

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

In the Matter of:

The Electronic Application of Kentucky Power	)	
Company for Approval of Affiliate Agreements	)	
Related to The Mitchell Generation Station	)	Case No. 2021-00421

**REBUTTAL TESTIMONY OF**  
**STEPHAN T. HAYNES**  
**ON BEHALF OF KENTUCKY POWER COMPANY**

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**EXHIBITS**

<b><u>EXHIBIT</u></b>	<b><u>DESCRIPTION</u></b>
EXHIBIT STH-R1	AG-KIUC response to Kentucky Power Discovery Requests 1-17 and 1-18
EXHIBIT STH-R2	AG-KIUC response to Kentucky Power Discovery Request 1-16

**DIRECT TESTIMONY OF  
STEPHAN T. HAYNES ON BEHALF OF  
KENTUCKY POWER COMPANY  
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY**

**CASE NO. 2021-00421**

**I. INTRODUCTION**

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

2 A. My name is Stephan T. Haynes, and I am senior vice president, Strategy and  
3 Transformation, Portfolio Optimization for American Electric Power Service  
4 Corporation (“AEPSC”). AEPSC is a wholly-owned subsidiary of American Electric  
5 Power Company, Inc. (“AEP”) and provides engineering, regulatory, financing,  
6 accounting, and planning and advisory services to subsidiaries of AEP, including  
7 Kentucky Power Company (the “Company” or “Kentucky Power”). My business  
8 address is 1 Riverside Plaza, Columbus, Ohio 43215.

**II. BACKGROUND**

9 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**  
10 **BACKGROUND.**

11 A. I earned a master’s degree in business administration from The Ohio State University,  
12 and a bachelor of business systems analysis degree, summa cum laude, from Harding  
13 University. I have also completed the AEP/OSU Management Development Program  
14 and the Darden Program at the University of Virginia.

15 I began my AEP career in 1984 as a programmer in the information systems  
16 department. After advancing through several positions in the information systems,

1 investor relations, and corporate finance departments, I assumed the position of  
2 Managing Director, Risk Oversight in 1998. In 2002, I was promoted to Vice  
3 President, Market Risk Oversight. In 2004, I became Vice President Corporate Finance  
4 and Assistant Treasurer, where I was responsible for cash management, market risk  
5 activities, trusts and investments, and the planning and execution of AEP's corporate  
6 financing programs, including debt and equity instruments, and banking relationships.  
7 In 2015 I was promoted to Senior Vice President, Strategic Initiatives and Chief Risk  
8 Officer, where I was responsible for all risk management functions, strategic initiatives,  
9 and strategic analysis for new business opportunities. I assumed my current position  
10 in January 2019.

11 **Q. WHAT ARE YOUR RESPONSIBILITIES AS SENIOR VICE PRESIDENT,**  
12 **STRATEGY AND TRANSFORMATION?**

13 A. I am responsible for overseeing AEP's strategic planning activities and strategic  
14 transactions such as mergers, acquisitions, joint ventures, and divestitures. I have been  
15 involved in a leadership role in a number of transactions over my time in this position.

16 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN ANY**  
17 **REGULATORY PROCEEDINGS?**

18 A. Yes. I have most recently filed direct testimony supporting the Joint Application of  
19 AEP, Kentucky Power, and Liberty Utilities Co. ("Liberty") for Approval of the  
20 transfer of ownership and control of Kentucky Power Company to Liberty. (Case  
21 Number 2021-00481, *Electronic Joint Application of American Electric Power*  
22 *Company, Inc., Kentucky Power Company and Liberty Utilities Co. For Approval of*  
23 *The Transfer of Ownership and Control of Kentucky Power Company*, filed January 4,

1 2022.). I have also filed testimony before the Public Utility Commission of Texas, the  
2 Public Utilities Commission of Ohio, the Virginia State Corporation Commission, the  
3 Indiana Utility Regulatory Commission, and the Federal Energy Regulatory  
4 Commission on behalf of numerous Kentucky Power affiliates.

5 **Q. DID YOU OFFER DIRECT TESTIMONY IN THIS PROCEEDING?**

6 A. No. I did not.

### III. PURPOSE OF TESTIMONY

7 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

8 A. The purpose of my testimony is to respond to the allegations of Lane Kollen of J.  
9 Kennedy and Associates, Inc. who submitted direct testimony on behalf of the Office  
10 of Attorney General of the Commonwealth of Kentucky and Kentucky Industrial  
11 Utility Customers, Inc. My testimony will demonstrate that the terms and conditions  
12 of the buyout transaction proposed by Section 9.6 of the Mitchell Plant Ownership  
13 Agreement are reasonable, lawful, and will allow Kentucky Power Company and  
14 Wheeling Power Company to comply with the orders of their respective commissions.  
15 In particular, contrary to the allegations of Witness Kollen, I will demonstrate that the  
16 buyout clause as proposed by the Company determines a price that is fair to Kentucky  
17 Power, that a floor price as proposed by Witness Kollen is unnecessary and would be  
18 counterproductive, that the appraisal terms are sufficient and appropriate in their level  
19 of detail, and that the components of the Buyout Price criticized by Witness Kollen set  
20 forth in the Mitchell Plant Ownership Agreement are, in fact, fair and reasonable and  
21 superior to the alternatives he proposes. I also respond to allegations made by Witness

1 Kollen that the Mitchell Plant Operations and Maintenance Agreement should be  
 2 rejected solely because it references the Mitchell Plant Ownership Agreement.

3 In addition, my testimony presents an alternate structure for the buyout  
 4 transaction that would be acceptable to the Company and which seeks to address many  
 5 of the concerns expressed by witness Kollen in his testimony.

6 **Q. WHAT OTHER WITNESSES ARE PRESENTING REBUTTAL TESTIMONY**  
 7 **IN THIS MATTER?**

8 A. In addition to my testimony, the Company is also presenting testimony by Allyson  
 9 Keaton, Tax Analyst Principal – Tax Accounting and Regulatory Support, and Jason  
 10 Cash, Director Regulatory Accounting Services, for AEPSC. Witnesses Keaton and  
 11 Cash respond, respectively, to Witness Kollen’s arguments that the buyout price should  
 12 be set in relation to certain tax and decommissioning costs in the event those benefits  
 13 to customers would otherwise exceed the fair market value of Kentucky Power’s  
 14 interest in the Mitchell Plant.

15 **Q. ARE YOU SPONSORING ANY EXHIBITS?**

16 A. I am sponsoring the following rebuttal exhibits:

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
EXHIBIT STH-R1	AG-KIUC response to Kentucky Power Discovery Requests 1-17 and 1-18
EXHIBIT STH-R2	AG-KIUC response to Kentucky Power Discovery Request 1-16

**IV. REBUTTAL OF MITCHELL PLANT OWNERSHIP AGREEMENT****ALLEGATIONS OF WITNESS KOLLEN**

1 **Q. WHAT CRITICISMS OF THE MITCHELL PLANT OWNERSHIP**  
2 **AGREEMENT MADE BY WITNESS KOLLEN DO YOU ADDRESS IN YOUR**  
3 **TESTIMONY?**

4 A. In his testimony, Witness Kollen takes issue with certain aspects of the terms of the  
5 Buyout Transaction set forth in Section 9.6 of the Mitchell Plant Ownership  
6 Agreement. Specifically, his criticisms, which I will address below, are that (1) the  
7 buyout price set by the agreement is unreasonable and, in his lay opinion, unlawful  
8 because it is not the greater of net book value or fair market value; (2) the  
9 decommissioning cost component of the buyout price should be rejected and  
10 determined at a later date or, if determined in accordance with the fallback fair market  
11 value methodology and not by mutual agreement, should be modified to reflect Witness  
12 Kollen's alternative approach; (3) certain costs and investments not explicitly  
13 referenced should be expressly included in the calculation of the coal inventory  
14 adjustment component of the buyout price, assuming the buyout price is determined in  
15 accordance with the fallback fair market value methodology and not by mutual  
16 agreement; and (4) that the form of Mitchell Interest Purchase Agreement that would  
17 be used if the buyout is consummated in 2028 should be included in the agreement at  
18 this time.

