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 Generating Station	)))	Case No. 2021-00421

APPLICATION

Kentucky Power Company ("Kentucky Power" or the "Company") moves the Public Service Commission of Kentucky (the "Commission"), in conformity with its October 8, 2021 ("October 8 Order) and October 28, 2021 Order ("October 28 Order") in Case No. 2021-00370,[1] for all approvals necessary to authorize the Company to enter into the proposed Mitchell Plant Operations and Maintenance Agreement ("Operations Agreement") (Exhibit DBM-2) and Mitchell Plant Ownership Agreement ("Ownership Agreement") (Exhibit DBM-3) with respect to the Mitchell Plant located in Moundsville, West Virginia, **on or before February 17, 2022**. (Collectively the Ownership Agreement and the Operations Agreement are the "New Mitchell Agreements.") This application also is filed in furtherance of the Commission's July 15, 2021 Order in Case No. 2021-00004 ("July 15 Order").[2]

Kentucky Power states in support of its application:

[1] *In the Matter of: Electronic Investigation of the Service, Rates and Facilities of Kentucky Power Company*, Case No. 2021-00371 (Ky. P.S.C.).

[2] Order, *In the Matter of: Electronic Application Of Kentucky Power Company For Approval Of A Certificate Of Public Convenience 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. July 15, 2021).

Applicant

1. Kentucky Power is a corporation organized on July 21, 1919 under the laws of the Commonwealth of Kentucky. The Company currently is in good standing in Kentucky.[3]

2. The post office address of Kentucky Power is 1645 Winchester Avenue, Ashland, Kentucky 41101. The Company's electronic mail address is kentucky_regulatory_services@aep.com.

3. Kentucky Power is engaged in the generation, purchase, transmission, distribution and sale of electric power. Kentucky Power serves approximately 165,000 customers in the following 20 counties of eastern Kentucky: Boyd, Breathitt, Carter, Clay, Elliott, Floyd, Greenup, Johnson, Knott, Lawrence, Leslie, Letcher, Lewis, Magoffin, Martin, Morgan, Owsley, Perry, Pike, and Rowan. Kentucky Power also supplies electric power at wholesale to other utilities and municipalities in Kentucky for resale. Kentucky Power is a utility as that term is defined in KRS 278.010.

4. Kentucky Power is a wholly owned subsidiary of American Electric Power Company, Inc. ("AEP"). AEP is a multi-state public utility holding company that includes utilities providing electric service to customers in parts of eleven states: Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia, and West Virginia.

Factual and Procedural Background

5. Kentucky Power and Wheeling Power Company ("Wheeling Power") each own an undivided 50 percent interest in the 1,560 MW Mitchell Plant, located near Moundsville,

[3] A certified copy of the Company's Articles of Incorporation and all amendments thereto was attached to the Joint Application in *In the Matter Of: The Joint Application Of Kentucky Power Company, American Electric Power Company, Inc. And Central And South West Corporation Regarding A Proposed Merger*, P.S.C. Case No. 99-149. The Company's November 19, 2021 Certificate of Existence is filed as **EXHIBIT 1** of this Application.

West Virginia ("Mitchell" or the "Plant"). Wheeling Power also is a wholly owned subsidiary of AEP. Kentucky Power presently operates Mitchell Plant under the current Mitchell Plant Operating Agreement ("Current Mitchell Agreement") (Exhibit DBM-1).

6. Kentucky Power filed an application with the Commission in Case No. 2021-00004 seeking a certificate of public convenience and necessity to undertake work at Mitchell to permit Mitchell to comply with EPA's Coal Combustion Residuals ("CCR") Rule and the ELG Rule ("Case 1"). The Company's application also described a CCR-only option ("Case 2"). The Commission on July 15, 2021 granted Kentucky Power a certificate of public convenience and necessity authorizing the Company to undertake the work associated with Case 2. The Commission denied the Company's request to undertake ELG upgrades proposed in Case 1.

