

Kentucky Power Company
KPSC Case No. 2021-00370
Post-Hearing Data Request Set 1
Dated December 3, 2021

DATA REQUEST

KPSC_PHDR_001 Provide a copy of the current Stock Purchase Agreement between Liberty Utilities Co. (Liberty), American Electric Power Company, Inc. (AEP), and AEP Transmission Company, LLC (AEP Transmission), including any exhibits, attachments or appendices. If the document has been amended since its announcement on October 26, 2021, provide all amendments.

RESPONSE

Please refer to KPCO_R_KPSC_PHDR_1_001_PublicAttachment1 for the requested information. Confidential treatment is being sought for portions of the referenced attachment.

Witness: Counsel

Kentucky Power Company
KPSC Case No. 2021-00370
Post-Hearing Data Request Set 1
Dated December 3, 2021

DATA REQUEST

KPSC_PHDR_002 Provide a copy of the Common Interest Agreement among any of the following: Liberty, AEP, AEP Transmission, and Kentucky Power.

RESPONSE

Please refer to KPCO_R_KPSC_PHDR_002_Attachment1 for the requested information.

Witness: Counsel

COMMON INTEREST AGREEMENT

This Common Interest Agreement (the “**Agreement**”) is entered into by and among the undersigned counsel (“**Counsel**”) on behalf of themselves and their respective clients, (i) American Electric Power Company, Inc. and its controlled affiliates, including American Electric Power Service Corporation, Kentucky Power Company, AEP Transmission Company, LLC, and AEP Kentucky Transmission Company, Inc. and (ii) Algonquin Power & Utilities Corp. and its controlled affiliates, including Liberty Utilities Co. (each client being hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”) in connection with the transactions (the “**Transaction**”) contemplated by the Stock Purchase Agreement, dated as of October 26, 2021, by and among Liberty Utilities Co., American Electric Power Company, Inc. and AEP Transmission Company, LLC (as amended, supplemented, restated or otherwise modified from time to time, the “**Purchase Agreement**”), the Ancillary Agreements (as defined in the Purchase Agreement), the Mitchell Plant O&M Agreement (as defined in the Purchase Agreement) and the Mitchell Plant Ownership Agreement (as defined in the Purchase Agreement) and any possible investigation or litigation concerning the Transaction. This Agreement memorializes and confirms the oral common interest agreement in place between the Parties.

WHEREAS, the Parties acknowledge that they have a mutuality of interest in analyzing the Transaction, including in contemplation of any potential investigation or litigation concerning the Transaction; and

WHEREAS, the Parties acknowledge that the sharing of oral and written information and documents under this Agreement is essential to fully preparing for any potential review of the Transaction and any related legal issues; and

WHEREAS, the Parties believe that it is in their best interests to be able to exchange both oral and written information with each other on a confidential basis and to cooperate in certain joint analysis and other activities, without waiving any applicable privilege or similar protection and while protecting confidential information from disclosure to third parties.

THEREFORE, to accomplish these objectives and to memorialize their understanding, the Parties agree to the following:

1. For purposes of this Agreement, “**Common Interest Material**” includes all information, whether oral or written, and includes, but is not limited to, documents, communications, factual materials, mental impressions, legal analyses, memoranda and interview reports, in each case, exchanged or communicated among the Parties, in their common interest efforts relating to the Transaction and undertaken under this Agreement. The fact of this Agreement and its contents also constitutes Common Interest Material under this Agreement. The Parties agree that all Common Interest Material disclosed under this Agreement shall be used only in connection with analysis of, and any possible regulatory proceeding, investigation or litigation concerning the Transaction and shall not be used for any other purpose without the prior express written

consent of the Party that provided the Common Interest Material (which consent may be withheld for any reason or no reason).

2. The materials to be exchanged as Common Interest Material pursuant to this Agreement may be immune from disclosure as a result of the privilege for attorney-client communications, attorney work product and other available privileges and protections from disclosure. It is the mutual understanding and intention of the Parties that the exchange of, or joint creation of, Common Interest Material under this Agreement is not intended to waive or diminish and will not waive or diminish in any way the status of such Common Interest Material if it is privileged or otherwise protected from disclosure. Furthermore, the Parties agree that all communications among the Parties under this Agreement are in confidence for the purposes of securing or communicating legal advice and, therefore, that all such communications are protected from disclosure by the attorney-client privilege, the common interest privilege and any other applicable privileges.