19 **Q. DOES WITNESS KOLLEN EXPRESS DISAPPROVAL OF ANY PROVISIONS**  
20 **OF THE PROPOSED NEW MITCHELL PLANT OWNERSHIP**

1           **AGREEMENT, OTHER THAN THE BUYOUT PROVISIONS IN SECTION**  
2           **9.6?**

3    A.    No. Other than Section 9.6 and definitions related to the buyout itself, Witness Kollen  
4           does not contest or express disapproval of any other provisions, including,  
5           significantly, those provisions designed to segregate investment in ELG and related  
6           O&M costs between the Company and Wheeling Power.

a.    **Rebuttal of Witness Kollen's Allegations Regarding the Fair Market Value**

**Price Determination**

7    **Q.    WITNESS KOLLEN'S TESTIMONY CRITICIZES THE USE OF FAIR**  
8           **MARKET VALUE TO DETERMINE THE BUYOUT PRICE UNDER**  
9           **SECTION 9.6 OF THE PROPOSED OWNERSHIP AGREEMENT. WHY DID**  
10          **THE COMPANY USE FAIR MARKET VALUE INSTEAD OF A DIFFERENT**  
11          **METHODOLOGY?**

12   A.    The fair market value methodology that accounts for the West Virginia decision to  
13          maintain an option for the plant to operate past 2028 was based on an attempt to be fair  
14          to both owners of the plant and recognize the CCR/ELG decisions made by each state.  
15          For context, the fair market valuation is a backstop proffered if other outcomes are not  
16          elected. The potential steps to determine the disposition of Kentucky Power's interest  
17          in Mitchell include (1) a Retirement Event determined by Wheeling Power after not  
18          choosing to use its ELG enabling equipment for operation past 2028, in which case  
19          Kentucky Power will be responsible for its 50% ownership share of decommissioning  
20          costs, and if Wheeling Power decides to operate past 2028, then (2) entering into a  
21          negotiated transfer price prior to June 30, 2027, subject to the approval of this



1 Commission and the Public Service Commission of West Virginia. However, if used,  
2 the fair market valuation process would ensure fairness for both Kentucky Power and  
3 Wheeling Power and their respective customers by recognizing the value each have  
4 paid and will pay to create value in the Mitchell Plant. The fair market value is intended  
5 to reflect what an arms-length transaction price would be for the Mitchell Plant.

6 **Q. WITNESS KOLLEN STATES ON PAGE 8 OF HIS TESTIMONY THAT THE**  
7 **“BUYOUT PRICE” IN THE MITCHELL PLANT OWNERSHIP**  
8 **AGREEMENT IS NOT REASONABLE. WHAT IS WITNESS KOLLEN’S**  
9 **PRIMARY ARGUMENT?**

10 A. Witness Kollen’s primary argument is that the price set out in the Mitchell Plant  
11 Ownership Agreement must be the greater of net book value or market value, and that  
12 the agreement, which requires a mutually agreed price or, alternatively, a fair market  
13 value price absent mutual agreement or an earlier retirement, does not comport with  
14 this stated requirement. My further understanding is that Witness Kollen’s lay opinion  
15 is based on his interpretation of Kentucky law that such pricing is a “statutory  
16 requirement” under Kentucky Revised Statutes (KRS) 278.2207.

17 **Q. DOES WITNESS KOLLEN’S ARGUMENT ACKNOWLEDGE THE EXPRESS**  
18 **LANGUAGE IN THE STATUTE THAT KRS 278.2207 APPLIES ONLY TO**  
19 **TRANSACTIONS BETWEEN A UTILITY “AND ITS AFFILIATES”?**

20 A. No, which makes his argument misleading at best. I am informed by counsel that KRS  
21 278.2207 would not apply if the Buyout Transaction is between Kentucky Power and  
22 a non-affiliate. I am also informed by counsel that, even in circumstances where KRS  
23 278.2207 applies, a utility can seek a deviation for a particular transaction subject to a

1 demonstration that the requested pricing is reasonable, and the Commission may grant  
2 such a request if the deviation is in the public interest.

3 **Q. ARE THERE CIRCUMSTANCES UNDER WHICH THE BUYOUT**  
4 **TRANSACTION WOULD NOT BE BETWEEN KENTUCKY POWER AND**  
5 **AN AFFILIATE?**

6 A. Yes. In Case Number 2021-00481, which is currently pending before the Commission,  
7 AEP, Kentucky Power and Liberty are jointly seeking approval for the sale of Kentucky  
8 Power to Liberty. If that transaction is consummated as planned, the Buyout  
9 Transaction, should it occur in 2028, will clearly not be between Kentucky Power and  
10 an affiliate, in which case KRS 278.2207 will not apply to the transaction. It will  
11 instead be an arm's length transaction between Kentucky Power and a non-affiliate.  
12 As noted in the joint application in this case, Kentucky Power is not seeking approval  
13 in this case for a Buyout Transaction, if any, and would plan to seek any appropriate  
14 approval from the Commission for that transaction closer to 2028 when Kentucky  
15 Power should be under new ownership.

16 **A. DOES WITNESS KOLLEN ACKNOWLEDGE THAT KRS 278.2207 WOULD**  
17 **NOT APPLY TO A SALE OF KENTUCKY'S MITCHELL INTEREST TO**  
18 **WHEELING POWER IF LIBERTY BECOMES KENTUCKY POWER'S**  
19 **OWNER?**

20 A. Yes. Witness Kollen subsequently acknowledges on page 18 of his testimony that his  
21 higher of net book or fair market value dictate would not legally apply to the Buyout  
22 Transaction when Liberty becomes Kentucky Power's owner. Indeed, it is only at this  
23 later point in his testimony where Witness Kollen admits, as he must, that KRS

1 278.2207 “specifically applies to affiliate transactions” and not to transactions as a  
2 general principle.

3 **Q. DOES WITNESS KOLLEN’S TESTIMONY THAT THE BUYOUT PRICE**  
4 **SHOULD HAVE A FLOOR OF NET BOOK VALUE HAVE ANY MERIT**  
5 **REGARDLESS OF WHETHER THE SALE IS TO AN AFFILIATE?**

6 A. No. Witness Kollen’s demand for a net book value floor for the Buyout Transaction is  
7 fundamentally flawed in these circumstances regardless of whether the buyer is an  
8 affiliate or a non-affiliate. Mitchell Plant’s net book value, which is based on each  
9 owner’s net investment in the Mitchell Plant, and is subject to regulatory-determined  
10 depreciation rates, does not necessarily approximate fair market value, to the potential  
11 detriment of both parties. In 2028, the net book value on the books of either company  
12 could be much greater than, or potentially much less than, the Mitchell Plant’s fair  
13 market value, depending on both companies’ level of investment and separate rates of  
14 depreciation. By contrast, the use of fair market value in this circumstance provides a  
15 neutral benchmark that assures a fair price to both owners based on the actual value of  
16 the plant at the time of the sale.

17 **Q IS THERE ANY MERIT TO WITNESS KOLLEN’S ASSERTIONS OF**  
18 **ACCOUNTING AND TAX RAMIFICATIONS OF THE BUYOUT**  
19 **TRANSACTION THAT COULD ARGUABLY RESULT IN A FLOOR PRICE?**

20 A. No. Witness Kollen makes various assertions about how accumulated depreciation  
21 costs related to decommissioning and certain alleged lost tax benefits or additional tax  
22 costs should be applied to the Buyout Price. These allegations are refuted by Company  
23 Witnesses Cash and Keaton in their respective rebuttal testimonies.

1 **Q. WOULD A FLOOR PRICE BE AN EFFECTIVE WAY TO ENSURE A**  
2 **MINIMUM VALUE FOR KENTUCKY POWER AND KENTUCKY**  
3 **CUSTOMERS?**

4 A. No. In fact, it could be counterproductive or detrimental to the interests of Kentucky  
5 Power and Kentucky Power customers. The buyout process has the potential to release  
6 value for Kentucky Power and its customers of Kentucky Power's undivided interest  
7 in the Mitchell Plant as a going concern through a sale to its co-owner, Wheeling  
8 Power. Releasing this value through a sale to another entity would not be an option for  
9 Kentucky Power beyond 2028 because Kentucky Power will not be investing in the  
10 ELG environmental control equipment. Thus, any other sale would be flawed because  
11 Kentucky Power does not own the ELG equipment necessary for its share of the plant  
12 to operate beyond 2028 due to orders of the Commission rejecting the CPCN for that  
13 investment. If Kentucky Power and Wheeling Power are unable to agree on a price  
14 due to a floor price that is set above what a willing buyer would otherwise pay, there  
15 would be no sale and Kentucky Power and its customers would not realize any  
16 proceeds.