7. Wheeling Power filed a companion application for a certificate of public convenience and necessity to complete CCR and ELG compliance work at the Mitchell Plant with the Public Service Commission of West Virginia ("West Virginia Commission").[4] The West Virginia Commission granted a certificate authorizing Wheeling Power to complete both CCR and ELG work at Mitchell.[5]

8. In a subsequent order, the West Virginia Commission confirmed that West Virginia and Federal Energy Regulatory Commission ("FERC") jurisdictional customers of Wheeling Power benefitting from the Plant beyond 2028 should pay ELG compliance costs and other capital investment and operations costs incurred to keep the Plant open after 2028.[6] The

[4] *Application for the issuance of a Certificate of Public Convenience and Necessity for internal modifications at coal fired generating plants necessary to comply with federal environmental* regulations, WVPSC Case No. 20-1040-E-CN ("*West Virginia CCR/ELG Case*"), Petition (Dec. 23, 2020).

[5] *West Virginia CCR/ELG Case*, Order (Aug. 4, 2021).

[6] *West Virginia CCR/ELG Case*, Order at 16 (Oct. 12, 2021) (collectively the two West Virginia Commission orders are the "West Virginia Orders").

West Virginia Commission conditioned that finding on Kentucky jurisdictional customers neither sharing in such costs nor sharing in the capacity and energy available from the Mitchell Plant after 2028.[7] The West Virginia Commission further ordered that "changes in the Operating Agreement for the Mitchell plant or changes in ownership of the Mitchell plant necessary to accommodate the continued operation of the plant without the involvement of Kentucky Power or Kentucky jurisdictional customers shall be filed for approval by [the West Virginia] Commission."[8]

9. This Commission issued its October 8 Order declaring that Wheeling Power is not required to obtain a certificate of public convenience and necessity from this Commission to complete ELG work. The October 8 Order also held that:

> The Commission expects Kentucky Power and Wheeling to promptly seek modifications to the Mitchell operating agreement should Wheeling move forward with the ELG project, in particular the provisions designating Kentucky Power the operator of Mitchell and assigning it certain responsibilities in that role.[9]

10. The Commission subsequently directed by the October 28 Order that "Kentucky Power should request Commission approval prior to any change to the Mitchell Operating Agreement."[10]

11. Kentucky Power files this application in conformity with the Commission's October 8 Order and October 28 Order for all approvals necessary to authorize the Company to enter into the proposed New Mitchell Agreements (Exhibits DBM-2 and DBM-3). The New

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[7] *Id.* at 15.

[8] *Id.* at 16.

[9] Order, *In the Matter of: Electronic Investigation of the Service, Rates and Facilities of Kentucky Power Company*, Case No. 2021-00371 at 9 (Ky. P.S.C. Oct. 8, 2021).

[10] Order, *In the Matter of: Electronic Investigation of the Service, Rates and Facilities of Kentucky Power Company*, Case No. 2021-00371 at 1-2 (Ky. P.S.C. October 28, 2021).

Mitchell Agreements also are in furtherance of the authority granted, limitations, and requirements of the Commission's July 15 Order.

Current And Proposed Mitchell Plant Agreements

A. The Current Mitchell Agreement

12. The Current Mitchell Agreement, since becoming effective on December 31, 2014, has governed the operation and maintenance and joint ownership rights and obligations of the Company and Wheeling Power. The Company and Wheeling Power (collectively the "Owners") are each entitled under the Current Mitchell Agreement to equal share of the capacity and energy of the Mitchell Plant. They also are responsible for all of the costs of operations, maintenance, and capital improvements. These costs and capital improvements generally are apportioned under the Current Mitchell Agreement between the companies based on their proportionate share of plant dispatch in the case of costs of operation and maintenance, or their ownership in the case of capital investments.

13. The Companies and American Electric Power Service Corporation ("AEPSC") each have a representative on the Mitchell Operating Committee. The Mitchell Operating Committee controls the Mitchell Plant, approves budgets for the Mitchell Plant, and makes major decisions affecting plant operations. Voting power on the Mitchell Operating Committee is equally divided between the Company and Wheeling Power. The AEPSC representative lacks a vote.