3. To ensure the protection of attorney work product, as well as privileged communications and confidential business, technical, financial, or other information that may be contained in such work product or communications, Common Interest Material shall not be disclosed in any way by any Party to anyone other than (i) attorneys, legal support staff, and economic experts evaluating or supporting antitrust or other regulatory clearance of the Transaction, any regulatory approvals associated with the Transaction, regulatory dockets relating to any entity acquired pursuant to the Transaction or the Ancillary Agreements, all at the direction or on behalf of Counsel, and (ii) employees or consultants of each Party who are working on the Transaction; provided that all such persons shall be informed of this Agreement and directed to abide by it. All written material exchanged under this Agreement may be marked with the legend PRIVILEGED AND CONFIDENTIAL COMMON INTEREST MATERIAL (or similar designations), but a failure to mark such material in this way shall not waive or otherwise diminish the protections afforded such material by this Agreement. Materials shared between the Parties' attorneys, legal support staff and economic experts shall presumptively be deemed Common Interest Material under this Agreement.

A Party may disclose Common Interest Material to the extent it is required to do so by any governmental agency, regulatory authority or in response to any legal proceeding (including any discovery request) or action brought against or involving either Party. In the event a Party is required by applicable law, rule or regulation, or by any judicial or governmental agency or regulatory authority, or other legal process or pronouncement (including any discovery request), or requested by any judicial or governmental agency or regulatory authority, to disclose any Common Interest Material, such Party, to the extent permitted by applicable law, rule, or regulation and otherwise applicable in the circumstances, agrees to (a) give the other Party prompt written notice (by electronic mail or otherwise) of such requirement and of the terms and circumstances surrounding the requirement so that the Parties may consult on taking legally available steps to resist or narrow such requirement or request and (b) disclose only that portion of the Common Interest Material that, on the advice of its counsel, continues to be required or requested

and exercise reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to such Common Interest Material.

4. Any Party providing Common Interest Material to any other Party may restrict the disclosure of such Common Interest Material by designating such materials as “**Counsel Only**.” For materials so designated, the term “**Counsel**” shall include the internal counsel or law firms that are signatories to this Agreement, as well as other internal counsel or law firms that are informed of this Agreement, including attorneys and legal support staff within a Party’s legal department or such law firm, and experts evaluating or supporting clearance of the Transaction, any regulatory approvals associated with the Transaction, regulatory dockets relating to any entity acquired pursuant to the Transaction or the Ancillary Agreements, all at the direction or otherwise on behalf of Counsel. Any Common Interest Material provided on an “Outside Counsel Only” basis shall not be divulged to any person other than outside law firms of a Party (including any Party that is an outside law firm), together with personnel and experts described above, and any materials provided on a “Counsel Only” basis shall not be divulged to any person other than Counsel. Any Party may, by written designation, also further limit disclosure of Common Interest Material to a restricted group or use (e.g., lawyers only), in which case such Common Interest Material will not be shared with any individuals outside such designated group.

5. Nothing contained in this Agreement shall apply to any Common Interest Material that (a) the receiving Party or its affiliates or representatives can reasonably demonstrate at the time of disclosure was, or thereafter became, available to the receiving Party or its affiliates or representatives on a non-confidential basis from a source other than the disclosing Party or its affiliates or representatives, *provided*, that such information was not known by the receiving Party or its affiliates or representatives, after reasonable inquiry, to have been obtained from a person in violation of an obligation of confidentiality owed to the disclosing Party with respect to such information, (b) at the time of disclosure was, or thereafter became, generally available to the public other than as a result of a disclosure by the receiving Party or any of its affiliates or representatives in violation of this Agreement or the confidentiality agreement between the receiving Party and the disclosing Party entered into in connection with the Transaction, or (c) the receiving Party or its affiliates or representatives can reasonably demonstrate is or was generated independently by the receiving Party or its affiliates or representatives without reference to or use of the Common Interest Material and without violating the terms of this Agreement.

6. If any inadvertent disclosure of Common Interest Material occurs, the inadvertently disclosing Counsel or Party in breach hereof shall promptly notify the other Party of such disclosure and shall promptly take all reasonable steps necessary to obtain the return of the Common Interest Material inadvertently disclosed and any other reasonable steps appropriate under the circumstances to preserve all applicable privileges and protections.

7. Neither the existence of this Agreement nor the joint defense effort in connection with the Transaction, nor any Common Interest Material exchanged in connection with this Agreement, shall (i) be used offensively or defensively in (a) any litigation between Parties to this Agreement (other than in connection with enforcing rights expressly provided by this Agreement) involving any issue relating to or deriving from the Transaction, or (b) any other legal proceeding or regulatory process or review, or (ii) be a basis on which to seek to disqualify Counsel for any of the Parties hereto in any proceeding.

