

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 May 5, 2022 supplemental response to KPSC_RH_1_1 (ten-day update) in Case No. 2021-00004.

Also filed with the notice of filing is the attachment to the May 5, 2022 ten-day update.

The Commission entered its Order on rehearing in Case No. 2021-00004 on May 3, 2022. That Order, *inter alia*, closed the case and directed that it be removed from the Commission's docket. Kentucky Power understands the May 3, 2022 Order in Case No. 2021-00004 to obviate any obligation under ordering paragraph 7 of the Commission's September 27, 2021 Order in this case to file herein updates regarding Case No. 2021-00004.

Respectfully submitted,



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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, 2021¹ 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.

¹ 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.

April 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 April 6, 2022 through April 12, 2022.

In Case No. 21-0810-E-PC, on April 7, 2022 a hearing was held concerning the New Mitchell Agreements. A copy of the transcript is attached as KPCO_SR_KPSC_1_1_Attachment45.

The transcript includes the testimony of two Wheeling Power witnesses (President Christian Beam and Timothy Kerns), as well as Staff and intervenor witnesses. The hearing concerned the same New Mitchell Agreements as those filed with the Kentucky Commission (i.e., the Mitchell Plant Operations and Maintenance Agreement and the Revised Mitchell Plant Ownership Agreement) and also includes testimony regarding the removal of Section 9.6 and related definitions and provisions from the Ownership Agreement if the WVPSC determined that was a

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more reasonable option and to assist in promoting consistency in the agreements approved by both this Commission and the WVPSC. The transcript also includes testimony by Wheeling Power and an intervenor witness regarding the need for timely approval of the New Mitchell Agreements in order to move permits into Wheeling Power's name and for Wheeling Power to move forward with the ELG physical work.

Kentucky Power provides this update earlier than the required 10 days in consideration of the Commission's comments at the March 30, 2022 hearing in Case No. 2021-00421 that the Commission relies on these updates to inform it of the status of the West Virginia proceedings in the Commission's consideration of Case No. 2021-00421.

April 25, 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 April 13, 2022 through April 24, 2022.

In Case No. 21-0810-E-PC, on April 13, 2022 an email from Christian Beam to Commissioner Raney was filed with the West Virginia Commission and treated as a Commission request exhibit. A copy of the request exhibit is attached as KPCO_SR_KPSC_1_1_Attachment46. On April 15, 2022 Appalachian Power Company and Wheeling Power Company filed post-hearing exhibits. A copy of these documents is attached as KPCO_SR_KPSC_1_1_Attachment47 through KPCO_SR_KPSC_1_1_Attachment49. On April 19, 2022 initial briefs were filed by West Virginia Staff, CAG/SUN/EEWV, CAD, West Virginia Coal Association, WVEUG, and Appalachian Power Company and Wheeling Power Company. A copy of these initial briefs are attached as KPCO_SR_KPSC_1_1_Attachment50. On April 22, 2022 Appalachian Power Company and Wheeling Power Company filed an addendum to motion for protective treatment originally filed March 23, 2022. A copy of this motion is attached as KPCO_SR_KPSC_1_1_Attachment51.

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May 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 April 13, 2022 through April 24, 2022.

In Case No. 21-0810-E-PC, on April 26, 2022 reply briefs were filed by CAG/SUN/EEWV, CAD, and Appalachian Power Company and Wheeling Power Company. Also on April 26, 2022 West Virginia Staff filed a letter in lieu of reply brief. A copy of these documents is attached as KPCO_SR_KPSC_1_1_Attachment52.

Witness: Deryle B. Mattison

April 26, 2022

Karen Buckley
Executive Secretary
Public Service Commission of West Virginia
201 Brooks Street, PO Box 812
Charleston, WV 25323-0812

03:27 PM APR 26 2022 EXEC SEC DIV

Re: *APPALACHIAN POWER COMPANY and WHEELING POWER
COMPANY, Petition for Commission Consent and Approval to Enter Into
Ownership and Operating Agreements for the Mitchell Plant,
Case No. 21-0810-E-PC*

Dear Ms. Buckley:

Attached for filing on behalf of West Virginia Citizen Action Group, Solar United Neighbors, and Energy Efficient West Virginia is a copy of the Post-Hearing Reply Brief by West Virginia Citizen Action Group, Solar United Neighbors, and Energy Efficient West Virginia, in the above-referenced case.

Copies of this Brief are being served upon all parties of record.

Please contact me if you have any questions concerning this filing.

Respectfully,



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Neighbors, and Energy Efficient
West Virginia*

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

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APPALACHIAN POWER COMPANY and)
WHEELING POWER COMPANY,) **Case No. 21-0810-E-PC**
Petition for Commission Consent and)
Approval to Enter into Ownership and)
Operating Agreements for the Mitchell Plant.)

REPLY BRIEF BY
WEST VIRGINIA CITIZEN ACTION GROUP,
SOLAR UNITED NEIGHBORS, AND ENERGY EFFICIENT WEST VIRGINIA

April 26, 2022

INTRODUCTION

West Virginia customers are in a bind when it comes to the retrofitting of the Mitchell Plant for compliance with the federal Effluent Limitation Guidelines (“ELGs”). Under the Commission’s October 12, 2021 Order in Case No. 20-1040-E-CN, (referred to hereinafter as the “ELG CPCN” proceeding or docket) those customers are on the hook for the full cost of retrofitting 100% of the two-unit plant. But neither Wheeling Power Company (“WPCo”) nor this Commission has the authority to force Kentucky Power Company (“KPCo”) to sell its 50% undivided interest in the Plant to WPCo, nor can they unilaterally dictate the costs or terms by which any such sale might occur. In addition, the record is undisputed that WPCo does not and will not need an additional 780 MW of Mitchell capacity to serve its West Virginia customers. While those customers would be responsible for the costs of maintaining and operating such additional Mitchell capacity if KPCo sold it to WPCo, there has been no showing that the costs

could be offset through sales of the unneeded capacity into the PJM market; in fact, the available evidence suggests that any such sales would be unlikely to generate much net revenue to offset the costs. Thus, even if KPCo could be forced to give up its Mitchell interest at a nominal cost, West Virginia customers would still get stuck with 780 MW of unneeded and likely uneconomic capacity.

As West Virginia Citizen Action Group, Solar United Neighbors, and Energy Efficient West Virginia (“CAG/SUN/EEWV”) detailed in their initial post-hearing brief, the option of negotiating a Unit Interest Swap offers a way out of this bind. In particular, that option allows WPCo and KPCo to divide their ownership interests in the Mitchell Plant so that they each own one unit of the plant outright. While the Proposed Ownership Agreement envisions the Unit Interest Swap as a backstop in the event that a Buyout Transaction cannot be negotiated, the evidence demonstrates that the Commission should order WPCo to proceed now with negotiating a Unit Interest Swap to acquire a 100% interest in the better performing Mitchell Unit 2. Doing so would save WPCo’s West Virginia customers at least \$22 million by allowing for ELG retrofits on only one unit, while ensuring that such customers are not saddled with the poorly-performing and unneeded Unit 1 of the Mitchell Plant. Nothing in the post-hearing briefs submitted by the Companies or the other parties suggests otherwise.

I. Given the Divergence of West Virginia and Kentucky Interests Regarding the Mitchell Plant, the Commission Can Best Protect West Virginia Customers by Requiring WPCo to Pursue a Unit Interest Swap Transaction Now.

The post-hearing briefs in this proceeding illustrate well the divergence of West Virginia and Kentucky interests regarding the Mitchell Plant. For example, West Virginia Coal Association (“WVCA”), Consumer Advocate Division (“CAD”), and Staff each urge rejection of the modified Proposed Agreement because, rather than committing KPCo to sell its 50% interest in the Mitchell Plant to WPCo, the Agreement simply requires a good faith effort by those parties to try to negotiate such a Buyout Transaction.¹ That lack of a commitment is not surprising, as one could imagine significant disagreement regarding the price at which any such sale should occur. In particular, both CAD and WVCA urge that any Buyout Transaction be at a “nominal” price, which CAD defines as \$1 or less,² while KPCo seeks a much higher price for 780 MW of Mitchell capacity – perhaps as high as \$586 million.³ In addition, while the Unit Interest Swap would require KPCo to reimburse WPCo for ELG retrofit costs if KPCo decided to run its Mitchell unit past 2028, no such reimbursement would be provided if KPCo decided to retire the unit,⁴ as presumably KPCo would find it unreasonable to have to pay for ELG retrofits on a unit that would be retired.

¹ Staff Post-Hearing Brief at 3; WVCA Post-Hearing Brief at 4; CAD Brief at 7.

² CAD Post-Hearing Brief at 11; WVCA Post-Hearing Brief at 5.

³ Kentucky Attorney General and Kentucky Industrial Utility Customer’s Joint Post-Hearing Brief at 6, 11, *Elec. Application of Ky. Power Co. for Approval of Affiliate Agreements Related to the Mitchell Generating Station*, Case No. 2021-00421 (Ky. P.S.C. Apr. 14, 2022) (explaining “transactions between affiliates are required to be transacted at net book value.”). *See also* KPCo Witness D. Brett Mattison Testimony at 14:18-23, *Elec. Application of Ky. Power Co. for Approval of Affiliate Agreements Related to the Mitchell Generating Station*, Case No. 2021-00421 (Ky. P.S.C. Nov. 19, 2021). The most recent net book valuation for KPCo’s share of the Mitchell Plant was \$586 million. Am. Elec. Power Co., Inc., Sec. & Exch. Comm’n, *Form 10-K*, at 79, 256 (Feb. 24, 2022), <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000004904/c074eb30-498a-4d76-ba37-ab93020ba4bd.pdf>.