14. The Current Mitchell Agreement appoints the Company as the Operator. As Operator, most environmental and other permits are held in the name of the Company on behalf of both Owners.

15. The Current Mitchell Agreement is a tariff that has been authorized by and is on file with the FERC as Kentucky Power Rate Schedule No. 303. The cost allocation methodologies in the Current Mitchell Agreement constitute a FERC-approved cost allocation methodology as that term is used in KRS 278.2207.

16. The Current Mitchell Agreement was agreed to by Kentucky Power and Wheeling Power when their objectives and plans for the Mitchell Plant, including its retirement date and the their type and level of investment were congruent. With the two companies' differing responsibilities, limitations, and requirements as a result of the July 15 Order and the West Virginia Orders, the objectives and interests of Kentucky Power and Wheeling Power with respect to the Mitchell Plant no longer coincide.

B. The New Mitchell Agreements.

17. In furtherance of the July 15 Order, and in conformity with the October 8 Order and the October 28 Order, the Company, with the concurrence of Wheeling Power, proposes to terminate the Current Mitchell Agreement and replace it with the New Mitchell Agreements. The New Mitchell Agreements also will be filed with FERC as tariffs for approval.

18. The negotiation of the New Mitchell Agreements unfolded as orders affecting the future of the Mitchell Plant were issued by this Commission and the WVPSC. That process included meetings of the Mitchell Operating Committee to discuss necessary changes to the Current Mitchell Agreement and review of new contractual terms required to address those changes and the two commissions' orders related to Mitchell.

19. AEP announced on October 27, 2021 the sale of Kentucky Power to Liberty Utilities Company ("Liberty") through a stock transaction. However, the need for and terms of the New Mitchell Agreements are a direct result of the Kentucky and West Virginia

Commissions' previously-described orders. Those orders necessitate replacement of the Current Mitchell Agreement with the New Mitchell Agreements to ensure that future investment in and operation of the Mitchell Plant are undertaken consistent with each company's ownership and participation with respect to the Mitchell Plant, as well as to ensure that costs are appropriately allocated and assigned between Mitchell's owners. In short, the changes reflected in the proposed New Mitchell Agreements are necessary regardless of the identity of Kentucky Power's corporate parent.[11] In addition, the New Mitchell Agreements are appropriate to govern the relationship regarding the Mitchell Plant whether or not the ownership of the Company changes, as they address the requirements of this Commission and the West Virginia Commission.

1. <u>The Proposed Ownership Agreement</u>

20. The Ownership Agreement addresses the overall rights and responsibilities of the Company and Wheeling Power as fifty-percent co-owners of the Mitchell Plant through 2028. These include entitlements to capacity and energy, investments in and utilization of fuel, allocation of expenditures on capital and operations and maintenance, approval of budgets, ownership transfers, and dispute resolution.

21. The Ownership Agreement appoints Wheeling Power as the Operator of the Mitchell Plant. Wheeling Power's role, duties, and authority as Operator of the Mitchell Plant are commensurate with those of Kentucky Power as operator of the Mitchell Plant under the Current Mitchell Agreement. The Mitchell Operating Committee retains control of the Mitchell Plant under the Ownership Agreement.

[11] Nonetheless, the Company understands that Kentucky Power's proposed acquirer, Liberty Utilities Co., has agreed to and accepted the terms of the New Mitchell Agreements as part of the sale transaction.

22. The Ownership Agreement expressly addresses the allocation of costs necessary to enable the Company to comply with the July 15 Order. It also enables Wheeling Power to comply with the West Virginia Order by making the investment necessary to comply with both the CCR and ELG rules so as to enable Wheeling Power to operate the Mitchell Plant after 2028.

23. The Ownership Agreement provides a mechanism for allocating future capital costs between Kentucky Power and Wheeling Power in light of the differing authority granted by, and the requirements of, the July 15 Order and the West Virginia Orders. The Ownership Agreement also provides for an independent third-party expert to assess the proper assignment of CCR and ELG compliance costs between the Companies.

