?**

24  
25 **A.** The purpose of my testimony is to address proposals made by Appalachian Power  
26 Company (APCo) and Wheeling Power Company (WPCo) (collectively, the  
27 Companies) in this proceeding. The focus of the proceeding is a petition for WPCo

**Appalachian Power Company and Wheeling Power Company**  
**Case No. 21-0810-E-PC**  
**Direct Testimony of Geoffery M. Cooke**  
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1 to enter into a new ownership and operating agreements related to WPCo's one-half  
2 interest in the Mitchell generating plant (Mitchell) located in Moundsville, West  
3 Virginia. Both companies are operating subsidiaries of American Electric Power,  
4 headquartered in Columbus, Ohio and provide electric utility service in the southern  
5 half of West Virginia and around Wheeling, WV.

6  
7 **Q. WOULD YOU PLEASE PROVIDE AN OVERVIEW OF THE EVENTS**  
8 **THAT LED UP TO THE FILING OF THE CURRENT PROCEEDING?**

9  
10 A. On December 23, 2020, the Companies filed an application for a Certificate of  
11 Public Convenience and Necessity (Case No. 20-1040-E-CN) to make certain  
12 internal modifications at the Amos, Mountaineer and Mitchell coal-fired generating  
13 facilities necessary to comply with coal combustion residuals (CCR) rules and  
14 effluent limitation guidelines (ELG) rules published by the federal Environmental  
15 Protection Agency. On August 4, 2021, the Commission issued a final Order  
16 granting the requested Certificates of Convenience and Necessity for the CCR and  
17 ELG projects for all three coal fired generating facilities. On September 8, 2021, the  
18 Companies filed a Petition to Reopen and Take Further Action requesting the  
19 Commission's consent and approval to proceed with the ELG projects at all three  
20 coal-fired generating facilities, including Kentucky Power Company's (KPCo)  
21 undivided fifty percent interest in the Mitchell plant, due to Kentucky Public Service  
22 Commission (KYPSC) (Case No. 2021-00004, Order July 15, 2021) and Virginia  
23 State Corporation Commission (VASCC) (Case No: PUR-2020-00258, Order  
24 August 23, 2021) denying approval for the compliance work to meet the ELG rules  
25 at the plants subject to their jurisdiction. On October 12, 2021, the Commission  
26 issued an Order to affirm its earlier order granting the requested Certificates of  
27 Convenience and Necessity for the CCR and ELG projects for all three coal-fired

**Appalachian Power Company and Wheeling Power Company**  
**Case No. 21-0810-E-PC**  
**Direct Testimony of Geoffery M. Cooke**  
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1 generating facilities. In this Order, the Commission concluded that since West  
2 Virginia customers and FERC jurisdictional customers are incurring the ELG  
3 compliance costs to keep Amos, Mountaineer, and Mitchell coal-fired generating  
4 facilities operating beyond 2028, they alone shall receive the benefits of capacity  
5 and energy from the three coal-fired generating facilities beyond 2028 made  
6 possible by the ELG improvements unless the KYPSC or VASCC decide to  
7 authorize ELG improvements.

8  
9 **Q. WOULD YOU BRIEFLY DESCRIBE THE CURRENT OWNERSHIP AND**  
10 **OPERATING ARRANGEMENT OF THE MITCHELL PLANT?**

11  
12 A. The Mitchell plant consists of two nominal 800 MW coal-fired base-load generating  
13 units. Both 800 MW units were constructed by Ohio Power Company (OPCo) and  
14 placed in service in 1971. As a result of state mandated corporate restructuring in  
15 Ohio, OPCo transferred its ownership in the Mitchell plant to AEP Resources.  
16 Subsequently, AEP Resources sold an undivided one-half ownership (800MW) of  
17 the Mitchell plant to each of KPCCo and WPCo with both of them currently operating  
18 the facility. Since December 31, 2014, the current Mitchell Agreement has governed  
19 the operation and maintenance and joint ownership rights and obligations of WPCo  
20 and KPCCo regarding the Mitchell Plant. Under the current Mitchell Agreement,  
21 WPCo and KPCCo are entitled to an equal share of the capacity and energy of the  
22 Mitchell plant and are responsible for all the costs of operation, maintenance, and  
23 capital improvements.

24  
25 **Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF THE COMPANIES**  
26 **FILING IN THIS PROCEEDING?**

27



**Appalachian Power Company and Wheeling Power Company**  
**Case No. 21-0810-E-PC**  
**Direct Testimony of Geoffery M. Cooke**  
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1 A. The Companies filed a petition for the Commission's consent and approval to enter  
2 into a new ownership and operating agreements for the Mitchell generating plant  
3 located in Moundsville, West Virginia. The filing states as contemplated by the  
4 Commission's August 4 and October 12, 2021 orders (Case No. 20-1040-E-CN), it  
5 is necessary to replace the current Mitchell Agreement in light of the conflicting  
6 decisions of this Commission and the Kentucky Public Service Commission. The  
7 original, proposed Mitchell Plant Ownership Agreement filed in this case included  
8 the following items which would be a change to the current agreement:

- 9
- 10 • Unless an early retirement event occurs, WPCo will purchase all of KPCo's  
11 ownership interest in the Mitchell Plant (including its interest in the underlying  
12 land, common facilities, barge unloading and gypsum conveyor facilities, and  
13 inventory and spare parts with respect to the Mitchell Plant) on December 31,  
14 2028 or on an earlier date that is mutually agreed upon by both WPCo and KPCo.  
15 It should be noted that the Conner Run Fly Ash Impoundment and Dam is not  
16 included in this arrangement.
  - 17 • The purchased price for the KPCo' ownership interest would be (1) an amount  
18 mutually agreed by both WPCo and KPCo and approved by the Commission and  
19 the KYPSC or (2) Fair Market Value (determined by an appraisal process),  
20 adjusted for coal inventory, excess ELG expenditures by WPCo, and  
21 decommissioning costs and approved by the Commission and the KYPSC.
  - 22 • ELG capital expenditures shall be allocated exclusively to and paid for  
23 exclusively by WPCo and CCR capital expenditures shall be allocated 50% to  
24 and paid for by each WPCo and KPCo.
  - 25 • Capital expenditures for assets that go into service after December 31, 2028 will  
26 be allocated entirely to WPCo.