17 **Q IF THE PLANT IS NOT SOLD TO WHEELING POWER DUE TO AN**  
18 **ARTIFICIAL FLOOR PRICE FOR THE BUYOUT TRANSACTION, WHAT**  
19 **WOULD HAPPEN BY COMPARISON IF THE PLANT THEN RETIRES?**

20 A. In that case, if Kentucky Power and its customers are put on a path to plant retirement  
21 in 2028, they would by comparison face the incurrence of decommissioning costs,  
22 offset only by whatever scrap value can be realized from the plant. Kentucky Power  
23 and its customers would forego any offset to the remaining book value of the plant that

1 could be realized from the sale. In addition, Kentucky Power and its customers would  
2 also not be shielded from ongoing environmental and other liabilities associated with  
3 the decommissioning process in the same manner that a sale to Wheeling Power would  
4 accomplish under the terms of the Buyout Transaction. Witnesses Cash and Keaton  
5 respond to various claims made by Witness Kollen that Kentucky Power is foregoing  
6 certain tax and accounting benefits if the plant is sold instead of “abandoned” or retired.

7 **Q. IF THE BUYOUT PRICE IS SUBJECT TO AN ARTIFICIAL FLOOR PRICE,**  
8 **WHAT ELSE COULD OCCUR IN THE PERIOD LEADING TO 2028?**

9 A. Based on the facts that Kentucky Power and Wheeling Power have different investment  
10 plans and intentions for the plant post-2028, there could be a ‘stalemate’ where an  
11 agreement on the transfer price does not occur or does not receive regulatory approval  
12 and therefore there is no ownership transfer at the end of 2028 from Kentucky Power  
13 to Wheeling Power. This could lead to various scenarios for plant operations. Because  
14 of its undivided ownership interest of the units, Kentucky Power may be forced to pay  
15 plant operating costs after 2028 if Wheeling Power continues to operate the plant.  
16 Another scenario is that Wheeling Power does not provide access to its ELG investment  
17 which is required for plant operations and the plant must shut down because the plant  
18 does not have what it needs to run in a compliant manner. Clearly, an unrealistic floor  
19 could at a minimum lead to significant uncertainty around the future of the plant  
20 operations, employees, costs, etc. This could lead to financial burdens to either or both  
21 parties. The proposed agreement is an attempt to provide a mechanism should other  
22 efforts not result in agreement or a retirement is not declared by Wheeling Power.

1 **Q. PLEASE COMMENT ON WITNESS KOLLEN’S ALLEGATION THAT THE**  
2 **APPRAISAL PROCESS HAS A “DOWNWARD BIAS” IN COMPARISON TO**  
3 **AN ACQUISITION BY A REGULATED ENTITY WHICH HE SUGGESTS**  
4 **SHOULD BE REQUIRED TO PAY A COST BASED NET BOOK VALUE**  
5 **PRICE.**

6 A. Witness Kollen’s analysis seems to be based on a false premise that a “hedge fund”  
7 would find less value in Kentucky Power’s share of the Mitchell Plant than Wheeling  
8 Power, or that Wheeling Power would find more value in the Mitchell Plant because it  
9 is regulated and has the opportunity to earn a regulated return on its investment in the  
10 Mitchell Plant because it has cost of service customers. Neither is the case. The plant’s  
11 value to a buyer is based on its potential for future market earnings. The benefit to any  
12 purchaser is largely based on the Mitchell Plant’s expected margins over its costs  
13 through its anticipated retirement date, less the costs of decommissioning. A rational  
14 purchaser, whether a regulated utility or an unregulated market participant, would have  
15 the same view and would also take into account environmental and other risks.

16 Recognizing this is the case, the appraisal process is a neutral approach that  
17 would determine a market value that could be obtained in an arm’s length sale between  
18 an informed and willing buyer and seller. The appraisers are required by the agreement  
19 to be nationally or regionally recognized appraisal firms – not hedge funds, private  
20 equity investors, or merchant generators as Witness Kollen’s testimony implies – with  
21 experience valuing coal-fired electric generating facilities that are comparable in size  
22 and scope to the Mitchell Plant. The process would discard any low or high appraisals

1 beyond the outlier range set forth in the agreement, thus also not favoring high or low  
2 determinations.

3 **Q. DO YOU AGREE THAT WITHOUT A NET BOOK VALUE FLOOR PRICE,**  
4 **KENTUCKY POWER LACKS BARGAINING POWER IN NEGOTIATING**  
5 **THE SALE PRICE WITH WHEELING POWER?**

6 A. No. Fair market value provides an appropriate, neutral backstop methodology to  
7 providing a price and, as noted above, a floor would be counterproductive to the  
8 interests of Kentucky Power and its customers. Furthermore, Wheeling Power will  
9 have made significant investments in ELG equipment and equipment for which it has  
10 paid more than its ownership share because the equipment is intended to be operated  
11 beyond 2028. Without achieving a commercial resolution of the price and purchasing  
12 Kentucky Power's interest, Wheeling Power will not be able to fully realize the benefits  
13 of its investment because the plant will retire in 2028 as currently proposed. Thus, the  
14 current agreement achieves a balance of each owner's commercial interests. That these  
15 provisions are fair to both companies is supported by the fact that the Mitchell Plant  
16 Ownership Agreement and Mitchell Plant Operations and Maintenance Agreement, as  
17 proposed, were accepted by Liberty as part of the agreements under which it would  
18 acquire Kentucky Power, including its current and future interests in the Mitchell Plant.

19 **Q. DID LIBERTY CONSIDER THE RAMIFICATIONS OF THE BUYOUT**  
20 **CLAUSE WHEN IT ENTERED INTO THE STOCK PURCHASE**  
21 **AGREEMENT?**

22 A. Yes. While it would be inappropriate for me to comment in detail because of the  
23 confidential and sensitive nature of discussions between AEP and Liberty which

1 occurred when Liberty was a bidder, Liberty did provide me the authority to represent  
2 that those provisions were consequential and among the most actively discussed aspects  
3 of the overall transaction with AEP. D. Brett Mattison in his direct testimony in this  
4 case testified that the current Mitchell Plant operating agreement needs to be revised  
5 and the two new Mitchell Agreements are needed due to the diverging orders of the  
6 Kentucky and West Virginia commissions regardless of the sale of the Company to  
7 Liberty. That is true, and it is also true that these same Mitchell buyout transaction  
8 issues were of considerable commercial interest to Liberty as the prospective owner of  
9 Kentucky Power. Simply put, after the transaction closes, Liberty will step into the  
10 shoes of Kentucky Power and need to live with the resulting agreement as its own. As  
11 a result, Liberty provided significant input into those provisions, as well as the other  
12 aspects of the Mitchell Agreements, prior to agreeing to their forms (including the  
13 structure of the future Buyout Transaction and the fair market valuation process) which  
14 then became exhibits to the Stock Purchase Agreement. Liberty was represented in  
15 those discussions by senior personnel, as well as its outside counsel.

16 To further highlight the importance to Liberty, obtaining approvals of the  
17 Mitchell Agreement from all three jurisdictions – Kentucky, West Virginia and FERC  
18 – became a condition precedent to the closing of the overall transaction. If these  
19 approvals are not obtained, or if the orders negatively deviate from what was proposed,  
20 Liberty has certain rights under the agreement which, depending on the nature of the  
21 orders, could give rise to the termination of the Stock Purchase Agreement.