8. A Party that has signed this Agreement may withdraw from the Agreement by notifying the other Party in writing. Such withdrawal shall not affect the attorney-client privilege, work-product privilege, litigation privilege, or other available privileges and protections from disclosure that exist under this Agreement, and the withdrawing Party shall continue to treat all Common Interest Material received from the other Party in accordance with the terms of this Agreement. Any withdrawing Party must continue to assert any applicable attorney-client privilege, work-product privilege and other available privileges and protections from disclosure with respect to all Common Interest Material covered by this Agreement unless and until such privileges are expressly waived by the providing Party or by both Parties if the Common Interest Material was prepared on behalf of both Parties. At any time upon the written request of disclosing Party for any reason, the receiving Party and its affiliates and representatives will promptly either (at the receiving Party's election) (1) deliver to the disclosing Party or (2) destroy, in each case at the receiving Party's and its affiliates' and representatives' expense, all Common Interest Material in the possession of the receiving Party or its affiliates and representatives, including any copies thereof; *provided*, that (i) the receiving Party and its affiliates and representatives may retain, in a secure location, copies of the Common Interest Material solely to the extent necessary to comply with applicable law, regulation or professional standards, (ii) the receiving Party and its affiliates and representatives shall not be required to return or destroy, and may retain copies of, Common Interest Material as required by its and their respective bona fide record retention policies, and (iii) the receiving Party and its affiliates and representatives shall not be required to return or destroy electronic versions of Common Interest Material which have been created pursuant to automatic archiving and back-up procedures in the ordinary course of business and which cannot reasonably be accessed by an end user (other than information technology personnel solely in accordance with such automatic archiving and back-up procedures); *provided, further*, that (a) any retained Common Interest Material is kept secure and confidential in accordance with this Agreement and destroyed in the ordinary course of business in accordance with the receiving Party's and its affiliates' and representatives' record retention policies, and (b) any and all duties and obligations regarding confidentiality and use of such retained Common Interest Material existing under this Agreement shall remain in full force and effect until the date such Common Interest Material is destroyed or returned in accordance with this paragraph 8. If requested in writing by the disclosing Party, an authorized person of the receiving Party shall confirm within ten (10) business days that all such Common Interest Material has been so delivered or destroyed in accordance with this paragraph 8. Any oral or other Common Interest Material will continue to be subject to the confidentiality obligations of this Agreement. Notwithstanding the delivery or destruction of the Common Interest Evaluation Material required by this paragraph 8, any and all

duties, obligations and restrictions existing under this Agreement shall remain in full force and effect pursuant to the terms of this Agreement.

9. Nothing in this Agreement shall oblige any Party to disclose or share any information.

10. Nothing contained in this Agreement and no action taken under this Agreement (including but not limited to the receipt of Common Interest Material) has the effect of transforming either Party's counsel into counsel for the other Party or for any other entity or otherwise creating an attorney-client relationship or fiduciary duty for any purpose. No counsel shall be deemed to be in an attorney-client relationship with any person or entity for any purpose on the basis of this Agreement or the taking of any action under this Agreement (including but not limited to the sharing of Common Interest Material).

11. Each Counsel represents, on behalf of its respective client (after full opportunity to advise and confer with its respective client), that its client has authorized it to waive any conflict of interest and any right of such client to seek disqualification of any of the undersigned Counsel or their respective law firms in any matter, including but not limited to the Transaction, based on its participation in this Agreement and/or disclosure, receipt or use of Common Interest Material under the terms of this Agreement.

12. Each Counsel acknowledges that it has advised its respective client that the client is represented only by the client's own attorneys in this matter, and that, while other attorneys who are Counsel have a duty to preserve the confidences disclosed to them under this Agreement, each Counsel will be acting only as the attorney for his or her respective client and will owe a duty of loyalty only to his or her own client.

13. Each Party acknowledges that the Common Interest Material is valuable and unique and that any disclosure thereof in breach of this Agreement will result in irreparable injury to the other Party and that money damages are an inadequate remedy for an actual or threatened breach of this Agreement because of the difficulty of ascertaining the amount of damage that will be suffered by the other Party in the event that this Agreement is breached. Therefore, each Party, without prejudice to any rights to judicial relief it may otherwise have, shall be entitled to the granting of equitable relief, including injunction and/or specific performance, in the event of any breach or threatened breach of the provisions of this Agreement. Each Party agrees that it will not oppose the granting of such relief on the basis that it has an adequate remedy at law. Each Party also agrees that it will agree to waive any requirement for the securing or posting of a bond in connection with the other Party's seeking or obtaining such relief.