**Appalachian Power Company and Wheeling Power Company**  
**Case No. 21-0810-E-PC**  
**Direct Testimony of Geoffery M. Cooke**  
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- 1           • If a non-ELG capital item has a depreciable life that extends beyond December  
2           31, 2028, KPCo will pay 50% of the expenditures for such capital item  
3           multiplied by the number of months between the reasonably anticipated in-  
4           service date of such capital item and December 31, 2028 divided by the  
5           depreciable life of such capital item. WPCo would be responsible for the  
6           remaining amount of such capital expenditures not allocated to KPCo.  
7           • Any other capital expenditure will be allocated 50% to and paid for by each  
8           WPCo and KPCo.  
9

10           The proposed Mitchell Plant Operations and Maintenance Agreement carries out  
11           the intentions of the Mitchell Plant Ownership Agreement that WPCo is to replace  
12           KPCo as operator of the Mitchell Plant and, therefore, become responsible for  
13           managing the day-to-day operations and maintenance of the plant, including  
14           dispatch, environmental, and NERC compliance.  
15

16   **Q.   HAVE THE COMPANIES PROPOSED A MODIFIED MITCHELL PLANT**  
17   **OWNERSHIP AGREEMENT SINCE THEIR ORIGINAL FILLING?**  
18

19   A.   Yes. On March 18, 2022, the Companies proposed a modified Mitchell Plant  
20   Ownership Agreement which included a Unit Interest Swap in replacement of the  
21   Fair Market Value option in the Companies' original proposed Mitchell Plant  
22   Ownership Agreement. In the Companies' proposed modified Mitchell Plant  
23   Ownership Agreement, if there is not mutual agreement on the purchase price  
24   between WPCo and KPCo along with the approvals from the Commission and  
25   KYPSC, then WPCo and KPCo will have the option to divide their interests in the  
26   Mitchell Plant by unit, common facilities shared by both units, and any inventories  
27   of coal and consumables present when the interests are divided, subject to the

**Appalachian Power Company and Wheeling Power Company**  
**Case No. 21-0810-E-PC**  
**Direct Testimony of Geoffery M. Cooke**  
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1 approvals of the Commission and the KYPSC. If KPCo decides to operate its unit  
2 beyond 2028, an agreement between WPCo and KPCo would also be needed so  
3 KPCo could utilize WPCo's ELG assets as well as any other investments which  
4 were not shared equally.

5  
6 **Q. DOES THE COMPANIES' MODIFIED PROPOSED MITCHELL PLANT**  
7 **OWNERSHIP AGREEMENT INCLUDE ALL THE ITEMS IN THE**  
8 **COMPANIES' ORIGINAL PROPOSAL?**

9  
10 A. No. The Companies' modified proposed Mitchell Plant Ownership Agreement does  
11 not make it clear that an agreement between WPCo and KPCo related to KPCo's  
12 usage of the ELG equipment or any capital expenditure funded 100% by WPCo  
13 would also be needed if both WPCo and KPCo were to each own an individual unit  
14 and KPCo decides to operate its unit beyond 2028. Also, in the Companies'  
15 modified proposed Mitchell Plant Ownership Agreement, if WPCo and KPCo  
16 cannot mutually agree to the terms and conditions of a Unit Swap Interest, the  
17 dispute would be decided by an independent arbitrator who is mutually acceptable  
18 to both WPCo and KPCo. It is not clear in the Companies' modified proposed  
19 Mitchell Plant Ownership Agreement whether the Companies would seek the  
20 Commission's approval to accept and follow the decision from the arbitrator.

21  
22 **Q. HOW DOES THE COMPANIES' PROPOSED MODIFIED MITCHELL**  
23 **PLANT OWNERSHIP AGREEMENTS COMPARE WITH THE**  
24 **COMMISSION'S OCTOBER 12, 2021 ORDER?**

25  
26 A. The Companies' modified proposed Mitchell Plant Ownership Agreement would  
27 allow for the potential closing of a unit of the Mitchell Plant. This would prevent

**Appalachian Power Company and Wheeling Power Company**  
**Case No. 21-0810-E-PC**  
**Direct Testimony of Geoffery M. Cooke**  
**Page 7 of 7**

---

1 the Companies' customers in West Virginia from receiving the benefits of capacity  
2 and energy made possible by the WPCo-funded improvements from the Mitchell  
3 plant operating beyond 2028, making the Companies' modified proposed Mitchell  
4 Plant Ownership Agreement inconsistent with the Commission's October 12, 2021  
5 Order.

6

7 **Q. WHAT IS UTILITIES DIVISION'S RECOMMENDATION IN THIS**  
8 **PROCEEDING?**

9

10 A. From a financial perspective, the Utilities Division recommends the Commission  
11 provide its consent and approval for WPCo to enter into the Companies' proposed  
12 Mitchell Plant Operations and Maintenance Agreement without specifically  
13 approving the agreement's terms and conditions. The Utilities Division  
14 recommends the Commission reject the Companies' modified proposed Mitchell  
15 Plant Ownership Agreement.

16

17 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

18

19 A. Yes.

**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 31<sup>st</sup> day of March 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**

By this Order, the Commission grants the request for admission *Pro Hac Vice*.

**BACKGROUND**

On November 19, 2021, Appalachian Power Company and Wheeling Power Company filed a petition for consent and approval to enter into Ownership and Operating Agreements for the Mitchell Plant.

On March 31, 2022, West Virginia Citizen Action Group, Solar United Neighbors, and Energy Efficient West Virginia, by counsel Emmett Pepper, an attorney admitted to practice law in West Virginia, filed a motion for *Pro Hac Vice* Admission of Melissa Anne Legge and a verified statement that the requisite admission fees for Ms. Legge had been forwarded to the State Bar of West Virginia.

**DISCUSSION**

Rule 12.7 of the Commission's Rules of Practice and Procedure (Procedural Rules) provides the basis by which attorneys who are not licensed to practice law in West Virginia may appear in formal Commission proceedings. Procedural Rule 12.7 states, in relevant part, as follows:

[A]ttorney's appearing before the Commission who are not licensed to practice in West Virginia shall have sought and obtained permission to practice before the Commission in compliance with Rule 8.0 of the Rules for Admission to the Practice of Law of the State of West Virginia ....

The Commission reviewed the request for admission *Pro Hac Vice* of Melissa Anne Legge and the attachments thereto. The Commission concludes that the applicant has complied with Rule 8.0 of the Rules for Admission to the Practice of Law of the State of West Virginia (Rules for Admission), and will therefore grant the request for *Pro Hac Vice* admission.

**FINDING OF FACT**

West Virginia Citizen Action Group, Solar United Neighbors, and Energy Efficient West Virginia requested admission *Pro Hac Vice* of Melissa Anne Legge.

**CONCLUSION OF LAW**

The request for admission *Pro Hac Vice* of Melissa Anne Legge complies with Rule 8.0 of the Rules for Admission.

**ORDER**

IT IS THEREFORE ORDERED that the request for admission *Pro Hac Vice* of Melissa Anne Legge is hereby granted subject to continuing compliance with the rules governing these admissions.

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, and by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Commission Staff by hand delivery.