24. The Ownership Agreement creates a procedure, subject to all required regulatory approvals, for Wheeling Power to acquire from Kentucky Power at a future date the Company's fifty-percent Mitchell ownership interest if Wheeling Power elects to continue operating the Mitchell Plant beyond 2028. These procedures do not presently effect a transfer of Kentucky Power's 50 percent undivided interest in the Mitchell Plant to Wheeling Power.

25. A more detailed description of the proposed Ownership Agreement can be found in the testimony of Company Witness Mattison.

2. The Proposed Operations Agreement

26. The Operations Agreement provides a mechanism by which Wheeling Power would manage the day-to-day operations and maintenance of the Mitchell Plant, including dispatch, environmental, and NERC compliance, on behalf of the Owners. It also addresses topics including Operator responsibilities and the budget and reporting processes supported by the operator.

27. A more detailed description of the proposed Mitchell Operations and Maintenance Agreement can be found in the testimony of Company Witness Mattison.

The Requested Authority

28. The New Mitchell Agreements are fair, in the public interest, and reasonable.

29. The New Mitchell Agreements allow Kentucky Power to undertake the work authorized by the Commission in the July 15 Order in a fashion consistent with the requirements and limitations of the July 15 Order.

30. The New Mitchell Agreements assign the full cost of all capital investment required to enable Wheeling Power to comply with the ELG Rule, and ELG-related operation and maintenance expenses to Wheeling Power in furtherance of the July 15 Order. The New Mitchell Agreements likewise assign capital costs and other expenses associated with the operation of the Mitchell Plant after 2028 exclusively to Wheeling Power. Finally, the New Mitchell Agreements reasonably and fairly allocate the costs required for the Mitchell Plant to operate through 2028 between Kentucky Power and Wheeling Power in a fashion consistent with the Current Mitchell Agreement.

31. The New Mitchell Agreements also provide a pathway for Kentucky Power to exit Mitchell Plant operations by December 31, 2028, consistent with recent Commission orders and in a manner that protects Kentucky Power's valuable ownership interests in the Mitchell Plant while simultaneously protecting its customers.

32. The New Mitchell Agreements allow Wheeling Power to comply with the West Virginia Orders.

A. The New Mitchell Agreements Conform To KRS 278.2207

33. KRS 278.2207 provides for the pricing of products and services between affiliated entities. It authorizes a utility such as Kentucky Power to provide products and services to an affiliate in accordance with a FERC-approved cost allocation methodology. Absent a FERC-approved, or other federally-approved cost-allocation methodology, Kentucky Power is required by KRS 278.2207 to provide products and services to Wheeling Power at the higher of Kentucky Power's fully-distributed costs or market.

34. The Current Mitchell Agreement provides for the allocation between Kentucky Power and Wheeling Power, in conformity with the agreement's FERC-approved cost allocation methodology, of the costs of services and products provided by Kentucky Power on behalf of Wheeling Power in connection with Kentucky Power's operation of the Mitchell Plant.

35. The cost of products and services used or provided by Kentucky Power on behalf of Wheeling Power in connection with Kentucky Power's operation of the Mitchell Plant are priced at Kentucky Power's fully-distributed cost. Because the products and services provided by Kentucky Power under the Current Mitchell Agreement are provided to the sole co-owner of the Mitchell Plant there is no higher market price for the products and services.

36. The allocation of costs and services between Kentucky Power and Wheeling under the New Mitchell Agreements are the same in concept as those required by the Current Mitchell Agreement, except as required to conform to the July 15 Order and the West Virginia Orders.

37. The cost of products and services to be used or provided by Wheeling Power on behalf of Kentucky Power under the New Mitchell Agreements in connection with Wheeling

Power's operation of the Mitchell Plant will be priced at Wheeling Power's fully-distributed cost.[12]

38. Because the products and services provided by Wheeling Power under the New Mitchell Agreements will be provided only to Kentucky Power as the sole co-owner of the Mitchell Plant there is no higher market price for the products and services. Third-party services and products to be used or acquired by Wheeling Power in connection with operation of the Mitchell Plant will be acquired by Wheeling Power at market and provided to Kentucky Power without mark-up.