14. If any person who is not a party hereto requests or demands, by subpoena or otherwise, any Common Interest Material received by a Party from any other Party, the Party that has received the request or demand shall promptly notify the providing Party, except as provided by law. Each Party so notified may take all steps it deems necessary to preserve all applicable privileges and protections with respect to such

Common Interest Material and each Party shall reasonably cooperate with the other Party in any proceedings relating to the disclosure of such Common Interest Material.

15. This Agreement shall continue in effect notwithstanding the consummation of the Transaction, abandonment of the Transaction, or withdrawal from this Agreement, and the Parties agree that they will continue to be bound by the Agreement following any such event.

16. Any waiver in any particular instance of the rights and limitations contained herein shall not be deemed to be, or treated as, a general waiver of any rights or limitations contained herein or as a waiver in any other instance. Any inadvertent or purposeful disclosure of information, documents, or other material exchanged pursuant to this Agreement shall not constitute a waiver of any privilege or protection of the Party providing such material.

17. This Agreement is governed in all respects by the laws of Delaware (excluding its conflict-of-law rules) and for that purpose, to the extent legally possible, the Parties submit to the exclusive jurisdiction of the courts of Delaware for any action or proceeding arising out of, or related in any way to, this Agreement, including, without limitation, any breach of this Agreement or any tort committed in connection with any transaction or occurrence in connection with this Agreement. Any right to trial by jury with respect to any lawsuit, claim or other proceeding arising out of or relating to this Agreement is expressly and irrevocably waived by all parties.

18. This Agreement may only be modified or amended by the Parties in writing. The respective signatories may execute this Common Interest Agreement in separate counterparts and it shall be effective with respect to all Parties who execute the Agreement. All signatories shall receive copies of all separate counterparts.



Adam Curran
Director, Legal & Business Affairs

Counsel for Algonquin Power & Utilities Corp.



John C. Crespo
Deputy General Counsel, Regulatory & Nuclear

Counsel for American Electric Power Company, Inc.

Kentucky Power Company
KPSC Case No. 2021-00370
Post-Hearing Data Request Set 1
Dated December 3, 2021

DATA REQUEST

KPSC_PHDR_003 Refer to the November 30, 2021 Hearing Video Transcript (HVT) at 9:39:19–9:42:05. Confirm that if the Federal Energy Regulatory Commission (FERC) rules on the Mitchell Operating and Ownership Agreements (Mitchell Agreements) in FERC Dockets ER22-453-000 and ER22-452-000 before this Commission rules on the Mitchell Agreements, Kentucky Power will agree to amend the Mitchell Agreements consistent with all Orders of the Commission notwithstanding any type of federal preemption that may preclude the Commission from modifying or denying the Mitchell Agreements.

RESPONSE

Kentucky Power and Wheeling Power Company (“Wheeling Power”) informed FERC in their filings in the referenced dockets that the filed agreements may need to be revised per orders of this Commission and the Public Service Commission of West Virginia, in which authority is also being sought for Kentucky Power and Wheeling Power, respectively, to enter into the proposed Mitchell Operation and Maintenance Agreement and the proposed Mitchell Ownership Agreement by and between the companies (“Proposed Mitchell Agreements”). As such, Kentucky Power does not intend to argue before this Commission that a FERC order would automatically preclude this Commission from ruling on the agreements in Case No. 2021-00421 or that Kentucky Power would not comply with a Commission ruling regarding whether it is authorized to enter into the Proposed Mitchell Agreements simply because of a prior FERC order. Kentucky Power (and Wheeling Power) would carefully review any orders by this Commission, as well as the orders of the Public Service Commission of West Virginia and FERC, to determine what changes might be needed to comply with those orders.

Witness: Counsel

Kentucky Power Company
KPSC Case No. 2021-00370
Post-Hearing Data Request Set 1
Dated December 3, 2021

DATA REQUEST

KPSC_PHDR_004 Refer to the November 30, 2021 Hearing Testimony of D. Brett Mattison regarding Liberty's involvement in the negotiation or development of Mitchell Agreements. Describe in detail Liberty's involvement in negotiating or developing the Mitchell Agreements, including who at Liberty was involved, and for each person specify their degree of involvement and the dates of their involvement.