22 **Q. ON PAGES 11-12 OF HIS TESTIMONY, WITNESS KOLLEN APPEARS TO**  
23 **SUGGEST THAT THE BUYOUT PRICE PAID BY WHEELING POWER**



1           **SHOULD BE INCREASED TO REFLECT THE SO-CALLED “VALUE OF**  
2           **THE MITCHELL PLANT TO WEST VIRGINIA.” DO YOU AGREE THIS**  
3           **WOULD BE A FAIR WAY TO VALUE THE PLANT?**

4    A.    No. Even if it was commercially willing to pay such a price, it would clearly be unfair  
5           to require Wheeling Power and its customers to pay a higher amount because of  
6           perceived benefits to the state of West Virginia associated with the plant. The  
7           Kentucky Commission declined to make the ELG investment, rendering the use of the  
8           plant for Kentucky customers inapplicable past 2028. Witness Kollen appears to ignore  
9           this or at least seeks to take advantage of the West Virginia decision to preserve an  
10          option for the Mitchell Plant and apply that option for use by Kentucky customers. It  
11          would be inappropriate as a matter of public policy for the Commonwealth of Kentucky  
12          to seek to obtain a windfall from citizens in a neighboring state such as West Virginia  
13          arising from the location of the plant and the normal operations of its laws, or the  
14          choices made by Kentucky Power as operator of the plant regarding where to source  
15          coal for the plant. In fact, the Company and Wheeling Power have ensured in the  
16          Mitchell Plant Ownership Agreement that Kentucky customers are insulated from  
17          Wheeling Power’s decision based on the orders of the Public Service Commission of  
18          West Virginia to invest in ELG and to further invest in and maintain the Mitchell Plant  
19          at the level necessary for it to operate beyond 2028. Having sought to safeguard  
20          Kentucky’s interests and to clear a path to effectuate the Kentucky CCR-only decision,  
21          to then penalize West Virginia customers in the manner Mr. Kollen suggests would be  
22          highly inappropriate.

1 **Q: IS IT WITNESS KOLLEN'S POSITION THAT KENTUCKY POWER COULD**  
2 **NOT COOPERATE IN A TRANSFER OF THE UNIT TO WHEELING POWER**  
3 **AND THEREBY ATTEMPT TO OBTAIN BENEFITS FROM THE**  
4 **MITCHELL PLANT BEYOND 2028 EVEN THOUGH THE COMMISSION**  
5 **DENIED THE ELG INVESTMENT THAT WOULD HAVE ENABLED SUCH**  
6 **A RESULT?**

7 A. It is unclear if Witness Kollen is supporting such an extreme position. In discovery, a  
8 similar question was posed to Witness Kollen, and he indicated that Kentucky Power  
9 could still derive benefits from the Mitchell Plant beyond 2028, but as the result of a  
10 new option or agreement. The testimony appears to recognize the decision to not invest  
11 in ELG is a limiting factor and that this action put an ending point for Kentucky  
12 customer use absent some other agreement. Witness Kollen's responses to these  
13 questions are attached to my rebuttal testimony as Exhibit STH-R1, which is comprised  
14 of the AG-KIUC responses to Kentucky Power discovery requests 1-17 and 1-18.

15 **Q. EVEN ASSUMING THE BUYOUT TRANSACTION IS BETWEEN**  
16 **AFFILIATES, DO YOU AGREE WITH WITNESS KOLLEN THAT THE**  
17 **BUYOUT PRICE METHODOLOGY IS CONTRARY TO KENTUCKY LAW**  
18 **BECAUSE IT DOES NOT SET NET BOOK VALUE AS THE FLOOR PRICE?**

19 A. No. I have been informed by counsel that the fact that the price for the buyout  
20 transaction is set by the Mitchell Plant Ownership Agreement at fair market value does  
21 not automatically run afoul of Kentucky's affiliate pricing rules. As noted above in my  
22 testimony, the fair market value price is a fallback in case the parties do not reach  
23 mutual agreement on a buyout price (assuming the Mitchell Plant is not earlier retired).

1 Any price that the parties agree to will need to be judged in accordance with Kentucky  
2 as well as West Virginia law as they apply to the facts at the time of the sale.

3 **Q. IF THE COMPANIES ARE AFFILIATES AT THE TIME OF THE SALE IN**  
4 **2028, CAN KENTUCKY POWER COMPLY WITH KENTUCKY LAW**  
5 **WITHOUT A NET BOOK VALUE FLOOR?**

6 A. As discussed in the Application in this case, Kentucky Power would intend to seek all  
7 necessary regulatory approvals for the sale including a deviation from the Kentucky  
8 affiliate pricing rules, if any should be necessary. Kentucky Power is not seeking  
9 approval for any actual buyout transaction at this time; thus, it would be premature for  
10 the Commission to determine how Kentucky law will apply to such a future transaction,  
11 should it ever occur. The Commission also retains its authority to review any sale based  
12 on the facts and circumstances, and does not need to judge those issues now.

13 **Q. DOES WITNESS KOLLEN TAKE INTO ACCOUNT THE AFFILIATE**  
14 **PRICING RULES THAT APPLY TO BOTH OWNERS OR JUST TO**  
15 **KENTUCKY POWER?**

16 A. This is an important point that Witness Kollen fails to address: during the period that  
17 Wheeling Power and Kentucky Power are affiliates, the companies are subject to the  
18 affiliate transaction pricing rules of their respective states, which each operate in an  
19 opposite and potentially mutually exclusive manner. The selling state (Kentucky)  
20 would generally require that the affiliate sale be made at the higher of net book value  
21 or market, and the purchasing state (West Virginia) would generally require that the  
22 purchase be made at the lower of net book value or market. Faced with these naturally  
23 divergent rules, the use of fair market value provides an objective methodology that

1 places both parties in the same position as if they purchased and sold Kentucky Power's  
2 interest in the plant in an arm's length transaction with an unrelated third party.

3 **Q. PLEASE ADDRESS WITNESS KOLLEN'S STATEMENTS THAT PRIOR**  
4 **SALES BETWEEN KENTUCKY POWER, WHEELING POWER AND ITS**  
5 **AFFILIATES OF INTERESTS IN THE MITCHELL PLANT WERE AT BOOK**  
6 **VALUE AND NOT FAIR MARKET VALUE.**

7 A. The three prior transfers of Mitchell Plant at adjusted net book value – from Ohio Power  
8 Company to AEP Generation Resources, Inc. ("AEPGR"), and from AEPGR in equal  
9 shares to the Company and Wheeling Power Company, respectively – are inapposite  
10 and not informative to the buyout price in this case. Those transfers were the final  
11 outcome of a corporate reorganization of Ohio Power Company due to the deregulation  
12 of generation in Ohio. Those circumstances, under which ownership of the plant was  
13 re-allocated among AEP affiliates due to a mandatory divestiture, are inherently  
14 different than the circumstances here, where the potential future transfer of the plant  
15 under the Mitchell Plant Ownership Agreement will be at Wheeling Power's option,  
16 based on the future economics of the plant in comparison to the option of retiring the  
17 plant, and will likely occur when the companies are no longer affiliates.

18 **Q. PLEASE COMMENT ON OTHER FACTORS THAT MAKE A NET BOOK**  
19 **VALUE TRANSFER AMONG THE MITCHELL PLANT CO-OWNERS**  
20 **INAPPROPRIATE UNDER THE CURRENT CIRCUMSTANCES.**

21 A. Transfers at net book value between plant co-owners would typically happen between  
22 regulated utilities under circumstances where there is alignment on the remaining  
23 useful life of the plant based on the investments they have equally made. Although the

1 Mitchell Plant may be operated beyond 2028 by Wheeling Power, the value of the plant  
2 to Kentucky Power terminates as of December 31, 2028 because Kentucky Power will  
3 not be investing in the ELG environmental control equipment necessary for the plant  
4 to operate after that date due to orders of the Commission denying the CPCN for that  
5 investment. As the commissions themselves have recognized through their orders  
6 approving different approaches to environmental compliance at the Mitchell Plant, the  
7 future value of the plant to each owner and its commission is subject to differing views  
8 which may cause very different investment plans and plans for the plant beyond 2028  
9 not recognized by a net book value approach.