⁴ CAD Post-Hearing Brief at 11.

WVCA dismisses the attempt in the modified Proposed Agreement to strike a balance between KPCo and WPCo's divergent interests as wholly illegitimate,⁵ but unintentionally reveals a far more reasonable explanation for the balance struck in the Proposed Agreement when it states earlier in its post-hearing brief that "[r]espectfully, Kentucky Power Company and its potential purchaser, [Algonquin Power & Utilities Corp.], are not subject to the jurisdiction of this Commission and not parties to this matter."⁶ While WVCA makes that statement to contend that Kentucky interests should be "of no consequence" to this Commission,⁷ it actually reflects the fundamental fact that neither WPCo nor this Commission can force KPCo (or Algonquin) to agree to specific Ownership Agreement terms. Instead, as Companies witness Beam explained in his rebuttal testimony:

Even though WPCo owns 50% of the Mitchell Plant and will pay for 100% of ELG, it is not possible to assert 100% unilateral control over the Mitchell Plant under any condition because KPCo has equal rights to the other 50% undivided interest in all non-ELG parts of the plant.⁸

And KPCo's rights to the Mitchell Plant are, as recognized by WVCA, subject to the jurisdiction of the Kentucky Commission, not this Commission. Notably, for all of the concerns raised in the post-hearing briefs about the terms of the Proposed Ownership Agreement, none of the parties identify a way by which the Commission could require that KPCo and the Kentucky Commission agree to the terms that WVCA, CAD, and Staff want to see.

As a sign of the impasse the parties have reached, the Companies have proposed that the Commission could simply approve the Proposed Ownership Agreement without the Buyout Transaction and Unit Interest Swap provisions.⁹ But doing so would merely kick the problem of

⁵ WVCA Post-Hearing Brief at 6.

⁶ WVCA Post-Hearing Brief at 6.

⁷ WVCA Post-Hearing Brief at 6.

⁸ Companies' Ex. CTB-R at 5:3-6.

⁹ Companies' Post-Hearing Brief at 12-13.

the divergent Kentucky and West Virginia interests down the road to a time when WPCo would have even less negotiating power because the ELG retrofits would have been completed on both Mitchell units.

A far more prudent approach would be to use the Unit Interest Swap option to provide the Commission and parties a pathway out of this impasse. As CAG/SUN/EEWV explained in their post-hearing brief, WPCo and KPCo could negotiate a Unit Interest Swap and thereby consolidate their 50% undivided interests in Mitchell into 100% ownership of one Mitchell unit for each company.¹⁰ Doing so would save West Virginia customers \$22 million in ELG retrofit costs, prevent them from being saddled with the unneeded and poor performing Mitchell Unit 1, and avoid the endless cycle of negotiations that any attempt to force a Buyout Transaction would likely engender. As such, the Commission should order the Companies to pursue a Unit Interest Swap with KPCo now.

CAD objects to the Unit Interest Swap provision on the grounds that there is nothing to guarantee that WPCo would receive the “better” of the two Mitchell units,¹¹ which the available evidence shows is Unit 2.¹² That may be true if WPCo waits to pursue a Unit Interest Swap until after ELG retrofits on the entire plant are completed. If the swap is pursued now, however, WPCo has a strong argument that it should receive Unit 2 because it makes the most sense to do the ELG retrofits on the better performing unit while leaving the poor performing unit to be retired by KPCo and/or Algonquin. And while CAD notes that the Unit Interest Swap provision would allow KPCo to retire a Mitchell unit at the end of 2028 without reimbursing WPCo for the

¹⁰ CAG/SUN/EEWV Post-Hearing Brief at 4-6, 9.

¹¹ CAD Post-Hearing Brief at 11.

¹² CAG/SUN/EEWV Post-Hearing Brief at 9-10.

ELG retrofits to such unit,¹³ that problem would be avoided if a swap were negotiated now because West Virginia customers would only pay for one unit of ELG retrofits to begin with.

WVCA and CAD also paint the Unit Interest Swap provision as inconsistent with the Commission's October 12, 2021 Order in the ELG CPCN docket which requires the continued operation of the Mitchell Plant without the involvement of KPCo.¹⁴ But that October 12 Order is not final, as petitions for reconsideration are still pending in the ELG CPCN docket. In addition, the October 12 Order was issued before the Companies made clear in the present proceeding that the two Mitchell units are separable for purposes of ownership and ELG compliance, and before it became clear that the divergent Kentucky and West Virginia interests would lead to such an impasse regarding any attempt to mandate that WPCo receive 100% ownership of the Mitchell Plant. As such, there are more than adequate grounds for this Commission to, as necessary, modify or go in a different direction than its October 12 Order, so as to require WPCo to negotiate a Unit Interest Swap with KPCo now.¹⁵

¹³ CAD Post-Hearing Brief at 11.

¹⁴ WVCA Post-Hearing Brief at 4-5 (referring to the Proposed Ownership Agreement as a "direct violation" of the October 12 Order); CAD Brief at 8-9, 13.

¹⁵ The Commission maintains the authority to modify any order to protect ratepayers, to clarify Commission authority and jurisdiction, or to ensure fairness. *See generally Indep. Oil & Gas Ass'n of W. Va., Inc.*, No. 04-0404-GT-C, 2004 WL 7079443, at *5 (July 29, 2004); *Am. Bituminous Power Partners, L.P. & Monongahela Power Co.*, No. 17-0631-E-P, 2018 WL 4329115, at *15 (Sept. 5, 2018); *In Re T&F Operating, Inc.*, No. 00-1722-G-PC, 2002 WL 31432705 (May 30, 2002).

II. There Has Been No Showing that WPCo Acquiring KPCo's 50% Share of the Mitchell Plant Would Be in the Best Interests of West Virginia Customers or Needed to Serve Those Customers.

In their post-hearing briefs, various intervenors rely on an unproven assumption that WPCo acquiring KPCo's 50% share of Mitchell would be in the best interest of WPCo's West Virginia customers.¹⁶ The Commission's August 2021 and October 2021 Orders in the ELG CPCN docket did not include a finding that acquisition of the second half of Mitchell is needed to serve WPCo's West Virginia customers or in the best interest of those customers. And the Companies acknowledge that they have not yet analyzed, much less demonstrated, whether WPCo needs KPCo's 50% share of Mitchell to serve West Virginia customers, or that such acquisition would be in the best interest of those customers.¹⁷ Suggestions otherwise are unfounded and should not be relied upon by the Commission.

A. The Companies Would Have to Demonstrate a Need for Additional Capacity Before Acquiring KPCo's 50% Interest in Mitchell.

West Virginia law is clear that any acquisition by WPCo of the second 50% of Mitchell would need to be preceded by a demonstration of need and that such acquisition would be in the best interest of West Virginia customers. Such demonstration would be necessary to ensure that the rates and charges for any acquisition of Mitchell are just and reasonable and based primarily on the costs of providing necessary services under W. Va. Code § 24-1-1 (a)(4), and to comply with W. Va. Code § 24-2-11 CPCN statute requirements.

¹⁶ WVCA Post-Hearing Brief at 2 ("This Commission cannot allow [the Kentucky PSC] to further postpone addressing what is far and away the most critical aspect of the Proposed Agreements – ownership and operation of the Mitchell Plant by Wheeling Power Company for the benefit of West Virginia ratepayers."); CAD Post-Hearing Brief at 6 ("The Commission's October 12, 2021 Order explained the reasons why the Commission agreed it was to the benefit of West Virginia that the required expenditures on all three stations be funded by West Virginia ratepayers.").

¹⁷ Hearing Tr. at 133:6-8.

As CAG/SUN/EEWV Witness James F. Wilson stated in his testimony, the Companies have not yet proven or even claimed a need for this additional capacity:

The testimony submitted by the companies in [the Mitchell Agreements] proceeding does not assert a need for acquiring full ownership of the Mitchell plant to serve West Virginia customers' capacity or energy requirements, nor did any of the Companies' testimony in the ELG CPCN docket.¹⁸

The Companies have repeatedly conceded that they do not, at this time, anticipate a need for increased capacity to serve West Virginia customers in 2029.¹⁹ In fact, when WPCo filed its most recent Integrated Resource Plan in 2020, it did not include an analysis of need for KPCo's 50% share of the Mitchell plant after 2028.²⁰ Even without KPCo's share of the Mitchell Plant, the Companies do not project that they will have a need for greater additional generation capacity to serve West Virginia customers in 2029.²¹ Therefore, the Commission should not assume that WPCo needs to acquire an additional 780 MW of Mitchell capacity to serve its West Virginia customers. Instead, as CAG/SUN/EEWV emphasized in their post-hearing brief, the Commission should make clear that any WPCo acquisition of KPCo's 50% interest in Mitchell must be preceded by a demonstration that such capacity is needed to serve WPCo's West Virginia customers.²²

¹⁸ Hearing Ex. JFW-D, Direct Testimony of James F. Wilson at 10:1-4 (Mar. 28,2022) ("Wilson Test.").