FOR THE COMMISSION:



Karen Buckley, Acting Executive Secretary

KB/jn  
210810s

## Public Service Commission of West Virginia

201 Brooks Street, P.O. Box 812  
Charleston, West Virginia 25323



Phone: (304) 340-0300  
Fax: (304) 340-0325

April 1, 2022

01:57 PM APR 01 2022 EXEC SEC DIV

Karen Buckley, Acting Executive Secretary  
Public Service Commission  
Post Office Box 812  
Charleston, West Virginia 25323

Re: **CASE NO. 21-0810-E-PC**  
**Appalachian Power Company and**  
**Wheeling Power Company**

Dear Ms. Buckley:

Enclosed for electronic filing is the *Prefiled Supplemental Direct Testimony of James Weimer, P.E.* in the above-referenced proceeding.

A copy has been served electronically upon all parties of record.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Head".

Lucas R. Head,  
Staff Attorney  
West Virginia State Bar I.D. No. 11146

LRH/vm  
Attachments

s:\\_staff\_files\lhead\cases\2021 cases\21-0810-c-pc apco & wheeling power company\supplemental direct testimony cover letter-certificate of service.docx

01:57 PM APR 01 2022 EXEC SEC DIV

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**CASE NO. 21-0810-E-PC  
Appalachian Power Company  
And Wheeling Power Company**

**CERTIFICATE OF SERVICE**

I, LUCAS ROBERT HEAD, Staff Attorney for the Public Service Commission of West Virginia, do hereby certify that a copy of the foregoing "*Supplemental Prefiled Direct Testimony of James Weimer, P.E*" has been served today electronically upon the following parties of record:

Keith D. Fisher, Esq.  
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Appalachian Power Company  
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Jacob C. Altmeyer, Esq.  
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Association, Inc.  
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Wheeling, WV 26003

Emmett Pepper, Esq.  
Counsel, CAG/SUN/EEWV  
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8 Hale Street  
Charleston, WV 25301



LUCAS HEAD  
WV State Bar No. 11146



APPALACHIAN POWER COMPANY  
AND WHEELING POWER COMPANY  
CASE NO. 21-0810-E-PC

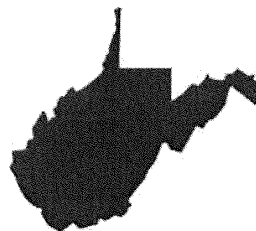
PREPARED SUPPLEMENTAL DIRECT TESTIMONY BY

JAMES WEIMER P.E.  
ENGINEERING DIVISION

ON BEHALF OF THE STAFF OF THE  
PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

\*\*\*\*\*

APRIL 1, 2022



201 Brooks Street, P.O. Box 812, Charleston, WV 25323

CASE NO. 21-0810-E-PC

SUPPLEMENTAL DIRECT TESTIMONY OF JAMES C WEIMER, P.E.

*Page 1*

1 **Q: What are your name, employer and business address?**

2

3 A: My name is James Weimer and I am employed in the Engineering Division of the  
4 Public Service Commission of West Virginia. The address is 201 Brooks Street, PO  
5 Box 812, Charleston, WV 25323.

6

7 **Q: What is your job title?**

8

9 A: My title is "Engineer".

10

11 **Q: What are your professional qualifications?**

12

13 A: I hold a license as a Registered Professional Engineer to practice in the State of  
14 West Virginia and the State of Pennsylvania. I have a Masters Degree in Mechanical  
15 Engineering with an emphasis on fluid mechanics and heat transfer. My first  
16 employment was in the power industry performing efficiency studies on coal and  
17 nuclear facilities and participating in outage maintenance activities. I have more than  
18 forty (40) years of pertinent engineering experience with the last 20 years of my  
19 experience having been in the field of public water and sewer utility regulation. I  
20 entered the field of electric utility regulation in 2021 as a large part of my pre  
21 Commission experience was in maintenance and engineering with responsibility for  
22 electrical transmission equipment design, installation and maintenance in the mining  
23 industry.

24

25 **Q: How long have you been employed at the Public Service Commission?**

26

27 A: Almost (22) years.

CASE NO. 21-0810-E-PC

SUPPLEMENTAL DIRECT TESTIMONY OF JAMES C WEIMER, P.E.

*Page 2*

1

2 **Q: What is the purpose of your current testimony?**

3

4 A: To provide clarifications to the Direct Testimony I submitted on March 28, 2022.

5

6 **Q: Were the recommendations you made on March 28, 2022 based on the**  
7 **modified Mitchel Plant Ownership Agreement proposed and submitted by the**  
8 **Companies on March 18, 2022?**

9

10 A: No. They were based on the original proposed Mitchell Plant Ownership  
11 Agreement and Mitchell Plant Operations and Maintenance Agreement submitted by  
12 the Companies on November 19, 2021.

13

14 **Q: Generally, what is your function related to the review of those documents?**

15

16 A: I am tasked to comment on Engineering related issues within any Agreement.

17

18 **Q: Has the Commission provided any guidance on the future of the plant after**  
19 **December 31, 2028?**

20

21 A: Yes. On October 12, 2021, the Commission entered an Order stating that since  
22 West Virginia ratepayers will incur the full cost of ELG compliance to keep the  
23 Mitchell Plant operating as a coal-fired generating facility beyond 2028, they alone  
24 shall receive the capacity and energy from the Plant after December 31, 2028.

25

26 **Q: Do you recommend approval of the modified Mitchell Plant Ownership**  
27 **Agreement?**

CASE NO. 21-0810-E-PC

SUPPLEMENTAL DIRECT TESTIMONY OF JAMES C WEIMER, P.E.

*Page 3*

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1

2 A: No. The modified Ownership Agreement is inconsistent with the Commission's  
3 Order from October 12, 2021.

4



**Keith D. Fisher**  
Senior Counsel  
500 Lee Street East, Suite 800  
Charleston, WV 25301  
304.348.4154  
kdfisher@aep.com

April 4, 2022

**Via Electronic Mail**

Karen Buckley  
Acting Executive Secretary  
Public Service Commission of West Virginia  
201 Brooks St.  
Charleston, WV 25301

04:13 PM APR 04 2022 EXEC SEC DIV

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

Dear Ms. Buckley:

On behalf of Appalachian Power Company and Wheeling Power Company, please find enclosed for filing in the above-referenced matter the Rebuttal Testimony of Christian T. Beam. On this date, copies thereof were served in accordance with the Certificate of Service.

This filing is made via electronic mail in accordance with the Commission's General Order No. 262.3 *Regarding Processing of Cases During COVID-19 West Virginia State of Emergency.*

Thank you for your attention to this matter. Should you have any questions regarding this correspondence, please do not hesitate to contact me.