10           Witness Kollen responded in discovery that a state commission may decide to  
11 not tie a depreciation rate to the end of the useful life of an asset to customers due to  
12 concerns with rate impacts, riders available for recovery, and the size of the balance to  
13 be recovered. Exhibit STH-R2, attached to this rebuttal testimony, consists of witness  
14 Kollen's response to Kentucky Power discovery request 1-16. But that is a state  
15 commission policy decision based on customer impacts and not a useful life analysis  
16 of the plant. While state commissions may adjust depreciation rates for customer  
17 impact issues, they should also recognize that is a policy choice that could have a  
18 potential impact on other matters where useful life to customers is the primary concern,  
19 such as the transfer price of an affected asset. The buyout transaction in the proposed  
20 Mitchell Ownership Agreement is one such example. For such cases, a policy-driven  
21 determination cannot then be held out to be net book value for transfer purposes,  
22 otherwise a commission could maintain low depreciation rates for an asset to artificially  
23 drive up net book value.

**b. Rebuttal of Witness Kollen's Allegations Regarding the Decommissioning Cost****Adjustment Used in Determining the Buyout Price**

1 **Q. WHY IS THERE A DECOMMISSIONING COST ADJUSTMENT TO THE**  
2 **BUYOUT PRICE IN 2028 IF THE PLANT IS BEING PURCHASED BY**  
3 **WHEELING POWER AND NOT RETIRED AT THAT TIME?**

4 A. The decommissioning cost adjustment is a reduction in the price Wheeling Power  
5 would pay Kentucky Power because the obligation to decommission Mitchell would  
6 transfer to Wheeling Power upon transfer of the Mitchell Plant. The adjustment  
7 recognizes that both Owners bear the decommissioning obligation and that, unless  
8 estimated at the time of transfer, Kentucky Power would need to pay those costs if the  
9 Company's interest was not purchased by Wheeling Power and the Mitchell Plant  
10 instead retired at or before 2028.

11 **Q. HOW IS THE DECOMMISSIONING COST ADJUSTMENT DETERMINED?**

12 A. The decommissioning cost adjustment would be determined by averaging the values  
13 determined by three independent, qualified, engineering or consulting firms with  
14 decommissioning experience, with any outliers removed and the remaining estimates  
15 averaged. The cost would be calculated as of December 31, 2028 as if the Mitchell  
16 Plant were being decommissioned at that date so that Wheeling Power would be  
17 responsible for any changes in decommissioning costs after that date.

18 **Q. IS WHEELING POWER "FINANCING" OR "PREPAYING" WHEELING**  
19 **POWER'S COSTS TO RETIRE THE PLANT IN 2028?**

20 A. No. Estimated decommissioning costs are applied as an adjustment for purposes of  
21 calculating the fair market value price that would be determined in 2028. The use of

1 an estimated value based on 2028 (and not 2040) retirement costs is intended to be a  
2 fair way of addressing Kentucky Power's existing responsibility as co-owner of the  
3 plant for fifty percent of its decommissioning costs and facilitating a permanent exit of  
4 Kentucky Power from those obligations. This structure ensures that Kentucky Power  
5 will not be responsible for future changes in law, plant condition or plant operations  
6 after Wheeling Power assumes future responsibility for the plant for purposes of  
7 determining the buyout price. Company Witness Cash further addresses Witness  
8 Kollen's arguments regarding this topic in his rebuttal testimony.

9 **Q. PLEASE ELABORATE ON YOUR LAST POINT REGARDING THE**  
10 **BENEFIT TO KENTUCKY POWER IN APPLYING ESTIMATED**  
11 **DECOMMISSIONING COSTS TO THE BUYOUT PRICE.**

12 A. The Ownership Agreement transfer process facilitates a full exit by Kentucky Power  
13 from plant operations, as well the full release of its decommissioning obligations, after  
14 December 31, 2028. Wheeling Power currently intends to continue to operate the plant  
15 after that date and the decommissioning obligation could change based on changes in  
16 operations or regulations. Releasing Kentucky Power from its decommissioning  
17 obligations upon transfer of ownership shields the Company from legal and other  
18 developments after December 31, 2028 that could change the scope and cost of  
19 decommissioning. Kentucky Power also would no longer have the obligation to  
20 monitor plant operations and decommissioning after December 31, 2028. In addition,  
21 evaluating the cost of decommissioning costs as of December 31, 2028 helps ensure  
22 that the estimate is insulated from the effects of future operating decisions and  
23 investments in the plant by Wheeling Power after that date, as well as any impacts from

1 changes to environmental laws or general escalations in costs related to  
2 decommissioning. Witness Kollen does not take these aspects into account.

3 **Q. PLEASE COMMENT ON WITNESS KOLLEN'S OPINION ABOUT**  
4 **WHETHER THE DECOMMISSIONING COST ESTIMATE INCLUDES**  
5 **SALVAGE INCOME AND CONTINGENCY RESERVE.**

6 A. As Company Witness Cash states in his rebuttal testimony, salvage income received  
7 from final decommissioning is typically used to offset any final removal costs incurred.  
8 Thus, as would be expected, Section 9.6(c) of the Mitchell Plant Ownership Agreement  
9 provides the appraisers with the latitude to include all applicable factors, including  
10 estimated salvage income, if any. It appropriately does not seek to prescribe today,  
11 almost 7 years in advance of the determination, what factors will or will not be relevant  
12 in recognition that conditions at the Mitchell Plant and the requirements for  
13 decommissioning will change between now and 2028. The decommissioning cost  
14 estimates will be provided by nationally or regionally recognized engineering or  
15 consulting firms, unaffiliated with either owner, and with experience decommissioning  
16 (or arranging decommissioning liability transfer arrangements for) coal-fired electric  
17 generating facilities that are comparable in size and scope to the Mitchell Plant. It  
18 should be anticipated that they would take into account the relevant factors based on  
19 their experience.

20 **Q. DO YOU AGREE WITH WITNESS KOLLEN'S CONTENTION THAT**  
21 **DEDUCTING FIFTY PERCENT OF THE ESTIMATED MITCHELL PLANT**  
22 **DECOMMISSIONING COSTS FROM THE BUYOUT PRICE HARMS**  
23 **KENTUCKY POWER?**



1 A. No. Witness Kollen makes several arguments that the decommissioning cost  
2 methodology harms Kentucky Power when, as described above, it benefits Kentucky  
3 Power by providing it a defined exit from the risks of future Mitchell Plant retirement  
4 obligations. Witness Kollen misleadingly contends that the methodology “assumes”  
5 Kentucky Power will continue to own the plant until 2040. As discussed above, this is  
6 not the case. In fact, the opposite is true. Kentucky Power currently has the obligation  
7 to fund the decommissioning costs of Mitchell Plant as the owner of a 50-percent  
8 undivided interest. By estimating the decommissioning costs as of December 31, 2028  
9 and deducting that amount from the fair market value price to yield a one-time payment  
10 amount, Kentucky Power is in fact avoiding funding decommissioning costs related to  
11 the Mitchell Plant’s operations beyond 2028 when Kentucky Power’s ownership in the  
12 Mitchell Plant has been completely transferred to Wheeling Power pursuant to the  
13 Buyout Transaction. This is why the decommissioning costs are determined for  
14 purposes of the buyout price based on the plant as it exists in 2028, so that Kentucky  
15 Power won’t be responsible for future changes in law, plant condition or plant  
16 operations after Wheeling Power assumes future responsibility for the plant for  
17 purposes of determining the buyout price.

18 **Q. IS KENTUCKY POWER HARMED BECAUSE THE APPLICATION OF THE**  
19 **ESTIMATED DECOMMISSIONING COSTS TO THE BUYOUT PRICE DOES**  
20 **NOT CREDIT KENTUCKY POWER WITH DECOMMISSIONING COSTS**  
21 **ALREADY RECOVERED BY THE COMPANY FROM ITS CUSTOMERS?**

22 A. No. As further described in the rebuttal testimony of Company Witness Cash, this  
23 claim is based on an inaccurate representation of the status of decommissioning costs

1 collected by Kentucky Power, and is largely a ratemaking issue that can be addressed  
2 by the Company at the time of any sale in 2028. Should a sale occur, the Commission  
3 has the ability to safeguard the interests of Kentucky customers when ratemaking  
4 treatment of the sale is considered by the Commission closer to the time of the sale.