¹⁹ In response to a question from Commissioner Raney, the Companies' witness Christian Beam acknowledged that WPCo could satisfy its customers' capacity needs solely with the 780 MW of Mitchell capacity that WPCo would continue to own under the Unit Interest Swap: "Q: Can you service the West Virginia customers that you have with the Wheeling Power 50 percent of Mitchell? A: Yes, we can." Hearing Tr. 165:4-7 (Apr. 7, 2022). *See also* Hearing Tr. 133:6-8; Wilson Test. at 10:7-15; Companies' Response to WVEUG 2-06(a), Wilson Test., Ex. JFW-2.

²⁰ Companies' Response to WVEUG 1-10b.

²¹ Companies' Response to WVEUG 2-06.

²² CAG/SUN/EEWV Post-Hearing Brief at 12-13.

B. Neither the Parties nor the Commission Should Assume that the Companies Can Beneficially Sell Excess Mitchell Capacity into the PJM Market.

As CAG/SUN/EEWV witness James Wilson explained, there has also been no showing that it would be in the best interest of WPCO's West Virginia customers for WPCo to acquire KPCO's 50% interest in the Mitchell Plant.²³ Implicitly acknowledging that acquisition of KPCO's 50% share of Mitchell would leave WPCo with significant excess capacity, the Companies speculate that they may be able to generate revenue to benefit customers by selling the excess capacity back into the PJM Market or to third parties through power purchase agreements.²⁴ No evidence or analysis, however, has been presented in either this docket or the ELG CPCN proceeding to support such speculation, which should not be relied on by the Commission.

In fact, the available evidence shows that it is unlikely at best that such sales would make any WPCo acquisition of KPCo's 50% share of the Mitchell Plant economic for West Virginia customers. As CAG/SUN/EEWV witness Wilson testified, sales to the PJM capacity market "would be unlikely to generate much net revenue to offset the plant costs."²⁵ This is due to three main reasons: 1) PJM already has excess capacity, 2) the value of capacity in PJM has remained low, and 3) many buyers will not purchase coal generated capacity or would do so at only a low price.²⁶

As witness Wilson proceeded to explain in his testimony, the PJM capacity market maintains "high reserve margins and low capacity prices" with "well over 20,000 MW of

²³ Wilson Test. at 6:5-8 and Section V.

²⁴ Wilson Test. at 16:3-5, citing Companies' Response to WVEUG 2-07 and the ELG CPCN Docket, Commission October 12, 2021 Order at 7.

²⁵ Wilson Test. at 16:6-7.

²⁶ Wilson Test. at 16-17.

existing capacity fail[ing] to clear in the last two PJM Capacity auctions.”²⁷ Additionally, few of the uncleared capacity generating units have retired and PJM’s peak load forecast is “essentially flat over the long-term” with very little growth projected for peak demand for 2022-2032,²⁸ thereby setting relatively low capacity price expectations for upcoming auctions. As more and more states and consumers increasingly seek sources of clean energy, “there will be far fewer buyers, and substantially lower willingness to pay, for a coal-based deal.”²⁹ Thus, there is simply no basis in this record, or in the ELG CPCN docket, to conclude that acquisition of KPCo’s 50% interest in Mitchell by WPCo would be in the best interest of West Virginia customers.

In sum, the Companies have not yet demonstrated, as they must, that West Virginia customers actually need additional capacity from Mitchell. Nor have the Companies demonstrated that they would be able to easily sell excess capacity from Mitchell into the PJM market. Any presumption that suggests such a finding has already been made is unsupported by the evidence and detrimental to WPCo’s West Virginia customers. Instead, the Commission should clearly state that there has not yet been a showing of need or of the best interests of West Virginia customers, and that both such showings are essential before any acquisition of the second 50% of the Mitchell plant could proceed.

²⁷ Wilson Test. at 16:10-12.

²⁸ Wilson Test. at 16:15-18 highlights that there was “a 0.3% total increase over 2022-2032 for the summer peaks that are used for capacity procurement, and a 3% total increase for the winter peaks that are not used for capacity procurement.”

²⁹ Wilson Test. at 17:5-7.

III. The Companies Have Ample Time to Negotiate a Unit Interest Swap and Arrive at the Proper ELG Retrofit Plan Before Beginning Construction of the Mitchell ELG Retrofits.

The Companies seek to create a false sense of urgency in an apparent attempt to persuade the Commission to make a rushed decision on the Proposed Agreements and, in the words of CAD, to “facilitate commencement of the physical ELG work at Mitchell as soon as possible.”³⁰ But the Companies’ own ELG compliance timeline shows that urgency is not necessary to ensure timely compliance. As such, the Commission should not let claims of urgency foreclose the negotiation of a Unit Interest Swap and design of a one-unit ELG retrofit plan that, as described above and in CAG/SUN/EEWV’s initial post-hearing brief, would be in the best interest of West Virginia customers.

The Companies’ brief states that the ELG retrofits at Mitchell must be complete by December 31, 2025, in order to satisfy the ELG Rule – and that construction cannot start until the Proposed Agreements have been approved by both Commissions.³¹ But the Companies’ schedule for those retrofits, described in their application in the ELG CPCN docket, allows for nearly eighteen months from today before construction must begin on the ELG retrofits to ensure compliance by the December 31, 2025 deadline.³² That schedule gives the Companies ample time to negotiate a Unit Interest Swap with KPCo, as well time to modify the ELG compliance plan to retrofit only the better-performing Mitchell Unit 2, thereby saving West Virginia

³⁰ CAD Post-Hearing Brief at 16; *see also* Companies’ Post-Hearing Brief at 5.

³¹ Companies’ Post-Hearing Brief at 2: “The ELG rule . . . establishes discharge limits that must be achieved as soon as possible between October 13, 2021 and December 31, 2025.” *See also* Companies’ Petition to Reopen, Case No. 20-1040-E-CN at 4 n.1 (Sept. 8, 2021): (“December 31, 2025 is the latest theoretically possible date to come into compliance with the ELG Rule or to cease operation.”). *See also* 40 C.F.R. § 423.13(g)(1)(i); (k)(1)(i)

³² Direct Testimony of Brian Sherrick, Case No. 20-1040-E-CN at 7-10 (Dec. 23, 2020).

customers \$22M in ELG retrofit capital costs and avoiding saddling those customers with the unneeded and poor-performing Mitchell Unit 1.

In the ELG CPCN docket, Companies witness Brian Sherrick provided a detailed chart of each step of the ELG retrofits.³³ The chart set forth overlapping schedules for four stages of the project: Permitting, Engineering & Design, Procurement, and Construction. Mr. Sherrick further explained that the Companies had already begun the first three stages, and just needed Commission approval to begin Construction.³⁴

The Companies estimated that Engineering & Design for the Mitchell CCR/ELG retrofits would take 22.2 months, Permitting 15.8 months, Procurement 21.7 months, and Construction 22.7 months, respectively. The Companies built in 3 to 4 months of additional time for each stage into its schedule, providing the start and finish dates for each stage as follows:

Stage	Start	Finish
Engineering & Design	September 2020	October 2022
Permitting	December 2020	June 2022
Procurement	December 2020	January 2023
Construction	September 2021	November 2023

The 22.7-month estimate was for both CCR and ELG retrofit construction, so the timeframe for only the ELG retrofits could be shorter. But even assuming the ELG retrofit construction stretches over that entire 22.7-month timeframe, construction could start as late as Halloween 2023 and still be scheduled to complete by the December 31, 2025 ELG Rule

³³ That chart, Exhibit BDS-D6 to the Direct Testimony of Brian Sherrick, Case No. 20-1040-E-CN, is attached as Exhibit A.

³⁴ Direct Testimony of Brian Sherrick, Case No. 20-1040-E-CN, 8:19-20; 9:18-19. *See also* Companies' Post-Hearing Brief at 4-5: "And, while detailed engineering for the ELG work is underway, physical construction (i.e. 'moving dirt') is not scheduled to begin until permits are transferred to WPCo."

compliance deadline. If the Companies modified the plan to only retrofit the better-performing Mitchell Unit 2, that would eliminate at least the need for one dry bottom ash conveyor system, making the plan less costly and less complex – which could shorten construction time even further.³⁵

The Companies' brief, ignoring its own witness's testimony about the ELG retrofit project, includes a naked claim that "time is of the essence" and that the Commission should rush through the process of approving these Proposed Agreements, so that ELG work can begin in time to meet the deadline.³⁶ The Companies do not include any citation to the actual ELG work schedule, or to any testimony by the Companies' witnesses that supports this claim. To the contrary, Mr. Sherrick's testimony from the ELG CPCN docket makes it clear that the ELG schedule allows for plenty of time to review the Proposed Agreements before construction must begin. In addition, Timothy Kerns, the engineer with "direct oversight over the operation and management of the Mitchell Plant,"³⁷ made no claims at all in his testimony, either before this Commission or the Kentucky Public Service Commission, that the Companies urgently needed to begin ELG retrofits to meet the 2025 deadline.