Sincerely,

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

Enclosure

cc: Certificate of Service

04:13 PM APR 04 2022 EXEC SEC DIV

COMPANY EXHIBIT CTB-R

**REBUTTAL TESTIMONY OF  
CHRISTIAN T. BEAM  
ON BEHALF OF APPALACHIAN POWER COMPANY AND  
WHEELING POWER COMPANY  
BEFORE THE PUBLIC SERVICE COMMISSION OF  
WEST VIRGINIA IN CASE NO. 21-0810-E-PC**

1 **Q. PLEASE STATE YOUR NAME.**

2 A. My name is Christian T. Beam.

3 **Q. ARE YOU THE SAME CHRISTIAN T. BEAM WHO FILED DIRECT AND**  
4 **SUPPLEMENTAL TESTIMONY IN THIS PROCEEDING?**

5 A. Yes.

6 **Q. FOR WHOM ARE YOU OFFERING REBUTTAL TESTIMONY?**

7 A. I am testifying on behalf of Appalachian Power Company (“APCo”) and Wheeling  
8 Power Company (“WPCo”) (collectively, the “Companies”).

9 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

10 A. I will address certain claims made in the direct testimony of Commission Staff (“Staff”)  
11 witnesses James Weimer and Geoffrey M. Cooke, West Virginia Citizen Action  
12 Group/Solar United Neighbors/Energy Efficient West Virginia (“CAG/SUN/EEWV”)  
13 witness James F. Wilson, and Consumer Advocate Division (“CAD”) witness Emily S.  
14 Medine. Having addressed those claims, I offer my recommendation that the  
15 Commission approve the revised proposed Mitchell Plant Ownership Agreement  
16 (“Revised Ownership Agreement”) that was submitted with my supplemental testimony  
17 on March 18, 2022, as well as the proposed Mitchell Plant Operations and Maintenance  
18 Agreement (“O&M Agreement”) that was submitted with the Companies’ initial filing  
19 (sometimes collectively referred to herein as the “Mitchell Agreements”). I also offer a  
20 suggested path should the Commission find it more reasonable to defer decisions about

1 the transfer process until a later time as a further rebuttal of the concerns that are at the  
2 root of many of the other parties' apparent discomfort with the Revised Ownership  
3 Agreement.

4 **Q. WHAT ARE THE GUIDING PRINCIPLES DRIVING THE COMPANIES'**  
5 **PROPOSED MITCHELL AGREEMENTS?**

6 A. As described in further detail in my earlier testimony, the Companies are fundamentally  
7 guided by two principles. First, the Companies seek to have WPCo enter into  
8 agreements that will facilitate compliance with the Commission's orders that they  
9 should invest in equipment to comply with both the Coal Combustion Residuals  
10 ("CCR") and Effluent Limitation Guidelines ("ELG") at the Mitchell Plant in order to  
11 preserve the plant's ability to run beyond 2028. The Companies further seek to comply  
12 with the Commission's directives in those orders that they should pay for those  
13 upgrades and ensure that their future value beyond 2028 is reserved for the benefit of  
14 West Virginia customers to the extent they have exclusively paid for those upgrades.  
15 Second, the Companies want to ensure that the terms and conditions of the Mitchell  
16 Agreements are fair to both WPCo and Kentucky Power Company ("KPCo")  
17 (collectively, "the Owners"). This is a bedrock need because WPCo and KPCo each  
18 own an undivided 50 percent interest in the Mitchell Plant (i.e., each owns half of each  
19 of the two coal-fired units and common equipment at the plant), and also because both  
20 parties require authorization from their respective state public service commissions to  
21 enter into the agreements.

22 **Q. DO THE MITCHELL AGREEMENTS ABIDE BY THOSE GUIDING**  
23 **PRINCIPLES?**



1 A. Yes. They provide the parties the necessary flexibility to comply with the directives of  
2 both commissions. Instead of mandating a specific solution that may be unacceptable  
3 to either commission or that may prove to be unworkable or impractical in the future,  
4 the agreements ensure that both Owners can adapt to changing and future needs. Both  
5 Owners recognize that the agreements provide a commercial framework within which  
6 they can resolve many details of the future operation and ownership of the Mitchell  
7 Plant, just as they do today and as the two parties (and as the Companies) have done  
8 with jointly owned plants throughout the past. The Owners further recognize that those  
9 actions will be subject to future review by their respective commissions for prudence  
10 and reasonableness. The Companies make no attempt here to circumvent those  
11 reviews, nor could they under law use a contract to limit either commission's authority.

12 **Q. HOW DO THE ALTERNATIVE PROVISIONS IN SECTION 9.6 OF THE**  
13 **REVISED OWNERSHIP AGREEMENT PROVIDE FLEXIBILITY FOR WPCO**  
14 **AND THIS COMMISSION?**

15 A. The alternative buyout and unit interest swap provisions of Section 9.6 provide a  
16 commercial framework to assist the Owners in navigating their future decisions.  
17 Ultimately, however, the terms and conditions of any agreement they may reach  
18 pursuant to Section 9.6 will be subject to numerous regulatory approvals, including  
19 those of the two commissions. For that reason, the concerns raised by other parties –  
20 and, in particular, witnesses Weimer and Wilson – are misplaced because the Owners'  
21 commercial framework does not alter the fundamental competitive balance of their  
22 interests in the Mitchell Plant; the Owners are, and will remain, equal co-owners until  
23 such time as the commissions jointly and equally approve a different approach. In

1 addition, the parties' concerns in their direct testimony regarding the buyout and unit  
2 interest swap provisions are premature.

3 **Q. PLEASE EXPLAIN FURTHER WHY THESE CONCERNS ARE BEING**  
4 **RAISED PREMATURELY.**

5 A. Section 9.6 of the Revised Ownership Agreement provides the mechanism for  
6 addressing the ownership and operation of the two Mitchell units leading up to, and  
7 after, 2028. To summarize, the Owners are required to negotiate in good faith either a  
8 buyout of KPCo's interest by WPCo or, failing that, a unit swap arrangement whereby  
9 WPCo would own in whole one of the Mitchell units and be able to operate it on its  
10 own beyond 2028. Regulatory approval by this Commission and the Kentucky Public  
11 Service Commission ("KPSC") is required for either of those mechanisms to be  
12 implemented in the future. Therefore, all of the theoretical and hypothetical scenarios  
13 that are troubling the other parties today may be amicably resolved in future years. The  
14 parties' concerns, therefore, are the result of speculation that would be premature to  
15 address. In any event, all of the parties to this case will be able to present their  
16 positions and make their arguments about whatever actual and specific scenarios may  
17 be presented to this Commission in the future for its decision. There is no need to  
18 borrow potential disagreements from the future and attempt to resolve them today.

19 For instance, Mr. Wilson spends the majority of his testimony arguing that  
20 WPCo should not acquire KPCo's 50% share of the Mitchell Plant, which, again, is a  
21 matter for a future proceeding. There is no determination of need contemplated at this  
22 time because there is no transaction that is being put before this Commission. All  
23 potential outcomes require regulatory approval in the future when such determinations  
24 are ripe for review.