5 **Q. DO YOU CONCUR WITH WITNESS KOLLEN'S RECOMMENDATION**  
6 **THAT THE DECOMMISSIONING COSTS COMPONENT OF THE BUYOUT**  
7 **PRICE SHOULD BE ELIMINATED?**

8 A. No. As explained in more detail above, the decommissioning costs component of the  
9 buyout price is a fair and appropriate way of allowing the sale of the plant to occur  
10 while at the same time allowing Kentucky Power to value and exit the  
11 decommissioning obligations as of 2028 that it otherwise would be required to bear  
12 under the current Mitchell Operating Agreement.

13 **Q. DO YOU AGREE WITH WITNESS KOLLEN'S RECOMMENDATION THAT**  
14 **ACCUMULATED DECOMMISSIONING COSTS AS OF 2028 SHOULD BE**  
15 **RECORDED AS A REGULATORY LIABILITY IN LIEU OF INCLUDING**  
16 **ESTIMATED DECOMMISSIONING COSTS IN THE BUYOUT PRICE?**

17 A. No. As explained above, the Company is not requesting any ratemaking treatment in  
18 this filing associated with the buyout price or any component of that price, including  
19 estimated decommissioning costs. The ratemaking treatment of the Buyout Price paid  
20 to Kentucky Power and any accumulated decommissioning costs on the Company's  
21 books in 2028 is more appropriately considered at the time of the sale, if one occurs.

22 **Q. DO YOU BELIEVE IT IS IN THE BEST INTERESTS OF KENTUCKY**  
23 **POWER OR ITS CUSTOMERS THAT DECOMMISSIONING COST**

1           **RESPONSIBILITY SHOULD BE SHIFTED TO A SEPARATE AGREEMENT**  
2           **AND BASED ON THE ACTUAL COSTS INCURRED BY WHEELING**  
3           **POWER, AS SUGGESTED BY WITNESS KOLLEN?**

4    A.    No. As explained above, that would be detrimental to Kentucky Power and its  
5           customers because they would be exposed to future changes in law, plant condition, or  
6           plant operations after Wheeling Power assumes future responsibility for the plant. Any  
7           such future developments would be likely to increase actual decommissioning costs in  
8           comparison to the current agreement which determines an estimate of the  
9           decommissioning cost amount as of 2028.

10   **Q.    HOW DO YOU RESPOND TO WITNESS KOLLEN’S SUGGESTION THAT**  
11           **THE DECOMMISSIONING COSTS SHOULD BE REDUCED BY**  
12           **“ESCALAT[ING] THE ESTIMATED DECOMMISSIONING COSTS TO THE**  
13           **FUTURE VALUE OF THE POST-RETIREMENT DECOMMISSIONING**  
14           **SPEND CURVE AND THEN DISCOUNT THOSE COSTS TO A NET**  
15           **PRESENT VALUE AT DECEMBER 31, 2028 USING THE COMPANY’S**  
16           **GROSSED UP COST OF CAPITAL.”**

17    A.    Witness Kollen’s proposal appears to be rooted in the flawed assumption that the  
18           decommissioning cost estimate is a “prepayment”. Witness Cash and I have both  
19           refuted this assertion in our testimonies; thus, this proposal is without merit for the  
20           reasons we have already given.

c. **Rebuttal of Witness Kollen's Allegations Regarding the Coal Inventory Adjustment**

1 **Q. WHAT IS THE COAL INVENTORY ADJUSTMENT?**

2 A. The coal inventory adjustment adjusts the buyout price for the cost of Kentucky  
3 Power's investment in the Mitchell Plant common coal pile, which would be acquired  
4 by Wheeling Power upon its acquisition of Kentucky Power's interests through the  
5 buyout process.

6 **Q. DOES THE COAL INVENTORY ADJUSTMENT NEED TO BE MODIFIED**  
7 **TO ACCOUNT FOR THE COMPANY'S INVESTMENTS IN OTHER ASSETS**  
8 **OR INVENTORY THAT WILL BE TRANSFERRED TO WHEELING POWER**  
9 **AT THE CLOSING OF THE BUYOUT TRANSACTION, IF ANY?**

10 A. No. Section 9.6(b) provides the appraisers with the latitude to include all applicable  
11 factors in the buyout price. It appropriately does not seek to prescribe today, almost 7  
12 years in advance of the determination, what factors will or will not be relevant in  
13 recognition that conditions at the Mitchell Plant and the requirements for  
14 decommissioning will change between now and 2028. The appraisers already have the  
15 ability, if appropriate, to take factors into account such as inventories of scrubber  
16 reagent, other consumables, spare parts, and materials and supplies that will transfer  
17 with Kentucky Power's interests in the Mitchell Plant. The fact they are not specifically  
18 mentioned does not mean they will not be taken into account, if necessary. In fact,  
19 Section 5.4 generally requires the costs of consumables and fuel oil used in operations  
20 to be treated the same as coal, recognizing that such costs should generally be  
21 considered in a similar manner.

**d. Rebuttal of Witness Kollen’s Allegations Regarding the Mitchell Interest Purchase Agreement**

1 **Q. WHAT IS YOUR RESPONSE TO WITNESS KOLLEN’S CONTENTION**  
2 **THAT THE MITCHELL INTEREST PURCHASE AGREEMENT SHOULD**  
3 **HAVE BEEN INCLUDED AS AN EXHIBIT TO THE MITCHELL PLANT**  
4 **OWNERSHIP AGREEMENT AND THAT THE COMPANY’S FILING IS**  
5 **INCOMPLETE?**

6 A. A form of the Mitchell Interest Purchase Agreement is not included as an exhibit to the  
7 Mitchell Plant Ownership Agreement because it will be prepared close to the time of  
8 transfer rather than today. Intervening events could require changes to the form to  
9 account for changes in plant conditions and operating environment. As previously  
10 noted in my rebuttal testimony above and in the Company’s Application in this matter,  
11 the Company is not seeking approval of any transaction to which the Membership  
12 Interest Purchase Agreement would apply in this proceeding. Accordingly, the  
13 Company’s Application is not incomplete as Witness Kollen contends.

14 **Q. WILL THE COMMISSION HAVE THE ABILITY TO CONSIDER THE**  
15 **TERMS AND CONDITIONS OF ANY MITCHELL INTEREST PURCHASE**  
16 **AGREEMENT IN THE FUTURE BEFORE ANY SALE OF KENTUCKY**  
17 **POWER’S INTEREST IN THE PLANT TO WHEELING POWER?**

18 A. Yes. The Mitchell Plant Ownership Agreement requires Kentucky Power and  
19 Wheeling Power to enter into discussions concerning the disposition of the Mitchell  
20 Plant no later than June 30, 2026, after which they are required (assuming the plant is  
21 not retired earlier) to cooperate in good faith to negotiate and execute the Mitchell

1 Interest Purchase Agreement no later than December 31, 2027. Thus, a period of up to  
2 18 months is allotted for the parties to fully negotiate the terms of the purchase  
3 agreement, and then a full 12 months to obtain any applicable regulatory or other  
4 approvals to allow the sale to be consummated on or prior to December 31, 2028. The  
5 overall process provides ample assurance that the Mitchell Interest Purchase  
6 Agreement will be fully vetted and negotiated in the time period prior to the sale, and  
7 that there will be adequate time for review by the Commission of its terms as part of  
8 any sale. In addition, a form of Mitchell Interest Purchase Agreement, even if proposed  
9 now, may not be used if (1) an Early Retirement Event occurs and the plant is retired  
10 at or before December 31, 2028, or (2) if Wheeling Power and Kentucky Power enter  
11 into a negotiated transfer price prior to June 30, 2027, subject to the approval of the  
12 Commission and the Public Service Commission of West Virginia.

13 **Q. WILL CUSTOMERS BE HARMED IF THE STRUCTURE OF THE BUYOUT**  
14 **TRANSACTION IS NOT FULLY IDENTIFIED IN THE MITCHELL**  
15 **OWNERSHIP AGREEMENT?**

16 A. No. As explained in my response to the prior question, the process set out in the  
17 Mitchell Ownership Agreement assures that the buyout transaction, should it occur,  
18 will be fully vetted and subject to review by the Commission during which customers  
19 impacts arising from the transaction structure can be identified, if any, and the  
20 Commission can ensure that the transaction is in the public interest. Moreover, the tax  
21 and other theoretical detriments alleged by Witness Kollen that could result from any  
22 particular transaction structure are purely speculative because the transaction has not

1 yet been proposed. In addition, the tax issues raised by Witness Kollen have been  
2 refuted by Witness Keaton in her rebuttal testimony.