To sum up: the Companies claim they cannot begin Mitchell ELG construction work without this Commission's approval of updated Mitchell Agreements. As detailed above, the Companies' own testimony and ELG retrofit schedule demonstrates that the Companies have

³⁵ Hearing Tr. 66:9 to 66:15: "Q: Is it fair to say that an ELG process intended to only keep one unit operating past 2028 would be less costly and less complex than – than what we currently have planned? [Answer from Companies' witness Timothy Kerns]: If you didn't install the dry bottom ash conveyor system on one of the units and the cost for that unit, yes, it would – it would be cheaper." At the very least, the Companies should hold off on that dry bottom ash conveyor system for Mitchell Unit 1 (which would take only approximately seven months to construct) unless and until it is crystal clear that the unit actually will operate past 2028.

³⁶ Companies' Post-Hearing Brief at 4-5.

³⁷ Kerns Direct, Hearing Tr. 2:13.

plenty of time to negotiate a Unit Interest Swap and design a one-unit ELG retrofit plan, before the Companies must move forward with construction on ELG retrofits at Mitchell. This is fortunate because, as detailed in the Post-Hearing Brief of CAG/SUN/EEWV, the Companies could save their customers \$22M by only retrofitting the better-performing Mitchell Unit 2 – and the Companies could easily serve WPCo's capacity needs through at least 2029 with just that one unit. A Unit Interest Swap paired with a tailored ELG retrofit plan is in West Virginia customers' best interests – and the Companies' Mitchell ELG retrofit schedule allows for more than enough time for the Companies to negotiate and design, and the Commission to conduct a full review of, that option.

IV. WVCA Persists in Pretending that the Non-Profit Law Firm Earthjustice, Rather than Its Clients West Virginia Citizen Action Group, Solar United Neighbors, and Energy Efficient West Virginia, Is a Party to this Proceeding.

In its post-hearing brief, WVCA identifies “Earthjustice,” rather than its clients, as one of “four” parties who intervened in this proceeding and as offering the testimony of witness James F. Wilson.³⁸ While WVCA's refusal to acknowledge the party status of West Virginia Citizen Action Group, Solar United Neighbors, and Energy Efficient West Virginia is not new,³⁹ it remains inexplicable, as the intervention motion,⁴⁰ the Commission's February 8, 2022 order granting intervention,⁴¹ and Mr. Wilson's testimony⁴² all clearly identify CAG/SUN/EEWV as

³⁸ WVCA Post-Hearing Brief at 4.

³⁹ Case No. 20-1040-E-CN, WVCA Initial Brief at 2, 4 (June 25, 2021); WVCA Reply Brief at 2-10 (July 2, 2021).

⁴⁰ Petition to Intervene by West Virginia Citizen Action Group, Solar United Neighbors, and Energy Efficient West Virginia, Case No. 21-0810-E-PC (Jan. 28, 2022).

⁴¹ Notably, the Commission granted CAG/SUN/EEWV intervention in the same order in which it granted intervention to WVCA.

⁴² Hearing Ex. JFW-D at 1:6-8. In its post-hearing brief, WVCA notes that “witnesses for the Companies, CAD, and Commission Staff all appeared in person at the hearing,” WVCA Post-Hearing Brief at 4, while omitting the fact that CAG/SUN/EEWV witness Wilson also appeared in person at the hearing.

the parties to this proceeding. As the Commission previously explained in addressing the same misidentification by WVCA during the ELG CPCN proceeding:

the Commission should not have quoted WVCA when its lawyers referred to Earthjustice and the Sierra Club as the only dissenting parties. Earthjustice, is not a party but represents CAG/SUN/EEWV in the case.⁴³

The same holds true here, and CAG/SUN/EEWV request that WVCA show them the basic respect of accurately referring to them, rather than one of their counsel,⁴⁴ as the parties to this proceeding.


⁴³ Case No. 20-1040-E-CN, Commission Oct. 12, 2021 Order at 10.

⁴⁴ CAG/SUN/EEWV are jointly represented in this matter by Emmett Pepper of Pepper & Nason, and counsel from Earthjustice.

CONCLUSION

The Commission should order WPCo to proceed with negotiating a Unit Interest Swap to consolidate its ownership interest in the better performing Mitchell Unit 2, to save WPCo's West Virginia customers at least \$22 million in ELG retrofits by retrofitting only one Mitchell unit, and to ensure that such customers are not saddled with unnecessary and likely uneconomic excess generation capacity.

Respectfully submitted,


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Mitchell - CCR/ELG EPA Updated Timelines...		AEP CCR-ELG MLP USEPA Public Version																															
Activity ID	Activity Name	Duration (Months)	Start	Finish	2021					2022					2023																		
					A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
	East Bottom Ash Pond Closure	3.2	Apr-23	Jul-23																													
T.P.C-C-100-C-CON-S2-10	Dewater East Bottom Ash Pond	0.4	Apr-23	Apr-23																													
T.P.C-C-100-C-CON-S2-15	Remove Sheet Piling	0.4	Apr-23	May-23																													
T.P.C-C-100-C-CON-S2-25	CCR & PVC Liner Material Removal	2.0	May-23	Jul-23																													
T.P.C-C-100-C-CON-S2-30	QA/QC of CCR Removal	0.8	Jul-23	Jul-23																													
	East Wastewater Pond Response	3.4	Aug-23	Nov-23																													
T.P.R-C-100-C-CON-S2-15	Compact Fill to Construct Waste Decant Area	1.2	Aug-23	Sep-23																													
T.P.R-C-100-C-CON-S2-10	Subgrade prep for liner	1.5	Aug-23	Sep-23																													
T.P.R-C-100-C-CON-S2-20	Liner and protective cover installation (Double liner, Revestment)	1.6	Sep-23	Nov-23																													
T.P.R-C-100-C-CON-S2-25	QA/QC Consultant Prepare East Wastewater Pond Certification for Operation	0.2	Nov-23	Nov-23																													
	Construction Commission Construction	6.9	Sep-22	May-23																													
	Construction Link 2	4.2	Sep-22	Feb-23																													
T.B.A-C-492-C-CON-72	Civil (UG Piping Relocations and Installation / Foundations / Ash Bunker)	4.2	Sep-22	Feb-23																													
T.B.A-C-492-M-CON-69	Str / Mech (AG Utility Relocs / Coas Steel / Eqpmnt Install / BoP Piping)	5.6	Oct-22	May-23																													
T.B.A-C-492-E-CON-60	Elec / I&C (Conduit & Cable Tray Install / DCS Eqpmnt Install / Purif Power and Control Cabling and Terminate)	4.4	Dec-22	May-23																													
	Construction Link 1	7.8	Sep-22	Jun-23																													
T.B.A-C-492-C-CON-62	Civil (UG Piping Relocations and Installation / Foundations / Ash Bunker)	4.6	Sep-22	Feb-23																													
T.B.A-C-492-M-CON-106	Str / Mech (AG Utility Relocs / Coas Steel / Eqpmnt Install / BoP Piping)	6.5	Oct-22	Jun-23																													
T.B.A-C-492-E-CON-60	Elec / I&C (Conduit & Cable Tray Install / DCS Eqpmnt Install / Purif Power and Control Cabling and Terminate)	6.5	Dec-22	Jun-23																													
	BA System Start-Up & Commissioning	1.5	Apr-23	Jun-23																													

 Current Bar Labels
  Summary
 Milestone

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused to be served a copy of the foregoing Post-Hearing Reply Brief by West Virginia Citizen Action Group, Solar United Neighbors, and Energy Efficient West Virginia upon the following parties:

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April 26, 2022



Emmett Pepper



CONSUMER ADVOCATE DIVISION
STATE OF WEST VIRGINIA
Suite 810
300 Capitol Street
Charleston, West Virginia 25301
(304) 558-0526

April 26, 2022

VIA ELECTRONIC DELIVERY

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

03:32 PM APR 26 2022 EXEC SEC DIV

RE: Case No. 21-0810-E-PC
APPALACHIAN POWER COMPANY and
WHEELING POWER COMPANY

Dear Ms. Buckley:

Pursuant to the Commission's Order of April 7, 2020, in General Order No. 262.3, attached for filing in the above-captioned proceeding is a PDF of the *Reply Brief of the Consumer Advocate Division (Public)*, a copy of which has been served on all parties of record.

An original and two copies of the *Reply Brief of the Consumer Advocate Division (Confidential)* will be hand-delivered to the Commission, under seal.

Very truly yours,

A handwritten signature in black ink that reads "Heather B. Osborn".

Heather B. Osborn
State Bar No. 9074

DFW

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Anne C. Blankenship, Esq.
Keith D. Fisher, Esq.
James R. Bacha, Esq.
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PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

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.

03:32 PM APR 26 2022 EXEC SEC DIV

**REPLY BRIEF OF
THE CONSUMER ADVOCATE DIVISION**

Comes now the Consumer Advocate Division of the Public Service Commission of West Virginia (CAD) and, pursuant to the briefing schedule established by the Commission in this matter, submits its *Reply Brief*. Specifically, the CAD hereby responds to certain factual statements and arguments contained in the Initial Brief filed on behalf of Appalachian Power Company (APCo) and Wheeling Power Company (WPCo) (together “the Companies”), as well as certain positions taken by Staff and CAG/SUN/EEWV in their respective briefs.

The CAD has read the Initial Briefs filed by the other parties to this case and nothing contained therein changes the CAD’s recommendation, as set forth in its Initial Brief. The CAD continues to recommend that the Commission deny approval of both the proposed Mitchell Ownership Agreement and the proposed Mitchell Operations and Maintenance Agreement.