1 **Q. IS THE UNIT INTEREST SWAP AS PROPOSED IN SECTION 9.6 OF THE**  
2 **REVISED OWNERSHIP AGREEMENT A REASONABLE OUTCOME?**

3 A. Yes. Even though WPCo owns 50% of the Mitchell Plant and will pay for 100% of  
4 ELG, it is not possible to assert 100% unilateral control over the Mitchell Plant under  
5 any condition because KPCo has equal rights to the other 50% undivided interest in all  
6 non-ELG parts of the plant. The Revised Ownership Agreement allows for more  
7 possible outcomes that at the very least ensure WPCo has an ability to own and operate  
8 a single unit at the Mitchell Plant. The unit interest swap creates a path for WPCo to  
9 exercise independent control over its ownership share. If, in fact, this Commission  
10 were to decide at some point in the future that it is in West Virginia customers' best  
11 interest for WPCo to acquire KPCo's interest in the plant, that remains a possibility that  
12 must also meet the needs of KPCo and observe any future rulings of the KPSC as well.

13 **Q. CAD WITNESS MEDINE SUGGESTS AT PAGES 8-9 OF HER DIRECT**  
14 **TESTIMONY THAT THE UNIT SWAP PROVISION OF SECTION 9.6 OF THE**  
15 **REVISED OWNERSHIP AGREEMENT IS UNWORKABLE BECAUSE OF**  
16 **THE DIFFICULTY, COST, AND PRACTICALITY OF DIVIDING THE**  
17 **MITCHELL PLANT. DO YOU AGREE?**

18 A. No. The unit swap mechanism would not require any 'division of the physical assets'  
19 as asserted by Ms. Medine. Today, the two Mitchell generating units are independently  
20 dispatched and operated. As with any jointly owned power plant, there are costs  
21 associated with unit-specific equipment and there are costs that are common to both  
22 units (i.e., common facilities that are used by both units). This is true for both capital  
23 investments and operations and maintenance ("O&M") expenses. The Companies have  
24 relevant experience with other plants, such as the Amos Plant and the (now closed)

1 Sporn Plant where there were different owners for each unit (Sporn), or owners shared  
2 units (Amos), and shared common facilities. Thus, this exact same approach to  
3 ownership is not novel and has been dealt with for decades.

4 For the Owners to move from an undivided to a divided interest, it would be  
5 necessary to assign the costs of existing equipment to Unit 1, Unit 2, or to common  
6 facilities. This would be primarily an accounting, tax, and legal exercise rather than an  
7 operational exercise. The units are already dispatched differently in that they have  
8 different capabilities and varying underlying costs. Such an undertaking might not be  
9 simple, but it is certainly be achievable.

10 In sum, Ms. Medine's suggestion of the need for physical separation is inaccurate  
11 at best, and the true work to divide the units, while complex, is achievable, regardless of  
12 how the Mitchell Plant appears to her on Google Earth.

13 **Q. CAD WITNESS MEDINE CONTENDS THAT THE OWNERSHIP**  
14 **AGREEMENT SHOULD SET A PARTICULAR VALUE FOR KPCO'S**  
15 **INTEREST IN MITCHELL THAT MIGHT BE TRANSFERRED TO WPCO IN**  
16 **THE FUTURE. DO YOU AGREE WITH THAT APPROACH?**

17 A. I do not agree. Ms. Medine's approach is not realistic, for several reasons.

18 First, this approach implies that WPCo has unilateral control of the Mitchell Plant.  
19 WPCo has a 50% undivided interest and must work with KPCo on the disposition of  
20 KPCo's undivided interest in the plant, which is one element that the Revised Ownership  
21 Agreement defines. Second, during the FERC proceeding, there were objections from  
22 parties to the Fair Market Value ("FMV") approach set forth in Section 9.6 of the original  
23 proposed Mitchell Plant Ownership Agreement, with parties questioning whether it  
24 yielded a fair and reasonable price for WPCo. In the end, any transfer price must be

1 negotiated by *both* Owners and is subject to the future regulatory approval of *both* this  
2 Commission and the KPSC. Such actions may take place, and in that event approvals  
3 will be sought at the appropriate time.

4 Simply put, it is not for witness Medine alone, in 2022 and only considering the  
5 interests of one party in West Virginia, to dictate that the future FMV of KPCo's share of  
6 the Mitchell Plant is one dollar. KPCo and the KPSC may take a different view. It will  
7 take time, thoughtful discussions, and good faith negotiations between the Owners to  
8 produce a potential transaction if WPCo seeks to purchase KPCo's share of the Mitchell  
9 Plant at some point in the future.

10 The proposed agreements provide a framework and timeline for those discussions,  
11 while recognizing that one party cannot infringe upon the rights of the other solely for its  
12 own benefit. It is my testimony that the Revised Ownership Agreement is reasonable,  
13 and fairly represents WPCo's interest in the Mitchell Plant.

14 **Q. CAD WITNESS MEDINE RECOMMENDS THAT THE PARTIES TO THE**  
15 **OWNERSHIP AGREEMENT PROVIDE AN OPTION FOR KPCO (OR A**  
16 **POSSIBLE SUCCESSOR) TO ENTER INTO A POST-2028 CAPACITY**  
17 **AGREEMENT WITH RESPECT TO MITCHELL. WHAT IS YOUR**  
18 **REACTION TO THAT RECOMMENDATION?**

19 A. To begin, witness Medine has not explained how this option would be in compliance with  
20 commission orders both here and in Kentucky. And furthermore, WPCo and KPCo will  
21 be free to negotiate such an agreement in the future if they regard it as being in the  
22 respective interests of those companies and their customers. To insert such a "right" in  
23 the Ownership Agreement now would be pointless since the price and other terms of a  
24 capacity agreement, if both parties decide years from now that they desire one, would

1 have to be subject to future negotiation. An option right without an agreed price is  
2 effectively not an option right at all.

3 **Q. IS THERE ANY REASON TO BELIEVE THAT KPSCO WILL PURPOSEFULLY**  
4 **IMPAIR ITS SHARE OF THE MITCHELL PLANT, AS MS. MEDINE**  
5 **SUGGESTS?**

6 A. No, there is no valid reason to believe that. Ms. Medine speculates that KPSCO may  
7 reduce dispatch if its parent ownership changes and thereby impair the value of the  
8 Mitchell Plant to WPCo. However, she ignores that KPSCO, regardless of upstream  
9 ownership, will need to meet its customers' needs based on typical integrated resource  
10 planning in Kentucky, which will take time and is subject to regulatory oversight and  
11 stakeholder input. She also ignores WPCo's role as operator of the plant under the  
12 proposed O&M Agreement. In addition, Ms. Medine does not acknowledge that the  
13 KPSC authorized KPSCO to invest in CCR equipment so that the Mitchell Plant *would be*  
14 *able to operate* through 2028 for the benefit of KPSCO's customers.