RESPONSE

Between August and October, 2021, Liberty employees and its counsel were actively involved in discussions with American Electric Power Company, Inc. and its counsel regarding the Proposed Mitchell Agreements in the course of discussions regarding the sale of Kentucky Power to Liberty. The personnel representing Liberty in those discussions regarding the Proposed Mitchell Agreements included Kevin Melnyk, Senior Vice President, Regulated Infrastructure Development at Algonquin Power & Utilities Corp. who led the Stock Purchase Agreement negotiation and Simpson Thacher & Bartlett LLP, Liberty's outside counsel for the transaction. The Proposed Mitchell Agreements filed with the Commission on November 19, 2021 in Case No. 2021-00421 are the same agreements accepted and agreed to by Liberty in discussions with AEP and which are exhibits to the Stock Purchase Agreement.

Witness: Stephan T. Haynes

Kentucky Power Company
KPSC Case No. 2021-00370
Post-Hearing Data Request Set 1
Dated December 3, 2021

DATA REQUEST

KPSC_PHDR_005 Identify who at Kentucky Power or AEP directed counsel to file the amended Mitchell Agreements at FERC and the reason for doing so prior to approval of the Mitchell Agreements by this Commission.

RESPONSE

The voting representatives of Kentucky Power and Wheeling Power to the Mitchell Operating Committee, consisting of Messrs. Brett Mattison and Chris Beam, respectively, directed counsel to make the necessary filings to seek approval of the Proposed Mitchell Agreements, consisting of the proposed Mitchell Operations and Maintenance Agreement between Kentucky Power Company and Wheeling Power Company (“Mitchell O&M Agreement”) and the Mitchell Plant Ownership Agreement between Kentucky Power and Wheeling Power (“Mitchell Ownership Agreement”) (collectively the “Proposed Mitchell Agreements”).

The nearly simultaneous November 19, 2021 filings with the Commission, the Public Service Commission of West Virginia and FERC were made in furtherance of the Commission’s directive in its October 8, 2021 Order in this case. The simultaneous filings are necessary to enable Kentucky Power and Wheeling Power, as directed by the Commission, to:

promptly seek modifications to the Mitchell operating agreement should Wheeling move forward with the ELG project, in particular the provisions designating Kentucky Power the operator of Mitchell and assigning it certain responsibilities in that role... Kentucky Power and Wheeling ... [should also] promptly seek modifications of environmental permits related to ELG currently held in Kentucky Power’s name.¹

The Proposed Mitchell Agreements require approval of this Commission, the Public Service Commission of West Virginia, and the Federal Energy Regulatory Commission.²

¹ Order, *In the Matter of: Electronic Investigation Of The Service, Rates And Facilities Of Kentucky Power Company*, Case No. 2021-00370 at 9 (Ky. P.S.C. October 8, 2021).

² As this Commission has previously recognized, operating agreements related to Mitchell are subject to FERC's jurisdiction. Order, *In the Matter of: Application of Kentucky Power Company for (1) A Certification of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power Company of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company’s Efforts to Meet Federal Clean Air Act and Related Requirements; and (5) All Other Required Approvals and Relief*, Case No. 2012-00578, Order at 10-11 (Ky. P.S.C. Nov. 15, 2013).

Thus, absent the November 19, 2021 filing with the two state commissions and FERC, the required modifications of the existing Mitchell Operating Agreement and the environmental permits cannot be promptly obtained.

Although the filing at FERC was made prior to a decision by this Commission in Case No. 2021-00421, where the Company is seeking approval of the Proposed Mitchell Agreements, neither the intent in, nor the effect of, doing so is to preclude or limit Commission review or approval of the proposed agreements, as further described in Kentucky Power's response to KPSC_PHDR_003. Filing the proposed Mitchell Agreements simultaneously with the three regulatory bodies, including FERC, neither contravenes the letter nor the spirit of the Commission's October 28, 2021 Order directing the Company to "request Commission approval to any change to the Mitchell Operating Agreement."³ The agreements are unexecuted by the parties and remain subject to approval by the three regulatory bodies. This Commission, as do the two other commissions, retain their legal authority with the respect to the Mitchell Agreements as further explained in the Company's response to KPSC_PHDR_003.