The Companies' Initial Brief

With respect to the Companies' Initial Brief, the CAD wishes to clarify the testimony of witness Emily Medine, to which the Companies incorrectly referred in their brief. Specifically, the Companies stated that witness Medine "remarked that it would be 'catastrophic' to delay approval of the New Mitchell Agreements to the point that ELG milestones could not be met."¹ Ms. Medine's precise testimony was "I think it's catastrophic for both utilities not to get that approval if you're holding up the ELG and the ELG compliance work until there's a transfer of permits and all those deals are done."² At no time during her testimony did Ms. Medine recommend the Commission approve either the proposed Ownership Agreement or the proposed Operations and Maintenance Agreement. Her testimony has consistently been to the contrary. The Companies have blatantly mischaracterized the context of Ms. Medine's testimony.

The potential catastrophe here arises out of American Electric Power (AEP) trying to force this Commission into approving agreements that are unfavorable to West Virginia ratepayers and which are not required for anything other than the sale of Kentucky Power Company (KPCo) to Liberty Utilities (Liberty). Nothing is preventing the Companies from moving forward with the ELG permitting or the expenditure of funds to commence physical construction of ELG modifications at the Mitchell Plant. The Companies' assertion that the two agreements they have proposed must be approved before ELG work can proceed is simply not true. What is true, however, is that

¹ Companies' Initial Brief at 5.

² Tr. p. 203.

AEP needs these agreements in place before it can move forward with its lucrative sale of KPCo to Liberty.

In pertinent part, the Stock Purchase Agreement (SPA) between AEP and Liberty³ states (1) that KPCo and WPCo will take the actions necessary to obtain regulatory approvals of the Mitchell Ownership Agreement and the Mitchell O&M Agreement; (2) the new Mitchell Ownership Agreement and Mitchell O&M Agreement must receive all regulatory approvals and be signed by KPCo and WPCo as necessary conditions to closing the sale of KPCo to Liberty; and (3) the new Mitchell Ownership Agreement and Mitchell O&M Agreement are exhibits to the SPA and contain what AEP and Liberty have agreed to regarding Mitchell including operations and cost allocations.⁴

The CAD's assertions that WPCo did not play an equal role in crafting the Revised Ownership Agreement and that the interests of West Virginia ratepayers were not fully represented in the process is not an "unfounded belief," as the Companies would like this Commission to believe. The Companies' responses to data requests, together with documents produced during this case, clearly demonstrate the absence of WPCo at the negotiating table.

The Companies' produced confidential documents with their *Supplemental Responses of APCo and WPCo to CAD's First Data Request*. Among those confidential documents is an "Index" relative to "Mitchell Agreements Circulated Between American Electric Power Company, Inc., ("AEP") and Liberty Utilities Co. ("Liberty")."⁵ This

³ Currently awaiting approval of the Kentucky PSC in Case No. 21-00481.

⁴ Supplemental Responses of APCo and WPCo to CAD's First Data Request, March 16, 2022, at "Response CAD 1-05", attached hereto as Exhibit 1.

⁵ See Confidential Exhibit 2, attached hereto.

document, attached hereto as Confidential Exhibit 2, shows the circulation of various draft documents between AEP and Liberty, including drafts of the Mitchell Ownership Agreement and Mitchell O&M Agreement. There can be no doubt that not only did Liberty and AEP have significant back-and-forth regarding the terms and conditions of the proposed Mitchell Agreements, but also the SPA between AEP and Liberty requires KPCo and WPCo to take the actions necessary to obtain regulatory approvals of the Mitchell Ownership Agreement and the Mitchell O&M Agreement.

Further, as the CAD noted during the evidentiary hearing and in its Initial Brief, the revision to Section 9.6 of the proposed Ownership Agreement (the “Unit Interest Swap” provision) arose in Kentucky PSC Case No. 21-000421, in response to concerns and objections expressed by the Kentucky Attorney General’s office. During the Informal Conference held in that case on March 9, 2022, Kentucky stakeholders were present along with representatives of Liberty⁶, despite the fact that Liberty is not a party to Case No. 21-000421. The Companies have yet to offer an explanation as to why Liberty, a non-party, was present during negotiations of the terms of the Ownership Agreement, yet no representative of WPCo (or any other West Virginia stakeholders⁷) was present.

Based on the totality of evidence, the obvious conclusion here is that AEP needs this Commission and the Kentucky Commission to approve the proposed Agreements – which contain language negotiated by Liberty – and has directed KPCo and WPCo to

⁶ CAD Cross Exhibit 3.

⁷ Any fair and reasonable settlement negotiation should include, at a minimum, a representative of the aggrieved party. In this instance, the aggrieved parties are the West Virginia ratepayers who are being required to bear more than their fair share of environmental upgrade costs.

obtain that approval. If either KPCo or WPCo fail to obtain that approval, AEP's sale of KPCo will not move forward without Liberty waiving that condition.

WVCAG/SUN/EEWV's Post-Hearing Brief

In their Post-Hearing Brief, West Virginia Citizen Action Group, Solar United Neighbors and Energy Efficient West Virginia (CAG/SUN/EEWV) correctly state that "the Companies have always presented the question of ELG retrofits at Mitchell as either for both units or for neither unit."⁸ The parties go on to assert that, with the Companies' introduction of the Unit Interest Swap provision, this Commission now has a third option to consider: an ELG retrofit plan designed just to keep one Mitchell unit operational past the ELG compliance deadline.⁹ The CAD does not agree that the Commission has a third option to consider at this time.

The underlying issue of whether ELG retrofits would be performed at Mitchell – at both units – has already been decided in the affirmative by this Commission in Case No. 20-1040-E-CN. That case is now final. Similarly, the Kentucky Commission answered that question in the negative with respect to KPCo. That issue is likewise final in the Kentucky case. In Case No. 20-1040-E-CN the parties conducted extensive discovery and fully litigated the question. The evidence developed therein was premised upon the positive and negative ramifications of performing ELG retrofits on both Mitchell units.

To proceed as CAG/SUN/EEWV has suggested would essentially require a complete re-litigation of the issues presented in Case No. 20-1040-E-CN. Among others,

⁸ Post-Hearing Brief at 4.

⁹ Id.

it would raise the questions of the practical consequences of ELG for only one unit; whether doing so would expose the other unit to an early closure (i.e. 2025) because as an NOPP was not filed; and what affect doing so would have upon permits that have been put in place or are in process. Given the timeframe for ELG compliance, that would appear impossible.

Staff's Initial Brief

The CAD disagrees with Staff's recommendation that the Commission should approve the proposed Mitchell O&M Agreement, and deny the proposed Mitchell Ownership Agreement. In fact, the CAD disagrees that the Commission even can approve the O&M Agreement, as drafted, given that the O&M Agreement references and incorporates the proposed Ownership Agreement therein.

Further, as discussed at length in the CAD's Initial Brief, the proposed O&M Agreement does not contain language that is necessary to ensure that the operation of Mitchell through 2028 will benefit West Virginia ratepayers and their ELG investment. KPCo would retain significant operating rights, including the right to dispatch their respective ownership shares, under the terms of the proposed O&M Agreement.¹⁰ The CAD also maintains its position, as set forth in its Initial Brief, that any O&M Agreement this Commission approves must also ensure that plant operations maintain the value of these assets, to protect the ELG investment being made by West Virginia ratepayers. The proposed O&M Agreement does not do so and should be rejected, for all of the reasons explained in the CAD's Initial Brief.

¹⁰ Direct Testimony of Christian T. Beam Exhibit CTB-D2.

Conclusion

The CAD maintains its position that the parties' disagreements as to the contents of the proposed Mitchell Ownership Agreement need not be decided by the Commission at this time because the proposed Ownership Agreement is not required for WPCo to move forward with the ELG work. Further, only those modifications to the current Mitchell Operating Agreement that are required to fulfill the spirit and explicit requirements of this Commission's Orders in Case No. 20-1040-E-CN, should be approved. The agreements presented by the Companies were not designed with the best interest of West Virginia ratepayers in mind because, specifically, they were not designed to protect West Virginia's investment in ELG. This is not surprising given the evidence demonstrating that these agreements were tailored to the needs and wants of Liberty.

WHEREFORE, for the reasons set forth herein and in its Initial Brief, the CAD respectfully requests the Commission deny approval of both the proposed Mitchell Ownership Agreement and the proposed Mitchell Operations and Maintenance Agreement.

Respectfully,



Heather B. Osborn
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Exhibit 1



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March 16, 2022

Via Electronic Mail

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

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

Dear Ms. Buckley:

Pursuant to the Commission's March 11, 2022 Order in the above-referenced matter, please find enclosed for filing the Supplemental Responses of Appalachian Power Company and Wheeling Power Company to CAD's First Data Request. 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

**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*

**SUPPLEMENTAL RESPONSES OF APPALACHIAN POWER COMPANY AND
WHEELING POWER COMPANY TO CAD'S FIRST DATA REQUEST**

Appalachian Power Company ("APCo") and Wheeling Power Company ("WPCo") (together, "the Companies") file the following as their Supplemental Responses to CAD's First Data Request in the above-referenced matter:

**APPALACHIAN POWER COMPANY &
WHEELING POWER COMPANY
WEST VIRGINIA CASE NO. 21-0810-E-PC
CAD Set 1**

Request CAD 1-04

Please produce the Confidential Information Memorandum or its equivalent put forward by Barclays, Goldman Sachs and Co., and/or others who served as AEP's financial and strategic advisors related to the sale of Kentucky Power.