15 Regardless of who owns KPSCO, Mitchell ownership is split evenly. The two  
16 Owners will need to work together on all operational and investment decisions and  
17 achieve outcomes that are appropriate for both parties. The new Mitchell Agreements do  
18 not change these fundamental facts. KPSCO, regardless of who owns it, would still be  
19 required to participate as a party to the agreements, and cannot simply cease investing in  
20 or operating the Mitchell Plant.

21 In addition, the agreements ensure that WPCo can make investment decisions for  
22 the plant that may benefit WV customers beyond 2028, and KPSCO does not have the  
23 ability to make unilateral decisions that will negatively impact the operation of the  
24 Mitchell Plant.

1 **Q. CAD WITNESS MEDINE TESTIFIES THAT THE PROPOSED MITCHELL**  
2 **AGREEMENTS WERE NEGOTIATED BY KPCO AND LIBERTY, WITHOUT**  
3 **THE INPUT OF WPCO, TO THE DETRIMENT OF WEST VIRGINIA**  
4 **CUSTOMERS. IS THAT TRUE?**

5 A. Not at all. As WPCo's representative on the Operating Committee ("OC"), it is my  
6 responsibility to represent WPCo's 50% interest in the Mitchell Plant and the interests of  
7 West Virginia customers. I was involved in the creation and approval of the agreements  
8 originally presented with my direct testimony in this proceeding, and in the creation of  
9 the Revised Ownership Agreement that was filed with, and addressed in, my  
10 supplemental testimony in this proceeding. All of those agreements were approved by  
11 the OC, of which WPCo and KPCo are the only voting members.

12 I do understand in general that KPCo is currently the subject of a potential sale to  
13 another company, but I have not been involved in any sales discussions that occurred  
14 between KPCo and any other parties. My responsibility is to ensure that the terms of  
15 any agreements regarding the Mitchell Plant allow the Companies to comply with prior  
16 Commission orders, and are fair to WPCo and its West Virginia customers. The  
17 original and revised agreements do exactly that – they allow WPCo and APCo to  
18 preserve the value of the Mitchell Plant beyond 2028, while also recognizing that  
19 WPCo does not own 100% of the Mitchell Plant and that neither WPCo nor this  
20 Commission can make decisions on KPCo's behalf.

21 **Q. IS FURTHER CLARITY NEEDED IN THE REVISED OWNERSHIP**  
22 **AGREEMENT REGARDING THE TECHNICAL EXPERT AND KPCO'S**  
23 **USAGE OF AND PAYMENT FOR ELG EQUIPMENT IN THE EVENT KPCO**

1           **WANTS TO RUN A UNIT PAST 2028, AS THE STAFF WITNESSES**  
2           **SUGGEST?**

3       A.    No. As answered by the Companies in response to Staff data request 1-3, Burns &  
4            McDonnell has already been selected as the technical expert (“TE”), and the firm’s  
5            review is ongoing at this time. That selection was made by WPCo and KPCo, who are  
6            voting members of the OC under the current Mitchell operating agreement, and who  
7            will continue to constitute the OC under the proposed Mitchell Agreements.

8                        However, while the TE will assist the OC, the OC itself is ultimately responsible  
9            for making the commercial decisions needed to ensure compliance with both  
10            commissions’ orders on payment for ELG. The TE will make recommendations to the  
11            OC, and the OC must make the allocation decisions, subject to review and approval of  
12            both commissions.

13                      Mr. Weimer’s concerns regarding the cost allocation process itself on page 7 of  
14            his testimony are also misplaced. The proposed Mitchell Agreements outline the  
15            process for cost allocation for both capital and O&M. The Owners will share the TE’s  
16            costs incurred in determining the appropriate allocation for CCR and ELG upgrades per  
17            the orders from both commissions.

18                      Mr. Cooke’s concern, at page 6 of his testimony, regarding payment for ELG  
19            equipment, should it be used by KPCo beyond 2028, is already addressed by “Exhibit  
20            C” to the Revised Ownership Agreement, and would be premature to address in any  
21            event. Pursuant to Exhibit C, WPCo and KPCo can negotiate “economic equalization  
22            payments” in the event the unit interest swap provision is triggered, such payments  
23            would account for differences between the two companies, including any unequally  
24            shared capital expenditures like ELG.



1 **Q. IS WITNESS WEIMER'S CONCERN REGARDING THE REVISED**  
2 **OWNERSHIP AGREEMENT ON COST ALLOCATION, AS NOTED AT**  
3 **PAGES 6-7 OF HIS TESTIMONY, RELEVANT TODAY?**

4 A. No, it is not. KPCo, just like WPCo, is responsible for gaining regulatory approval of  
5 costs incurred as a result of its participation in the Mitchell Plant's ownership and  
6 operations. Potential future issues around regulatory approval in Kentucky, as  
7 mentioned by witness Weimer, are not a concern that needs to, or can be, addressed by  
8 this Commission at this time. In addition, cost allocation is determined by the OC, in  
9 which each Owner has a 50% interest. I believe it is speculative, at best, to assume  
10 today that the Owners and the OC will not be able to agree to reasonable terms that are  
11 in the best interest of the Owners and their customers.

12 **Q. IN YOUR OPINION, ARE STAFF WITNESS WEIMER'S OTHER CONCERNS**  
13 **REGARDING EMISSIONS TRADING AND POSSIBLE REPOWERING OF**  
14 **THE MITCHELL PLANT AN IMPEDIMENT TO APPROVAL OF THE**  
15 **PROPOSED AGREEMENTS?**

16 A. No. These particular concerns of Mr. Weimer are a bit of a red herring. Not only are  
17 they wholly speculative, but they would be issues regardless of the proposed Mitchell  
18 Agreements. Carbon dioxide ("CO2") is currently not a regulated pollutant, and it is  
19 impossible to know whether that will change. A possible future repowering of a unit  
20 could be negotiated by the Owners under any scenario. Until CO2 regulation becomes  
21 a reality or a specific repowering initiative is proposed, there is no point in engaging in  
22 premature speculation about such matters. The proposed Mitchell Agreements pose no  
23 impediment to consideration of either matter in the future.

1 **Q. DOES MR. WEIMER MAKE ANY STATEMENTS THAT ARE FACTUALLY**  
2 **INCORRECT?**

3 A. Yes. At page 2 of his direct testimony, Mr. Weimer identifies APCo as the owner of  
4 WPCo and KPCo. APCo has no ownership interest in either of those companies.  
5 Furthermore, the sale of KPCo to a third party is not a matter before this Commission.