In addition, where multi-jurisdictional approval for a filing or transaction is required, it is a long-standing practice of Kentucky Power, Wheeling Power, and the other American Electric Power Company, Inc. ("AEP") operating companies to make the regulatory filings simultaneously, or as nearly simultaneously as is practicable, with each regulatory body. The filings were made nearly simultaneously with the three regulatory bodies in furtherance of this long-standing, industry-accepted, and never before questioned practice. Moreover, having the filings before all three regulatory bodies, particularly the two state commissions, is the only way to achieve a balanced outcome for the retail and wholesale customers of both companies and their regulators absent which the current agreement with Kentucky Power as the operator of the plant will remain in place.

The Company further acknowledges that its November 19, 2021 filing with FERC requested that the two agreements, in conformity with Section 205 of the Federal Power Act, will become effective sixty-one days after filing on January 19, 2021. Nevertheless, the filing also expressly recognizes that the Mitchell Agreements may be amended as a result of state regulatory action, and further FERC regulatory approval sought, is required to effectuate state commission requirements: "[t]o the extent that either the WVPSC or KPSC require changes to the Mitchell Agreements, the Parties may need to amend the agreements as filed herein and, in that case, will make the necessary filings with the Commission."⁴

Witness: D. Brett Mattison (as to factual matters in response)

³ Order, *In the Matter of: Electronic Investigation Of The Service, Rates And Facilities Of Kentucky Power Company*, Case No. 2021-00370 at 1-2 (Ky. P.S.C. October 28, 2021).

⁴ Notice of Filing, *KPCO_SR_KPSC_1_1_Attachment7*, *In the Matter of: Electronic Investigation Of The Service, Rates And Facilities Of Kentucky Power Company*, Case No. 2021-00370 at 7 (Ky. P.S.C. Filed November 24, 2021).

Kentucky Power Company
KPSC Case No. 2021-00370
Post-Hearing Data Request Set 1
Dated December 3, 2021

DATA REQUEST

KPSC_PHDR_006 Identify who at Kentucky Power or AEP directed counsel to omit the impending filing of the Mitchell Agreements with FERC from the November 15, 2021 ten-day status update filed in Case Nos. 2021-00004 and 2021-00370.

RESPONSE

No employee of Kentucky Power or AEP (including American Electric Power Service Corporation) “directed counsel to omit the impending filing of the Mitchell Agreement with FERC from the November 15, 2021 ten-day status update filed in Case Nos. 2021-00004 and 2021-00370.” The November 15, 2021 filings were, and remain, fully responsive to KPSC RH_1_1 and KPSC RH_2_6, the two data requests that give rise to the ten-day status update in Case No. 2021-00004, and the Commission’s September 27, 2021 Order in Case No. 2021-00370, which gives rise to the requirement the ten-day status update in Case No. 2021-00004 also be filed in this case.

KSPC RH_1_1 asks Kentucky Power:

Explain Kentucky Power and Wheeling Power’s plan regarding Mitchell. Provide updated status reports every ten days through the pendency of this proceeding.⁵

KPSC RH_2_6 amends KPSC RH_1_1 to require also:

As a continuing request provide a copy of any documents filed by Wheeling Power or by the West Virginia Public Service Commission in West Virginia Public Service Commission Case No. 20-104-E-CN. The documents should be filed as part of the status filed every ten days pursuant to the Commission’s August 19, 2021 Order, Appendix A, Item 1, and include only documents filed in Case No. 20-104-E-CN by Wheeling Power or the West Virginia Public Service Commission since the last status report.⁶

⁵ Order, Appendix A, *In the Matter of: Electronic Application Of Kentucky Power Company For Approval of A Certificate of Public Convenience And Necessity For Environmental Project Construction At The Mitchell Generating Station, An Amended Environmental Compliance Plan, And Revised Environmental Surcharge Tariff Sheets*, Case No. 2021-00004 (Ky. P.S.C. August 19, 2021).

⁶ Commission Staff’s First Rehearing Request for Information Kentucky Power Company, *In the Matter of: Electronic Application Of Kentucky Power Company For Approval of A Certificate of Public Convenience And Necessity For Environmental Project Construction At The Mitchell Generating Station, An Amended*

The Commission's September 27, 2021 Order in Case No. 2021-00370 requires that Kentucky Power:

[i]mmediately subsequent to filing each ten-day status report in Case No. 2021-00004 pursuant to Appendix A, Item 1 of the Commission's Order in that matter, ... [shall] file a notice of filing in this case with the documents with the documents in that most recent 10-day status report.⁷

Kentucky Power's November 15, 2021 ten-day update in Case Nos. 2021-00004 and 2021-00370 provides in pertinent part:

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.

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.