Response CAD 1-04

The Companies filed an objection to this question on January 20, 2022.

Supplemental Response CAD 1-04

Because the requested document contains confidential information, it will be made available to the Staff, the CAD, and any other parties that have executed a Confidentiality Agreement, and provided under seal to the Commission.

**APPALACHIAN POWER COMPANY &
WHEELING POWER COMPANY
WEST VIRGINIA CASE NO. 21-0810-E-PC
CAD Set 1**

Request CAD 1-05

Please produce all information provided to AEP by Algonquin Power & Utilities Corporation subsidiary Liberty Utilities Company or others related to Liberty's plans for Kentucky Power and Mitchell if it were successful in the acquisition, including any conditions related to Mitchell included in its offer. [Modified by CAD on Jan. 27, 2022 to request only "the parties' written offers and counter offers with respect to the anticipated transfer of KPCo to Liberty."]

Response CAD 1-05

The Companies filed an objection to this request on January 20, 2022. Without waiving that objection, the Companies respond as follows:

The SPA between AEP and Liberty Utilities (see response to CAD 1-03) and the new Mitchell Ownership Agreement and Mitchell O&M Agreement reflect the plans for both parties, including Liberty's plans for Mitchell. Specifically, the SPA states that:

- Kentucky Power and Wheeling Power will take the actions necessary to obtain the regulatory approvals of the Mitchell Ownership Agreement and Mitchell O&M Agreement;
- The new Mitchell Ownership Agreement and Mitchell O&M Agreement must receive all regulatory approvals and be signed by Kentucky Power and Wheeling Power as necessary conditions to closing the sale of Kentucky Power; and
- The new Mitchell Ownership Agreement and Mitchell O&M Agreement are exhibits to the SPA and contain what AEP and Liberty have agreed to regarding Mitchell including operations and cost allocations.

Supplemental Response to Modified CAD 1-05

The Stock Purchase Agreement drafts exchanged between AEP and Liberty Utilities Co., as well as the exchanged drafts of the Mitchell Plant Ownership Agreement and Mitchell Plant Operations and Maintenance Agreement that are the subject of this proceeding, constitute the parties' written offers and counter-offers with respect to the anticipated transfer of KPCo to Liberty. Because those drafts contain confidential information, they will be made available to the Staff, the CAD, and any other parties that have executed a Confidentiality Agreement, and provided under seal to the Commission.

**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 "Supplemental Responses of Appalachian Power Company and Wheeling Power Company to CAD's First Data Request" was served upon the following, via electronic mail, on this 16th day of March, 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>
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Emmett Pepper, Esq. Pepper & Nason 8 Hale Street Charleston, WV 25301 <i>Counsel for CAG, SUN, and EEWV</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)

Exhibit 2

CONFIDENTIAL

INDEX

**Mitchell Agreements Circulated Between American Electric Power Company, Inc.
("AEP") and Liberty Utilities Co. ("Liberty")**

CERTIFICATE OF SERVICE

I, Heather B. Osborn, counsel for the Consumer Advocate Division of the Public Service Commission of West Virginia (CAD), certify that I have served a copy of the foregoing *Reply Brief of the Consumer Advocate Division (Public)* upon the following counsel of record in accordance with the Commission's Order of April 7, 2020.

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DATED: April 26, 2022



An **AEP** Company

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April 26, 2022

Via Electronic Mail

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04:27 PM APR 26 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 Reply Brief of Appalachian Power Company and Wheeling Power Company. 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith D. Fisher". The signature is fluid and cursive.

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

Enclosure

cc: Certificate of Service

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

CASE NO. 21-0810-E-PC

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

04:27 PM APR 26 2022 EXEC SEC DIV

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

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

COME NOW Appalachian Power Company (“APCo”) and Wheeling Power Company (“WPCo”) (jointly “the Companies”), by counsel, and respectfully file their Reply Brief following the evidentiary hearing in this matter.

INTRODUCTION

The Companies seek the Commission’s approval of agreements that will allow WPCo to become operator of the Mitchell Power Plant, to begin ELG work on site, and to ensure that West Virginia is able to maintain the option to run the plant beyond 2028. The Companies have satisfied their burden of demonstrating that they should be authorized to enter into those agreements because they are reasonable and comply with West Virginia law. The issues that have concerned other parties to this case arise from how those agreements respond to and, in fact, comply with the differing decisions of this Commission and the Kentucky Public Service Commission (“KPSC”) in underlying parallel proceedings: this Commission authorized WPCo to perform both CCR and ELG work at Mitchell; the KPSC authorized CCR work but not ELG work for Kentucky Power

Company (“KPCo”).¹ Since WPCo and KPCo each owns a 50% undivided interest in Mitchell, those divergent decisions necessitated a creative and balanced mechanism that would enable both utilities to comply with the decisions of their respective regulators.

The solution arrived at by WPCo and KPCo is embodied in two new inextricably intertwined agreements, now pending before this Commission and the KPSC for their approvals necessary for continued operation and customer protections: a proposed Mitchell Plant Operations and Maintenance Agreement and a Revised Ownership Agreement (collectively referred to as the “New Mitchell Agreements”), which together satisfy prior orders of both commissions.

Hearings on the New Mitchell Agreements have been held in both jurisdictions and post-hearing briefing is now complete. Reply Briefs were filed last Thursday, April 21st, in Kentucky and Reply Briefs are being filed in West Virginia today. WPCo attempted to respond to the concerns of other parties as the case progressed. What is not in question is that a change is needed to ensure that WPCo can continue with the ELG investment for both units at the Mitchell Plant. If the provision of most concern to other parties (Section 9.6 of the Ownership Agreement) is troublesome to the Commission, then the Companies have offered to remove that provision to aid in the execution of a mutually agreeable agreement in both states so that all of the other provisions which make WPCo the plant operator and satisfy the other directives of both commissions’ orders can go into effect.

To ensure that ELG compliance can move forward without unnecessary delay, the Companies are asking this Commission to grant approval of the New Mitchell Agreements, since they have been crafted to respect the decisions of both states’ regulators, in a way that their

¹ At pages 2-4 of their Initial Brief, the Companies provided a succinct summary of the environmental regulations controlling the continued operation of the Mitchell Plant and the parallel proceedings before this Commission and the KPSC.

approval will maximize the chances that both regulators will issue consistent orders that will enable WPCo to become the operator of Mitchell and to move forward with ELG work at Mitchell. Specifically, the Companies request that the Commission authorize WPCo to enter into the New Mitchell Agreements both with or without Section 9.6 of the Revised Ownership Agreement and related provisions. However, if the Commission deems it more reasonable not to include any provisions related to the future of the plant after 2028, then the Commission could instead approve the New Mitchell Agreements without Section 9.6 and related provisions.

ONLY THE NEW MITCHELL AGREEMENTS CAN BE THE BASIS FOR TIMELY AND CONSISTENT ORDERS IN WEST VIRGINIA AND KENTUCKY THAT ARE URGENTLY NEEDED FOR WPCO TO MOVE FORWARD WITH ELG WORK AT MITCHELL.

It is important that consistent orders be issued because there are two sources of time pressure affecting the fate of Mitchell. One source can be measured by the calendar in years. By the end of 2028, decisions will have to be made regarding the ownership of Mitchell and the continued operation of one or both of the Mitchell Plant units. Prior to that, by May 2025, decisions will have to be made regarding the commitment three years in advance of Mitchell's generating capacity to PJM to synchronize with PJM's capacity planning cycle. But the co-owners, the parties, and the regulators have years to attempt to craft reasonable solutions and accommodations. Tr. at 71-72 (Beam). The New Mitchell Agreements do not dictate any of these decisions, although they do create a framework to assist the co-owners in making decisions and presenting them to this Commission and the KPSC for their consideration. The deferral of these decisions was deliberate. They are likely to involve conflicting views which may conceivably be resolved in the fullness of time, but which would involve protracted debate and perhaps preclude consistent regulatory orders, if they were forced to resolution today.

The other source of time pressure necessitates prompt and consistent orders on the New Mitchell Agreements. That time pressure is not measured by the calendar in years but rather by a metaphorical stopwatch held by the U.S. Environmental Protection Agency (the "EPA"). It is imperative that WPCo act as soon as possible to comply with the EPA's ELG requirements. Company witness Beam testified at the hearing on the timeline for approval of the New Mitchell Agreements:

So as soon as possible is the timeline. We have to get moving to comply with the Orders we've been given. We have to transfer over the operations from Kentucky to Wheeling Power. We have to apply for permits in the new operator's name. And then we also have to get started on the physical work on the ELG at the plant. And so as soon as possible is the timeline.

Tr. at 97-98 (Beam). Mr. Beam also noted that, once consistent orders have been obtained from this Commission and the KPSC, the New Mitchell Agreements have to be submitted to and approved by the FERC. Tr. at 100 (Beam).²

Each of the other parties to this proceeding offers its own modification of or alternative to the New Mitchell Agreements. Each of those proposals is at odds with the proposals of each of the other parties and each presents an arrangement that is not before the KPSC in its parallel proceeding. If this Commission were to approve any of those modifications or alternatives, the inevitable result would be inconsistent orders in West Virginia and Kentucky and the necessity of another round of proceedings, at a minimum, and all of the delay caused by those further proceedings, before there could be any hope of achieving consistent orders in the two jurisdictions.