3 **Q. IS THE INDEMNITY OBLIGATION DESCRIBED IN THE DEFINITION OF**  
4 **MITCHELL INTEREST PURCHASE AGREEMENT UNDULY VAGUE?**

5 A. No. Although the exact terms of the indemnity will be prepared at the time the Mitchell  
6 Interest Purchase Agreement is drafted before the sale, if any, it caps the liability of  
7 Kentucky Power at \$15 Million for unknown contingent liabilities. These are liabilities  
8 that may have arisen prior to the closing, but which, due to their unknown, contingent  
9 nature, cannot be factored into the buyout price calculation at the time the transaction  
10 occurs. This provision beneficially limits Kentucky Power's risk to a specified amount  
11 when otherwise it would have continued to have unlimited liability for any unknown  
12 contingent risks absent the sale. Otherwise, the sale as set out in the definition is on a  
13 non-recourse basis. Witness Kollen fails to acknowledge the risks avoided by  
14 Kentucky Power through the buyout transaction.

V. **REBUTTAL OF MITCHELL PLANT OPERATIONS AND MAINTENANCE**  
**("O&M") AGREEMENT ALLEGATIONS OF WITNESS KOLLEN**

15 **Q. PLEASE BRIEFLY DESCRIBE THE MITCHELL PLANT O&M**  
16 **AGREEMENT.**

17 A. While the Mitchell Plant Ownership Agreement generally describes Kentucky Power's  
18 and Wheeling Power's mutual rights and obligations as owners of the Mitchell Plant,  
19 the Mitchell Plant O&M Agreement describes Wheeling Power's rights as the operator  
20 of the Mitchell Plant and its obligations to Kentucky Power as the non-operator owner.

1 **Q. IS WITNESS KOLLEN CORRECT IN HIS VIEW THAT THE MITCHELL**  
2 **PLANT O&M AGREEMENT SHOULD BE REJECTED BECAUSE IT**  
3 **CONTAINS TOO MANY REFERENCES TO THE MITCHELL PLANT**  
4 **OWNERSHIP AGREEMENT?**

5 A. No. Although separate agreements, the two documents are designed to work together  
6 to achieve the overall objective of ensuring that the Mitchell Plant is owned and  
7 operated by the two companies under appropriate terms and conditions. It is entirely  
8 appropriate that the two agreements would refer to each other to ensure they are  
9 effective in achieving their goals and in fully expressing the intent of the parties.

10 **Q. WOULD IT BE A BETTER APPROACH AS OFFERED BY WITNESS**  
11 **KOLLEN FOR THE COMPANY TO SIMPLY EXTEND THE TERM OF THE**  
12 **EXISTING MITCHELL OPERATING AGREEMENT?**

13 A. No. The current Mitchell Operating Agreement is inadequate in its current form to  
14 ensure compliance with the orders of this Commission and the Public Service  
15 Commission of West Virginia regarding CCR and ELG environmental compliance.  
16 The current agreement lacks detailed provisions that would ensure Kentucky Power is  
17 not allocated costs related to ELG investments made by Wheeling Power or the costs  
18 of O&M related to that equipment. The current agreement lacks detailed provisions  
19 to ensure that Kentucky Power does not pay for capital investments at the plant to the  
20 extent that the units would have useful lives beyond 2028. The current agreement also  
21 does not provide Kentucky Power with a defined path to exit plant operations in 2028  
22 or to change the operator to Wheeling Power and move ELG and other environmental  
23 permits into its name. In addition, the current agreement will terminate if either Owner



1 is sold and is no longer affiliated with AEP and does not contain certain provisions  
2 typically found in contracts between unrelated third parties, such as creditworthiness,  
3 default, termination, or indemnification.

**VI. ALTERNATE BUYOUT TRANSACTION PROPOSAL**

4 **Q. DOES WITNESS KOLLEN PROPOSE MODIFICATIONS TO THE**  
5 **PROPOSED MITCHELL PLANT OWNERSHIP AGREEMENT?**

6 A. Yes. Witness Kollen's primary position is that the Commission should not accept the  
7 proposed Mitchell Plant Ownership Agreement. However, Witness Kollen also  
8 presents several modifications to the agreement that he states should be required by the  
9 Commission if it otherwise accepts the agreement. As with his criticisms of the  
10 agreement, discussed above, Witness Kollen's proposed modifications are confined to  
11 the terms and conditions of the Buyout Transaction and, in particular, the fair market  
12 value provisions, including how the plant should be valued and how estimated  
13 decommissioning and other costs should be reflected for purposes of determining a  
14 fallback sales price.

15 **Q. DO YOU CONCUR WITH THE ALTERNATIVES OFFERED BY WITNESS**  
16 **KOLLEN?**

17 A. No. As described throughout my testimony above, the alternatives proposed by  
18 Witness Kollen should be rejected by the Commission. Taken as a whole, the  
19 suggestions lack fairness, are counterproductive, and would not help achieve  
20 compliance with the CCR/ELG orders of both commissions.

21 **Q. ARE THERE OTHER POTENTIAL ALTERNATIVES THAT WOULD BE**  
22 **RESPONSIVE TO WITNESS KOLLEN'S TESTIMONY?**

1 A. Yes, I believe so. Witness Kollen's main criticism concerns the market value  
2 provision, and I do not believe he has fully explored other satisfactory options that the  
3 Company is also willing to consider.

4 **Q. RECOGNIZING WITNESS KOLLEN'S TESTIMONY IS LARGELY**  
5 **DEDICATED TO OPPOSING THE FAIR MARKET VALUE PROVISION,**  
6 **WOULD THE COMPANY CONSIDER ANOTHER APPROACH FOR THE**  
7 **COMMISSION TO CONSIDER IN THE ALTERNATIVE IN ORDER TO**  
8 **ALLEVIATE WITNESS KOLLEN'S CONCERNS, GIVE MEANING TO**  
9 **BOTH STATES' ORDERS, AND PROVIDE FOR AN UPDATED**  
10 **AGREEMENT?**

11 A. The Company is open to proposing an alternative to the Fair Market Value backstop  
12 that was filed in the proposed agreement. Again, the goal was to provide a backstop  
13 that is fair and reasonable to the interests of both Kentucky Power and Wheeling Power  
14 and which recognizes the states' conflicting orders in the CCR/ELG cases. The  
15 Company is open to an alternative backstop mechanism, assuming that mechanism  
16 satisfies the directives issued by both states, should the plant not be retired or if  
17 Wheeling Power elects to continue operations past 2028 and a mutual agreement cannot  
18 be reached. All other elements of the proposed Mitchell Plant Ownership Agreement  
19 beyond Section 9.6 and related provisions, including making Wheeling Power the  
20 Operator and the capital spending provisions, and the Mitchell Plant Operations and  
21 Maintenance Agreement, would remain as proposed.

1 **Q. WHAT TYPE OF ALTERNATIVE WOULD THE COMPANY CONSIDER TO**  
2 **THE FAIR MARKET VALUE CONSTRUCT IN THE ORIGINALLY**  
3 **PROPOSED OWNERSHIP AGREEMENT?**

4 A. The Company is willing to consider dividing the interests in the Mitchell Plant by unit  
5 if the plant is not retired or a mutual agreement cannot be reached as to Wheeling Power  
6 acquiring the plant on or before the end of 2028.

7 **Q. HOW WOULD THE UNIT DIVISION WORK BETWEEN THE MITCHELL**  
8 **OWNERS?**

9 A. If the other paths leave the resolution of unit ownership undetermined, then the parties  
10 will agree to work to divide their interests in Units 1 and 2 at Mitchell, which would be  
11 relatively straightforward given that each unit is of the same nominal generating  
12 capacity (approximately 800 MW each). The Owners will use the Operating  
13 Committee to determine a fair division of the undivided interests and then seek the  
14 appropriate regulatory approvals, including the necessary approvals from both state  
15 commissions. The Operating Committee can meet and determine the need for real  
16 estate and property professionals and/or engineering consultants to establish the real  
17 property/land division between Kentucky Power and Wheeling Power Company.