6 **Q. ARE THE PROPOSED MITCHELL AGREEMENTS CONSISTENT WITH THE**  
7 **COMMISSION'S ORDERS IN CASE NO. 20-1040-E-CN?**

8 A. Yes, they are. The terms of the revised Ownership Agreement provide the flexibility  
9 and options that afford the best chance of consistent decisions in the two states. WPCo  
10 is proceeding with CCR and ELG. The agreements specifically address all the concerns  
11 brought up in the testimony of the other parties to this proceeding. They do so in a  
12 fashion that is reflective of the 50/50 ownership and that recognizes that all future  
13 decisions require regulatory approvals from both commissions.

14 The proposed Mitchell Agreements allow the Owners to act consistently with  
15 the Commission's directive that West Virginia customers should receive the full benefit  
16 of ELG beyond 2028. The agreements state that, if KPCo or another party were to  
17 derive benefit from the plants post-2028, the Owners should in good faith negotiate  
18 compensation to WPCo for its ELG investment, and both commissions would need to  
19 approve such an agreement at that time. This is wholly consistent with this  
20 Commission's prior orders.

21 In addition, the proposed Mitchell Agreements will make WPCo the operator  
22 and permit holder for the Mitchell Plant. This is necessary to comply with prior  
23 Commission Orders and to move forward with the ELG investments this Commission  
24 has required. The Commission already recognized this need when it expressly directed

1 WPCo to make changes to the current Mitchell operating agreement. The KPSC  
2 likewise directed KPCo to effect the changes necessary for WPCo to become the  
3 operator and assume responsibility for environmental permitting.

4 **Q. DO YOU RECOMMEND THAT THE COMMISSION APPROVE THE**  
5 **REVISED OWNERSHIP AGREEMENT AND THE PROPOSED O&M**  
6 **AGREEMENT?**

7 A. Yes, for the reasons stated herein and in my earlier-filed Direct and Supplemental  
8 testimony in this matter. The Revised Ownership Agreement contains revisions  
9 presented in my Supplemental testimony that are reasonable and yield a fair and  
10 balanced outcome for the Owners of Mitchell and their customers.

11 **Q DO THE OTHER PARTIES' PROPOSALS TO MODIFY PROVISIONS OF THE**  
12 **MITCHELL AGREEMENTS RUN THE RISK OF DIVERGENT DECISIONS**  
13 **BETWEEN THE TWO COMMISSIONS?**

14 A. Unfortunately, they do. What appears to be lost on Ms. Medine, and other witnesses, is  
15 that making unnecessary changes to the Mitchell Agreements almost ensures a round of  
16 diverging decisions that will have the potential to delay permitting and the ELG  
17 upgrades and possibly endanger the Mitchell Plant's ability to achieve the necessary  
18 ELG milestones that were presented in Case No. 20-1040-E-CN.

19 **Q. DO UPDATED AGREEMENTS NEED TO BE ADOPTED BY THE PUBLIC**  
20 **SERVICE COMMISSIONS OF BOTH WEST VIRGINIA AND KENTUCKY?**

21 A. In order to implement the orders of the two commissions, updated agreements need to be  
22 adopted by both. WPCo and KPCo, as co-owners of equal 50% undivided interests in the  
23 Mitchell Plant, are regulated by the West Virginia and Kentucky commissions, have filed  
24 the same Mitchell Agreements, including the alternative unit interest swap provisions

1 included in my supplemental testimony, with both state commissions (and will later file  
2 the approved agreements at FERC) for their respective approval. Staff witness Weimer  
3 takes the position in his supplemental direct testimony that the Commission should not  
4 approve the Revised Ownership Agreement. But both the West Virginia and Kentucky  
5 commissions will need to concur on a new Ownership Agreement in some form.

6 **Q. HOW DO THE PROCEEDINGS IN KENTUCKY IMPACT THIS CASE?**

7 A. KPCo has an undivided 50% interest in the Mitchell Plant, and WPCo is investing in  
8 ELG in the entire plant to preserve the option to operate the plant past 2028. The KPSC  
9 has found in its previous orders that the Mitchell Plant will essentially no longer be in  
10 KPCo's generation mix beyond 2028. In fact, my understanding from counsel is that  
11 KPCo may need to obtain a certificate of need from its commission to run Mitchell  
12 beyond 2028 like any other incremental generation resource for its interest to be added  
13 back to KPCo's asset mix. So, the main outstanding questions are how WPCo can make  
14 the ELG investments while both owners make CCR investments, and how KPCo will  
15 unwind its undivided interest at the conclusion of its usage in 2028.

16 **Q. IS THE QUESTION OF HOW TO UNWIND THE JOINT OWNERSHIP  
17 SOMETHING THAT HAS TO BE DECIDED NOW?**

18 A. No. The Companies and KPCo have proposed in their respective state proceedings that it  
19 would be prudent to defer that decision. The Companies have presented a framework  
20 (i.e., the buyout and unit interest swap provisions set forth in Section 9.6 of the  
21 Ownership Agreement) which permits the joint owners to explore over time the various  
22 commercial scenarios and establish a path for unwinding their joint ownership at the  
23 conclusion of KPCo's use of the plant. But, the Companies also recognize that it may be  
24 deemed reasonable to wait until there are more facts in the future, when the usefulness of

1 the plant beyond 2028 is better known, before defining the commercial structure for that  
2 future transaction.

3 **Q. WHAT DOES THAT MEAN FOR THE AGREEMENTS BEFORE THE**  
4 **COMMISSION NOW?**

5 A. Setting aside Section 9.6, WPCo still needs approval of the terms of both proposed  
6 Mitchell Agreements to ensure operations by WPCo and to ensure protections for both  
7 owners and their customers regarding ELG and other expenditures, particularly  
8 considering the potential that the relationship could move to a non-affiliate ownership  
9 structure. As to Section 9.6 and its related provisions, while these are reasonable  
10 provisions, in my opinion it would also be reasonable to exclude them and leave the  
11 commercial structure of the acquisition of KPCo's 50% interest in Mitchell to a future  
12 date. WPCo would defer to the Commission's preference as to including it or not.

13 **Q. ARE THE OWNERS INCENTIVIZED TO RESOLVE OWNERSHIP ISSUES BY**  
14 **MID-2025 IF SECTION 9.6 IS REMOVED FROM THE REVISED MITCHELL**  
15 **OWNERSHIP AGREEMENT?**

16 A. Yes. KPCo and WPCo each own an undivided 50% interest in the Mitchell Plant  
17 including its capacity and energy. As a result, WPCo can only bid its 50% share of the  
18 Mitchell Plant's capacity and energy into PJM after 2028 if it has not acquired KPCo's  
19 interest. Therefore, both Owners have an appropriate incentive to resolve post-2028  
20 ownership by mid-2025 when capacity commitments would need to be made by the  
21 Owners to PJM under a typical three-year advance timeline. WPCo has incentive to  
22 preserve the ability for the Mitchell Plant to operate past 2028 in conformance with the  
23 orders of this Commission, and KPCo can exit Mitchell Plant operations after 2028 given  
24 the directives of its commission. Thus, the Owners' rights would be preserved in the

1 absence of Section 9.6, and they would have the flexibility needed to reach an agreement  
2 and any confirming changes for after 2028 in accordance with these directives.