² The KPSC's orders create a related, third source of time pressure as well. The KPSC directed KPCo and WPCo to "promptly" modify their contractual relationship should WPCo move forward with ELG in order to designate WPCo as operator and to put environmental permits related to ELG in WPCo's name. *In the Matter of: Electronic Investigation of the Service, Rates and Facilities of Kentucky Power Company*, Case No. 2021-00371, Order at 9 (Ky. P.S.C. Oct. 8, 2021).

Company witness Beam has explained in detail the time pressures on obtaining consistent orders needed to perform the ELG work at the Mitchell Plant mandated by this Commission:

But timing is of the essence. So we just keep going back and forth between Commissions and getting more dates, more time, more hearings because the longer we do that, the longer I hold off on installing the ELG equipment. And it would then put me in violation of the EPA's rules to get this equipment installed.

Tr. at 149 (Beam).

CAD witness Medine acknowledged that this Commission and the KPSC would have to approve the same ownership agreement and the same operating agreement. Tr. at 194 (Medine).

And she gave this further warning:

I think it's catastrophic for both utilities not to get that approval if you're holding up the ELG and the ELG compliance work until there's a transfer of permits and all those deals are done. So I think it's catastrophic – it's catastrophic for both sides, because you're going to probably have to shut down both units in 2023. I mean, it's not just simply catastrophic for Wheeling or catastrophic for Kentucky Power, it's for both.

Tr, at 203 (Medine).

This is why the Companies are providing the Commission with optionality as it relates to the approval of Section 9.6 of the Ownership Agreement; to increase the likelihood of being able to move forward with a synchronous agreement. The same request was made of the KPSC. The Revised Ownership Agreement defers the resolution of matters that are highly contentious today but that may be capable of resolution in the fullness of time. Section 9.6 of that Agreement offers two approaches that could be the basis for such resolution, but leaves the ultimate decisions on any such resolution to the judgment of this Commission and the KPSC. But because that Section 9.6 has attracted so much criticism from other parties, the Companies have also expressed their willingness to jettison it altogether (and the other provisions of the Revised Ownership Agreement

associated with Section 9.6) in order to achieve a straightforward basis for prompt and consistent orders in both West Virginia and Kentucky.

**THE NEW MITCHELL AGREEMENTS WARRANT APPROVAL
BY THIS COMMISSION.**

The New Mitchell Agreements were carefully crafted for WPCo and KPCo to respect the differing decisions of this Commission and the KPSC.³ The agreements work together to enable the CCR work to be performed so that Mitchell can operate through 2028 as directed by both commissions and to enable WPCo to perform the ELG work so that Mitchell can operate well beyond 2028. Both of the New Mitchell Agreements need to be approved at this time.

The Operations and Maintenance Agreement is necessary to govern how the Mitchell Plant is operated and maintained, especially now that the two state regulators of the plant have made decisions which are at variance. There has been only minimal, if any, criticism of this agreement in this proceeding.

Approval of the revised Ownership Agreement is also essential now because it achieves many important objectives to comply with the orders of both commissions. It is Section 1.5 of that agreement that makes WPCo the new operator of Mitchell, an essential step in carrying out this Commission's ELG mandates.⁴ Article 6 of that agreement provides a detailed specification

³ Company witness Beam explained in detail how he and his KPCo counterpart, Brett Mattison, as the two voting members of the Mitchell Operating Committee, reached agreement on the terms of the New Mitchell Agreements, including revisions to those agreements. Company Exhibit CTB-D at 8-9; Company Exhibit CTB-S at 2-3; Company Exhibit CTB-R at 9; Tr. at 94, 14-17, 139-43 (Beam). The evidentiary record is undisputed on the origin of those agreements. The contention of other parties, such as the CAD, that these agreements were dictated by the interests of a potential purchaser of KPCo is nothing more than speculation and wholly lacking in any evidentiary support. Such arguments can simply be ignored because they only serve to distract from the evidence that the agreements will ensure compliance with commission orders for years to come regardless of their origins.

⁴ This step is also essential to carry out the KPSC's related orders. *See In the Matter of: Electronic Investigation of the Service, Rates and Facilities of Kentucky Power Company*, Case No. 2021-00371, Order at 9 (Ky. P.S.C. Oct. 8, 2021).

of how expenses and capital investments will be apportioned between the two owners of Mitchell and ensures that WPCo and the West Virginia customers receive appropriate credit for the ELG investments at Mitchell. And Section 9.6, should it remain, provides a framework for two possible post-2028 scenarios at Mitchell, one a buyout by WPCo of KPCo's ownership interest and the other a unit interest swap which would leave WPCo and KPCo each with the undivided ownership of one of the Mitchell units.

The Companies have rebutted other criticisms of the New Mitchell Agreements, leaving Section 9.6 of the Revised Ownership Agreement as the only remaining focus of criticism by the other parties, albeit from several different and conflicting perspectives. The Companies are frankly puzzled by the antagonism that Section 9.6 has engendered because it does not mandate that this Commission approve any specific transaction and maintains its full right of review in accordance with its jurisdiction if and when the Companies seek approval of a transaction. It simply provides two possible frameworks for the resolution of the Mitchell Plant's future. Any proposal that may be made pursuant to either of those frameworks will have to be presented to and approved by both this Commission and the KPSC, in proceedings in which any and all interested parties will be able to participate and present their evidence and advocacy.

And the Companies have taken a further step in response to the criticisms of Section 9.6. The Companies have offered to excise Section 9.6 (and its associated provisions) from the Revised Ownership Agreement. No other party has advocated against the removal of Section 9.6, and the Companies fail to see how there can be any good faith opposition to that proposal. An objection to it could only be grounded in an insistence on immediate resolution of matters that could not possibly command today the assent of the regulators in both states. The only argument concerning the removal of Section 9.6 was that the concept was not before the KPSC. But, as indicated above,

the same concept was raised with the KPSC, as well. The option of deleting Section 9.6 has been communicated to the KPSC through the 10-day update process in effect in Kentucky, and argued at page 2 of KPCo's April 21, 2022 Response Brief in the Kentucky proceeding. Accordingly, if deemed reasonable by this Commission, it is an appropriate and effective option.

The fervent desire of the Companies is to enable this Commission and the KPSC to issue prompt and consistent orders that will enable both commissions' decisions about Mitchell to be implemented and WPCo to become the operator of Mitchell and to perform the ELG work mandated by this Commission. To that end, the Companies have requested Commission approval of the New Mitchell Agreements, either with or without Section 9.6 of the Revised Ownership Agreement. Such a course will maximize the likelihood of prompt and consistent orders in both jurisdictions.

**ADOPTION OF ANY OF THE PROPOSALS OF THE OTHER PARTIES
WILL PREVENT PROMPT AND CONSISTENT DECISIONS
BY THIS COMMISSION AND THE KPSC.**

None of the proposals advanced by any of the other parties warrant adoption by this Commission. In addition, those proposals are also fatally deficient because they are not under consideration in the parallel Kentucky proceeding and therefore could not be the basis for prompt and consistent orders in both jurisdictions. The Companies offer the following comments on the chief shortcomings of those proposals.

CAD

Perhaps the most extreme of all the other parties' positions is the CAD's. The CAD argues that the Commission should outright deny the Companies' request for approval of both the proposed Ownership Agreement and O&M Agreement. CAD Initial Brief at. 7. Such inaction would jeopardize the future of Mitchell. As explained in detail by Company witness Beam, it is

crucial that the New Mitchell Agreements, in either version offered by the Companies, be approved in order to timely proceed with the ELG work and comply with EPA regulations. Tr. at 149 (Beam). Simply put, failure to do so will result in the retirement of Mitchell prior to 2028. And as CAD states in its brief, “both KPCo and WPCo would be critically impaired by loss of the ability to operate Mitchell until at least 2028.” CAD Initial Brief at 9. Although CAD witness Medine recognizes this as a catastrophic outcome, the CAD’s position does nothing to avert it. Tr. at 203 (Medine).

The CAD argues that a new Ownership Agreement is unnecessary at this time and that both it and the O&M Agreement do not reflect the directives of the Commission. However, the CAD actually only takes issue with Section 9.6, and the particular issues which the CAD insists on resolving now regarding that provision are better deferred to a later date, as 9.6 is prudently written. The proposed agreements are not intended to and should not address every detail of the process to operate Mitchell up to and past 2028; they are intended to provide the means for moving forward and a potential framework for an ultimate resolution of contested issues. Many events need to unfold that will be back before this Commission for approval at the appropriate time to implement the directives of the Commission in Case No 20-1040-E-CN. Ms. Medine does not object to the O&M Agreement and, as discussed above, the agreements are inextricably intertwined and both are needed to operate the plant and properly account for the differing investments of the two owners. The ownership agreement is also needed for the basic assignment of operator so that WPCo can do the ELG work.

The Companies provided the New Mitchell Agreements because they are focused on the directives of this Commission and how best to proceed now so that those directives can ultimately be effectuated. It would be the height of counterproductivity to insist on resolving now, as the

CAD wishes to do, every conceivable and speculative scenario that may or may not arise over the next several years. To reject the New Mitchell Agreements now would effectively doom any prospect of achieving prompt and consistent orders in West Virginia and Kentucky.