The response answers both data requests with no intent to purposefully leave information out. It details Kentucky Power and Wheeling Power plan with respect to Mitchell: to seek approval for the new Mitchell Agreements. It also reports the absence of filings by Wheeling Power or the West Public Service Commission in Case No. 20-1040-E-CN from November 4, 2021 through November 14, 2021. Although the response does not mention the November 19, 2021 FERC filing, there was no decision by management or counsel, and certainly no direction from management to counsel, to omit the fact of the FERC filing. It simply did not occur to the persons involved in the preparation of the response to include the upcoming FERC application.

Witness: D. Brett Mattison (as to factual matters in response)

Environmental Compliance Plan, And Revised Environmental Surcharge Tariff Sheets, Case No. 2021-00004 at 5 (Ky. P.S.C. September 17, 2021).

⁷ Order, *In the Matter of: Electronic Investigation Of The Service, Rates And Facilities Of Kentucky Power Company*, Case No. 2021-00370 at 3 (Ky. P.S.C. September 27, 2021).

Kentucky Power Company
KPSC Case No. 2021-00370
Post-Hearing Data Request Set 1
Dated December 3, 2021

DATA REQUEST

KPSC_PHDR_007 Identify who at Kentucky Power or AEP directed counsel to file with this Commission the request for approval of changes in the Mitchell Agreements in a different docket than this proceeding and the reason for doing so.

RESPONSE

There was no intent to circumvent any direction by filing in another docket, it was a decision by Kentucky Power intended to keep the record focused on the unique issues at hand.

Kentucky Power first notified the Commission in its ten-day update filed on September 13, 2021 of the possibility it might seek approval of any modifications of the existing Mitchell Operating Agreement in a separate docket: “Kentucky Power Company ... will work to bring the Commission a recommendation on how to handle the Mitchell Operating Agreement in a new docket for review.”⁸ Ten days later the Company reported “Kentucky Power Company will work to bring the Commission a recommendation on how to handle the [M]itchell operating agreement either in Case No. 2021-00370 or in a separate docket.” A similar disclosure was made in the October 4, 2021, October 13, 2021, October 25, 2021, and November 4, 2021 ten-day updates.

On November 5, 2021 Kentucky Power filed its “notice of election of use of electronic filing procedures.” The proposed caption for the case was “*In the Matter of: Electronic Application of Kentucky Power Company For Approval Of Affiliate Agreements Related To The Mitchell Operating Agreement.*” The proposed filing was assigned Case No. 2021-00421 by the Commission. The Company’s November 15, 2021 ten-day status report explained:

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.

⁸ Kentucky Power Supplemental Response to RH 1-1, *In the Matter of: Electronic Application Of Kentucky Power Company For Approval of A Certificate of Public Convenience And Necessity For Environmental Project Construction At The Mitchell Generating Station, An Amended Environmental Compliance Plan, And Revised Environmental Surcharge Tariff Sheets*, Case No. 2021-00004 at 5 (Ky. P.S.C. Filed September 13, 2021).

2021-00421. The Company will file its application before November 30, 2021.⁹

No statute or regulation forecloses Kentucky Power's use of a separate proceeding to bring the Mitchell Agreements to the Commission for review. In fact, the Company regularly files applications with the Commission for discrete relief such as that being sought in Case No. 2021-00421. The wide-ranging scope of the Commission's investigation in this case, as well as the indeterminate timeline for the investigation, also counseled in favor of a separate docket. The separate docket further allowed for those parties to this proceeding who did not wish to participate in the review of the Mitchell Agreements to do so by not seeking intervention.¹⁰ Finally, the Company is unaware of any prejudice to the Commission or the parties to this proceeding by the Company's use of a separate docket for review of the Mitchell Agreements.

The Company acknowledges the Commission's direction that:

Insofar as the Commission doesn't provide a path forward by order in this matter, Kentucky Power should use this docket to propose recommendations on any of the subjects mentioned, or related to those discussed, herein.¹¹

Kentucky Power did not understand the September 15, 2021 Order to require the Company to file its application for approval of the Mitchell Agreements in this case. Nor did it understand the Order to prohibit the Company from filing for approval of the Mitchell Agreement in a separate proceeding. Acting on its understanding of the Commission's September 15, 2021 Order, the Company on five different occasions¹² over a period of nearly two months brought to the attention of the Commission and the parties to this proceeding its proposal to seek approval of the Mitchell Agreements in a separate proceeding. Mr. Mattison participated in the decision making, with counsel, to file the application in the separate proceeding.