3 **Q. IF THE COMMISSION WANTED WPCO TO LEAVE THE STRUCTURE OF**  
4 **THE ACQUISITION OF KPSCO'S UNDIVIDED INTEREST IN MITCHELL TO A**  
5 **FUTURE DATE, WHAT COULD IT DO IN THIS CASE?**

6 A. The Commission in this case could authorize WPCo to enter into the agreements except  
7 for Section 9.6 of the Mitchell Ownership Agreement (including associated definitions  
8 and provisions such as the arbitration clause in Section 12.4 that are specific to that  
9 clause) if it finds that to be reasonable. That could also facilitate KPSCO entering into the  
10 agreements on those same terms, assuming that the KPSC approves the agreements  
11 absent Section 9.6 and authorizes KPSCO to enter into the agreements on the same basis.  
12 If the Commission sees both options as reasonable, it could issue an order finding it  
13 reasonable for WPCo to enter into an agreement containing either option to facilitate  
14 collaboration with the KPSC.

15 **Q. REGARDING YOUR LAST POINT, HOW COULD THIS APPROACH BE**  
16 **RAISED IN KENTUCKY?**

17 A. KPSCO is required to file status updates every ten days on the overall status of the Mitchell  
18 Agreements, including the instant proceeding, through which it informs the KPSC and  
19 staff of developments. My understanding is that KPSCO would and is required to use those  
20 updates to provide information about this proceeding, and could include any available  
21 information about this case, particularly if it would facilitate the orderly creation of a  
22 common set of agreements that satisfies both commissions.

23 **Q. WILL WPCO BE ABLE TO PROTECT ITS INTERESTS THROUGH THE**  
24 **PROPOSED AGREEMENTS WITH OR WITHOUT SECTION 9.6?**

Page 17 of 17

- 1 A. Yes, it will. WPCo will be the operator of Mitchell and it will continue to participate in  
2 the OC and have equal input into every decision at the plant. WPCo will be able to  
3 ensure prudence of the operations and maintenance plans of the plant, including the  
4 capital budget and planning, on an equal footing with KPCo. This remains true  
5 regardless of either Owner's plans for future, and regardless of Section 9.6.
- 6 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**
- 7 A. Yes, it does.

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**CASE NO. 21-0810-E-PC**

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

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

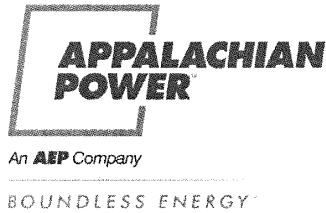
**CERTIFICATE OF SERVICE**

I, Keith D. Fisher, counsel for Appalachian Power Company and Wheeling Power Company, do hereby certify that a true and correct copy of the foregoing filing was served upon the following, via electronic mail, on this 4th day of April, 2022:

Lucas R. Head, Esq. Public Service Commission of West Virginia 201 Brooks Street Charleston, WV 25301 <i>Counsel for Staff of WV Public Service Commission</i>	Robert F. Williams, Esq. Heather B. Osborn, Esq. John Auville, Esq. Consumer Advocate Division 300 Capitol Street, Suite 810 Charleston, WV 25301 <i>Counsel for Consumer Advocate Division</i>
Susan J. Riggs, Esq. Jason C. Pizatella, Esq. Spilman Thomas & Battle, PLLC 300 Kanawha Blvd E Charleston, WV 25301 <i>Counsel for WVEUG</i>	Derrick P. Williamson, Esq. Barry A. Naum, Esq. Spilman Thomas & Battle, PLLC 1100 Bent Creek Blvd, Suite 101 Mechanicsburg, PA 17050 <i>Counsel for WVEUG</i>
Emmett Pepper, Esq. Pepper & Nason 8 Hale Street Charleston, WV 25301 <i>Counsel for CAG, SUN, and EEWW</i>	H. Brann Altmeyer, Esq. Jacob C. Altmeyer, Esq. Phillips, Gardill, Kaiser & Altmeyer, PLLC 61 Fourteenth Street Wheeling, WV 26003 <i>Counsel for WV Coal Association, Inc.</i>

  
Keith D. Fisher (WV State Bar #11346)





**Keith D. Fisher**  
Senior Counsel

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April 4, 2022

**Via Electronic Mail**

Karen Buckley  
Acting Executive Secretary  
Public Service Commission of West Virginia  
201 Brooks St.  
Charleston, WV 25301

03:46 PM APR 04 2022 EXEC SEC DIV

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

Dear Ms. Buckley:

Please find enclosed for filing in the above-referenced matter the "Appalachian Power Company and Wheeling Power Company's Proposed Order of Witnesses." On this date, copies thereof were served in accordance with the Certificate of Service.

This filing is made via electronic mail in accordance with the Commission's General Order No. 262.3 *Regarding Processing of Cases During COVID-19 West Virginia State of Emergency.*

Thank you for your attention to this matter. Should you have any questions regarding this correspondence, please do not hesitate to contact me.

Sincerely,

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

Enclosure  
cc: Certificate of Service

03:46 PM APR 04 2022 EXEC SEC DIV

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**CASE NO. 21-0810-E-PC**

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

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

**APPALACHIAN POWER COMPANY AND WHEELING POWER COMPANY'S  
PROPOSED ORDER OF WITNESSES**

On January 25, 2022, Appalachian Power Company and Wheeling Power Company ("the Companies") were ordered to file an agreed order of witnesses for the April 7, 2022 hearing by April 4, 2022. Based on its attempts to confer with the other parties and the responses thereto, the Companies propose the following order of witnesses for the April 7, 2022 hearing:

Appalachian Power Company and Wheeling Power Company

Timothy C. Kerns (direct testimony only)  
Christian T. Beam (direct, supplemental, and rebuttal testimony)

CAG/SUN/EEWV

James F. Wilson (requested to appear in the afternoon)

Consumer Advocate Division

Emily S. Medine

Staff

James C. Weimer  
Geoffery M. Cooke

Respectfully submitted,

**APPALACHIAN POWER COMPANY  
WHEELING POWER COMPANY**

By Counsel



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*Counsel for Appalachian Power Company  
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Dated: April 4, 2022

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**CASE NO. 21-0810-E-PC**

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

*Petition for Commission Consent and Approval  
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Keith D. Fisher (WV State Bar #11346)