18 **Q. IS THERE ANY PARTICULAR TIMING FOR THE OWNERS TO ENGAGE**  
19 **IN THE MUTUAL AGREEMENT OR UNIT DIVISION EXERCISE?**

20 A. In light of the PJM auction rules, it would be appropriate for Wheeling Power and  
21 Kentucky Power to determine unit disposition by May 2025 under this revised structure  
22 so that their determination is synchronized with the PJM capacity planning cycle, under  
23 which generation capacity commitments are generally made three years in advance.

1           However, the division would not become effective until January 1, 2029, unless  
2           otherwise agreed, and plant investments made after a determination to divide the units  
3           would follow the provisions of the agreement.

4   **Q.   WHAT MATTERS WOULD HAVE TO BE DETERMINED IF THE UNITS**  
5   **WERE SPLIT BETWEEN OWNERS?**

6   A.   Kentucky Power and Wheeling Power would need to properly divide the common  
7   facilities shared by both Units (sometimes referred to as the Unit “0” assets) and  
8   associated costs, and any inventories of coal and consumables present when the  
9   interests are divided. The common facilities are the items used by both Units as part  
10   of the generation process outside the actual generating Unit. The costs of the common  
11   facilities arise from operating the equipment that transfers coal to the plant and  
12   equipment to deal with anything removed from the generating unit (e.g. jointly used  
13   conveyors, pumps, and coal handling equipment). These items are identified in the  
14   accounting records and the costs to operate can be determined by the owners of the  
15   plant using accounting processes similar to those in place today. Inventories of coal,  
16   consumables, fuel, spare parts and other inventory assets would also be ratably divided  
17   between the parties based on their ownership interests. The Units are able to run  
18   independently of each other, thus providing both cost and operational separation when  
19   the units are dispatched.

20   **Q.   IN THIS SCENARIO, HOW COULD THE COSTS ASSOCIATED WITH THE**  
21   **ELG EQUIPMENT BE DIVIDED?**

22   A.   Kentucky Power will have the option to retire its divided unit at separation. If it does  
23   not plan to operate it past 2028 then the Operating Committee can determine the

1 appropriate manner in winding down the common facility costs should Wheeling  
2 Power decide to continue operating. If Kentucky Power or any subsequent owner  
3 decides to continue running the Unit assigned to Kentucky Power, then an adjustment  
4 to settle the common facility costs will have to be made to account for the ELG and  
5 any other investments Kentucky Power did not share in equally, as appropriate.

6 **Q. PLEASE EXPLAIN HOW YOUR LAST STATEMENT IS CONSISTENT**  
7 **WITH THIS COMMISSION'S ORDERS REGARDING ELG INVESTMENTS.**

8 A. Although the Commission has not authorized Kentucky Power to construct the ELG  
9 project and has directed that Kentucky Power shall not pay for ELG costs to the extent  
10 the project is pursued by Wheeling Power, Kentucky Power deciding in the future to  
11 continue running the Unit assigned to Kentucky Power would clearly be a change in  
12 circumstance that may require the Company to approach the Commission about  
13 revisiting these directives. The Commission's current orders are clearly built on the  
14 premise that Kentucky Power exits the Mitchell Plant at the end of 2028 and therefore  
15 does not need to share in the ELG costs that enable those future operations. That  
16 premise would be rendered untrue if Kentucky Power continues running its assigned  
17 Unit. As noted previously, Witness Kollen also recognizes this would be a change in  
18 circumstance that would require different arrangements than those currently in place.  
19 Of course, Kentucky Power still has a path to fully complying with the Commission's  
20 current orders by simply retiring its unit.

21 **Q. HOW WILL THE OWNERS MANAGE ANY DETAILS NEEDED TO**  
22 **EFFECTUATE THE SPLITTING OF THE UNITS?**

1 A. The Operating Committee has equal representation by the Owners and can be used by  
2 each to operate in good faith to fairly divide the interests previously undivided. In the  
3 event there is a dispute, a third party will adjudicate any such dispute.

4 **Q. WAS THIS ALTERNATIVE APPROACH DISCUSSED WITH LIBERTY**  
5 **UTILITIES?**

6 A. Yes, without waiving any privilege on the context of the discussion, an alternative like  
7 this was discussed with Liberty. Liberty authorized Kentucky Power to again assert  
8 the importance of the approval of the Proposed Mitchell Agreements by this  
9 Commission, the West Virginia commission and FERC, and that those approvals are a  
10 prerequisite to closing of any acquisition by Liberty of Kentucky Power.

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

12 A. Yes, it does.

**ELECTRONIC APPLICATION OF KENTUCKY POWER COMPANY FOR APPROVAL OF  
AFFILIATE AGREEMENTS RELATED TO THE MITCHELL GENERATING STATION, Case  
No. 2021-00421**

17. Please state whether Kentucky Power should have the option to receive energy and capacity from the Mitchell Plant beyond December 31, 2028 in light of the Commission's orders in Case No. 2021-00004.

Response:

Mr. Kollen has not formed and did not express an opinion on this issue in his testimony, but does not believe that the Commission's Order in Case No. 2021-00004 precludes some form or type of option or other agreement whereby the Company could obtain capacity and/or energy from the Mitchell Plant after December 31, 2028.

Response by: Lane Kollen

**ELECTRONIC APPLICATION OF KENTUCKY POWER COMPANY FOR APPROVAL OF  
AFFILIATE AGREEMENTS RELATED TO THE MITCHELL GENERATING STATION, Case  
No. 2021-00421**

18. Please state whether Kentucky Power should have the option to receive energy and capacity from the Mitchell Plant beyond December 31, 2028 in light of the fact that it will not have paid for the ELG investment that will allow it to run past December 31, 2028.

Response:

Refer to the AG-KIUC response to Item 17. The fact that the Company will not have paid for the ELG investment does not preclude some form or type of option or other agreement whereby the Company could obtain capacity and/or energy from the Mitchell Plant after December 31, 2028.

Response by: Lane Kollen



**ELECTRONIC APPLICATION OF KENTUCKY POWER COMPANY FOR APPROVAL OF  
AFFILIATE AGREEMENTS RELATED TO THE MITCHELL GENERATING STATION, Case  
No. 2021-00421**

16. Please confirm that it is appropriate to calculate depreciation rates for regulatory purposes to fully depreciate an asset and its cost of removal over the useful life of the asset and while the asset continues to provide service to customers. If your answer is anything other than an unqualified confirmation, please provide in detail the facts supporting the failure to confirm the statement unequivocally.

Response:

Denied. It may or may not be “appropriate” to “fully depreciate an asset and its cost of removal over the useful life of the asset and while the asset continues to provide service to customers.” There may be other factors that should be considered, especially as an identifiable asset nears a probable retirement date. These factors, include, but are not limited to, the magnitude of the remaining net book value to be recovered, rate impact on customers of accelerated retirements due to the economics of alternatives, form(s) of recovery, including the use of a rider for that purpose, and the opportunity to finance the unrecovered amounts with lower cost forms of financing, such as securitization.

Response by: Lane Kollen



### Haynes 2021-00421.docx

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#### E-Signature Summary

**E-Signature 1: Stephan T Haynes (STH)**

February 09, 2022 06:05:53 -8:00 [2CAFF92FDD8F] [167.239.75.249]  
sthaynes@aep.com (Principal) (Personally Known)

**E-Signature Notary: S. Smithhisler (SRS)**

February 09, 2022 06:05:53 -8:00 [5F767746CACF] [167.239.221.102]  
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 testimony, and the information contained therein is true and correct to the best of his information, knowledge and belief after reasonable inquiry.

Stephan T Haynes

Stephan T. Haynes

STATE OF OHIO

)

) Case No. 2021-00421

COUNTY OF FRANKLIN

)

Subscribed and sworn to before me, a Notary Public in and before said County and State, by

Stephan T. Haynes, on 02/09/2022.



S Smithhisler

Notary Public

Notary ID Number: 2019-RE-775042

Notarial act performed by audio-visual communication

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