Witness: D. Brett Mattison (as to factual matters in response)

⁹ Notice of Election Of Use Of Electronic Filing Procedures, *In the Matter of: The Electronic Application Of Kentucky Power Company For Approval Of Affiliate Agreements Related To The Mitchell Generating Station*, Case No. 2021-00421 (Ky. P.S.C. Filed November 5, 2021).

¹⁰ Only two of the four intervenors in this proceeding sought intervention in Case No. 2021-00421.

¹¹ Order, *In the Matter of: Electronic Investigation Of The Service, Rates And Facilities Of Kentucky Power Company*, Case No. 2021-00370 at 8 (Ky. P.S.C. September 15, 2021).

¹² The September 13, 2021 and September 23, 2021 ten-day updates in Case No. 2021-0004 indicating the Company's intent to seek approval of the Mitchell Agreements in a separate proceeding also were incorporated by reference in the record of this proceeding by the Commission's September 15, 2021 Order initiating this investigation.



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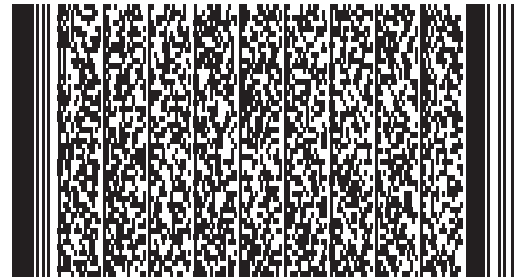
E-Signature Summary

E-Signature 1: Stephan Haynes (STH)

December 13, 2021 08:46:43 -8:00 [BC91922013AF] [167.239.221.106]
sthaynes@aep.com (Principal) (Personally Known)

E-Signature Notary: S. Smithhisler (SRS)

December 13, 2021 08:46:43 -8:00 [2096397AA3DF] [167.239.221.104]
srsmithhisler@aep.com
I, S. Smithhisler, did witness the participants named above electronically sign this document.



VERIFICATION

The undersigned, Stephan T. Haynes, being duly sworn, deposes and says he is Senior Vice President of Strategy & Transformation for American Electric Power Service Corporation that he has personal knowledge of the matters set forth in the forgoing responses and the information contained therein is true and correct to the best of his information, knowledge and belief after reasonable inquiry.

Stephan Haynes

Stephan T. Haynes

STATE OF OHIO

)

) Case No. 2021-00370

COUNTY OF FRANKLIN

)

Subscribed and sworn to before me, a Notary Public in and before said County and State, by
Stephan T. Haynes, this 13th day of December 2021.

S. Smithisler

Notary Public

Notary ID Number: 2019-RE-775042

My Commission Expires: April 29, 2024



Notarial act performed by audio-visual communication

CD03DAA6-2DFD-4898-AB78-AD316AA00A28 --- 2021/12/13 07:37:54 -8:00 --- Remote Notary





KY Discovery Verification - Mattison.docx

DocVerify ID: D56EE14E-E02C-441B-A5EC-A98906CE0C11
Created: December 13, 2021 07:40:04 -8:00
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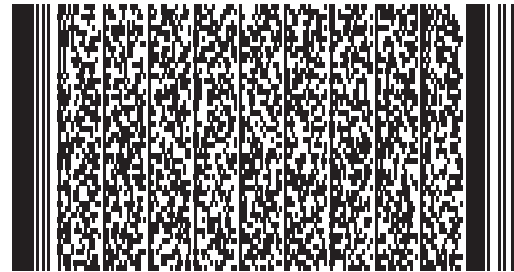
E-Signature Summary

E-Signature 1: Deryle Brett Mattison (DBM)

December 13, 2021 09:02:16 -8:00 [5D584C5DE53E] [167.239.221.106]
bmattison@aep.com (Principal) (Personally Known)

E-Signature Notary: S. Smithhisler (SRS)

December 13, 2021 09:02:16 -8:00 [4E45DB8CEA09] [167.239.221.104]
srsmithhisler@aep.com
I, S. Smithhisler, did witness the participants named above electronically sign this document.



VERIFICATION

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

Deryle Brett Mattison

D. Brett Mattison

STATE OF OHIO

)

) Case No. 2021-00370

COUNTY OF FRANKLIN

)

Subscribed and sworn to before me, a Notary Public in and before said County and State, by D. Brett Mattison, this 13th day of December 2021.

S. Smithisler

Notary Public



Notary ID Number: 2019-RE-775042

My Commission Expires: April 29, 2024

Notarial act performed by audio-visual communication

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