STAFF

The Staff recommends approval of the proposed Mitchell Plant Operations and Maintenance Agreement. Staff Initial Brief at 8. But the Staff recommends rejection of the Revised Ownership Agreement, only because of its opposition to the Unit Interest Swap, not the other provisions of the agreement, which importantly carry out the Commission's cost allocation directives. The Staff devotes the greatest part of its Initial Brief (pages 5-8) to a wholly mistaken argument that the Unit Interest Swap and Unit Interest Swap Dispute provisions deprive the Commission of its regulatory authority over a unit interest swap transaction. Section 9.6(b) of the Revised Ownership Agreement makes it abundantly clear that any Unit Interest Swap Transaction is subject to receiving regulatory approvals. All that the Dispute Resolution provisions of Article 12 of the Revised Ownership Agreement accomplish with respect to a Unit Interest Swap Transaction is to establish a mechanism for creating the terms of such a transaction to be presented to the regulators for their review in the event that the Mitchell Operating Committee is not able to reach agreement on the terms to be presented. The jurisdiction and authority of this Commission and the KPSC over a Unit Interest Swap Transaction presented to them for their necessary approval is not compromised, limited, or superseded in any respect whatsoever. Company witness Beam explained this on the stand. Tr. at 153-56 (Beam). Chairman Lane indicated her understanding of that explanation. Tr. at 178. It is surprising, therefore, that the Staff persists in its own misunderstanding in its Initial Brief. In any event, if the Commission has any issue with any aspect of Section 9.6, it can simply avail itself of the option to approve the New Mitchell Agreements

with the deletion of “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).” Company Exh. CTB-R at 16.

WVEUG

West Virginia Energy Users Group (“WVEUG”) offers two proposed modifications of the New Mitchell Agreements. One is to defer any action on the Revised Ownership Agreement, solely because Section 9.6 leaves the possibilities of a WPCo buyout of KPSC’s interest in Mitchell or a Unit Interest Swap to be negotiated and submitted for regulatory approval at a later date. WVEUG Initial Brief at 2-4. This recommendation suffers from the same flaw as other parties’ positions in this case, which is that it could endanger future operation of the Mitchell Plant, and ignores the balance of the agreement which beneficially implements the Commission’s cost allocation directives in its orders so WPCo can pay for and ensure the ELG is installed and available to run the plant beyond 2028.

Second, in the event that the Commission decides to approve the Revised Ownership Agreement, WVEUG asks that it be amended to acknowledge expressly the possibility of third-party acquisition. WVEUG Initial Brief at 4-6. Such an amendment is unnecessary, since Company witness Beam acknowledged repeatedly at the hearing that the Revised Ownership Agreement does not preclude such acquisition. *Id.* at 4, footnote 7. So all that such an amendment would accomplish is to prevent the timely issuance of consistent orders by this Commission and the KPSC. Tr. at 90-91 (Beam). WVEUG seems to suggest that, even if the Revised Ownership Agreement is not amended, it might be sufficient if this Commission “find and affirmatively declare that nothing in the New Mitchell Agreements precludes a third-party acquisition option.”

WVEUG brief at 5. The Companies have no objection to such a finding and declaration by this Commission.

WVCA

The West Virginia Coal Association (“WVCA”) expresses a nostalgic preference for Section 9.6 of the original Ownership Agreement, which mandated a required transfer of KPCo’s interest in the Mitchell Plant to WPCo at fair market value. WVCA Initial Brief at 5. However, that original Section 9.6 was so widely disliked (except by WVCA evidently) that it was replaced in both West Virginia and Kentucky. WVCA regards the revised Section 9.6 as inconsistent with and contradictory of this Commission’s Order in Case No. 20-1040-E-CN. *Id.* at 4-9. It is difficult to see how this can be the case, however, since the revised Section 9.6 does not mandate any particular result: it simply establishes two frameworks for proposals (one for a buyout and one for a unit interest swap) that could be negotiated and offered for the consideration of this Commission and the KPSC. Any proposal under either of those frameworks is expressly conditioned on it being approved by the regulators. Company Exh. CTB-S1 at 15, Section 9.6(a) and (b) of the Revised Ownership Agreement. So a proposal approved by this Commission would obviously not be in conflict with this Commission’s Orders, and a proposal rejected by this Commission would simply be rejected, without any implication that the procedural mechanism that allowed it to be offered was somehow beyond the pale.

CAG/SUN/EEWV

CAG/SUN/EEWV ask the Commission to take a course that is directly at odds with this Commission’s Orders in Case No. 20-1040-E-CN. They propose that the Commission order an immediate unit interest swap with WPCo acquiring sole ownership of Mitchell Unit 2 and that ELG work be performed on only Unit 2. CAG/SUN/EEWV Initial Brief at 4-12. The Commission

has determined that ELG work should be performed on both of the Mitchell units. CAG/SUN/EEWV's argument should have been made in Case No. 20-1040-E-CN, in a motion for reconsideration of, or in an appeal of, the Commission's orders in that proceeding. This proposal was not even addressed in the direct testimony of CAG/SUN/EEWV witness Wilson, and the parties to this proceeding have had no opportunity to submit evidence in opposition to it. For these reasons alone, it should not be considered by the Commission.

Beyond that, there are many shortcomings in the CAG/SUN/EEWV position and the Companies will point out just a few. Pursuit of such a course would necessitate further proceedings before the KPSC because that particular unit interest swap would require KPSC's approval and it has never been presented there. Any possibility of prompt and consistent orders in the two jurisdictions would thereby be rendered impossible. The CAG/SUN/EEWV's course of action is contrary to the two-unit ELG compliance plan that has been proposed to the EPA and the West Virginia Department of Environmental Protection for inclusion in the NPDES permit for Mitchell. Furthermore, there is no evidentiary record supporting the conclusion that Mitchell Unit 1 is inferior to Mitchell Unit 2. Company witness Kerns testified that the units are similar, that both have corrosion issues, and that it would be sheer speculation to try to determine today which of the two units might be more desirable to own in 2028. Tr. at 57-58, and 74-75 (Kerns). Interestingly, on the date of the hearing, Mitchell Unit 1, which CAG/SUN/EEWV deems the inferior unit, was operating and Mitchell Unit 2 was not. Tr. at 51 (Kerns).

CONCLUSION

The Companies respectfully ask the Commission for its consent and approval for WPCo to enter into the proposed Mitchell Plant Ownership Agreement, as revised, with and without Section 9.6 (and related provisions), and the proposed Mitchell Plant Operations and Maintenance

Agreement pursuant to the Commission's orders in Case No. 20-1040-E-CN and, to the extent required, W. Va. Code § 24-2-12. The Companies have demonstrated that the New Mitchell Agreements are necessary, comply with this Commission's orders, and overall are reasonable, fair, and in the public interest. Their approval will maximize the prospect of prompt and consistent orders being issued in both West Virginia and Kentucky and, after receipt of FERC approval, will enable WPCo to perform the ELG work at Mitchell mandated by this Commission.

Respectfully submitted,

**APPALACHIAN POWER COMPANY
WHEELING POWER COMPANY**

By Counsel,



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Dated: April 26, 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
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 26th 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>
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April 26, 2022

Karen Buckley, Acting Executive Secretary
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01:41 PM APR 26 2022 EVER DEP ATW

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

Dear Ms. Buckley:

Please accept for filing the original and twelve (12) copies of "*Staff's Letter in Lieu of Reply Brief*" on behalf of Commission Staff in the above-captioned proceeding.

This letter is to inform the Commission that Staff will not be filing a Reply Brief in the above referenced matter. Staff reviewed the Initial Briefs filed by the other parties, and continues to support the positions set forth in Staff's Initial Brief to the Commission filed on April 19, 2022. Summarily, Commission Staff recommends that the Commission approve the proposed Mitchell Operations and Maintenance Agreement. Commission Staff recommends that the Commission deny approval of the proposed, Modified Mitchell Ownership Agreement because it is inconsistent with this Commission's prior orders in Case No. 20-1040-E-CN, Appalachian Power Company and Wheeling Power Company, and because it is inconsistent with this Commission's jurisdiction pursuant to W. Va. Code §24-2-12.

A copy has been served upon all parties of record in this proceeding.

Sincerely,
/s/ Lucas R. Head
LUCAS R. HEAD
Staff Attorney
WV State Bar I.D. No. 11146

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**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

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

01:41 PM APR 26 2022 EXEC SEC DIV

CERTIFICATE OF SERVICE

I, LUCAS R. HEAD, Counsel for the Public Service Commission of West Virginia, do hereby certify that a copy of the foregoing "*Staff's Letter in Lieu of Reply Brief*" has been served upon all parties of record, as list below, by First Class United States Mail, postage prepaid this 26th day of April, 2022.

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VERIFICATION

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

Brett Mattison

Brett Mattison

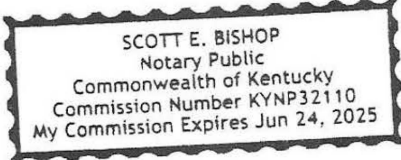
Commonwealth of Kentucky)
)
County of Boyd)

Case No. 2021-00004

Subscribed and sworn before me, a Notary Public, by Brett Mattison this 5th day of May, 2022.

Scott E. Bishop

Notary Public



My Commission Expires June 24, 2025

Notary ID Number: KYNP 32110