39. Kentucky Power and Wheeling Power will file the New Mitchell Agreements with FERC for approval as tariffs. Kentucky Power anticipates that FERC will approve the New Mitchell Agreements, including their cost allocation methodologies. The expected approval by FERC of the cost allocation methodologies of the New Mitchell Agreements provides an alternative basis for the New Mitchell Agreements' conformity to KRS 278.2207.

40. The allocation methodology and pricing of products and services to be provided by Wheeling Power under the New Mitchell Agreements are reasonable. They mirror the pricing of products and services provided by Kentucky Power, as current operator of the Mitchell Plant, to Wheeling Power since December 31, 2014.

41. The New Mitchell Agreements provide transparency, clarity, and certainty with respect to Kentucky Power's continued ownership of the Mitchell Plant, as well as the Mitchell Plant's continued operations, environmental compliance, cost allocation, and ownership.

[12] Section 7.2.1 of the proposed Mitchell Operations and Maintenance Agreement provides that "the Non-Operator Owner [Kentucky Power] shall reimburse Operator for its allocated share in accordance with the Ownership Agreement of the fully distributed costs incurred (whether paid or accrued) in the provision of Services." *See* Exhibit DBM-2 at Section 7.2.1.

42. The New Mitchell Agreements permit Kentucky Power to implement the authority granted Kentucky Power by the July 15 Order in a fashion consistent with the limitations and requirements of that Order.

43. The New Mitchell Agreements also provide a reasonable and transparent process by which Kentucky Power shall transfer its undivided interest to Wheeling Power in 2028 or earlier at a to-be-agreed-upon price absent an Early Retirement Event. If an agreement cannot be reached, the Mitchell Plant will be transferred at fair market value as determined by three independent appraisers.

44. Any transfer by Kentucky Power of its undivided 50 percent interest in the Mitchell Plant in accordance with the New Mitchell Agreements will remain subject to all required regulatory approvals, including this Commission's future determination under KRS 278.218 that the transfer is for a proper purpose and consistent with the public interest.

45. Approval of the New Mitchell Agreements, including any deviation from the affiliate pricing requirements of KRS 278.2207(1)(b), also is in the public interest for the reasons identified in paragraphs 29 through 44 above.

B. <u>The New Mitchell Agreements Do Not Require Approval Under KRS 278.218</u>.

46. KRS 278.218 mandates Commission approval for the change in ownership of, control, or the right to control, Kentucky Power's 50 percent undivided interest in the Mitchell Plant. Approval is required upon the Commission's finding that the transaction is for a proper purpose and consistent with the public interest.

47. The New Mitchell Agreements do not effect a change in ownership of, control, or the right to control, Kentucky Power's 50 percent undivided interest in the Mitchell Plant.

Kentucky Power retains full ownership under the New Mitchell Agreements of its 50 percent undivided interest in the Mitchell Plant.

48. The New Mitchell Agreements, including their provisions appointing Wheeling Power as Operator of the Mitchell Plant, likewise do not effect a change in control or the right to control the Mitchell Plant. Control of the Mitchell Plant under the New Mitchell Agreements remains with the Operating Committee. Under the New Mitchell Agreements, the membership of the Operating Committee remains unchanged, including Kentucky Power's status as one of the two Operating Committee members. Kentucky Power retains its equal vote with Wheeling Power on all Operating Committee matters.

49. The New Mitchell Agreements are for a proper purpose. The New Mitchell Agreements permit Kentucky Power to implement the authority granted to Kentucky Power by the July 15 Order in a fashion consistent with the limitations and requirements of that Order.

50. The New Mitchell Agreements permit the Company to implement the authority granted to Kentucky Power by the July 15 Order in a fashion that provides transparency, clarity, and certainty with respect to Kentucky Power's continued ownership of the Mitchell Plant. They also facilitate the Mitchell Plant's continued operations and environmental compliance, while providing for fair and reasonable cost allocation, and protecting Kentucky Power's ownership of its 50 percent undivided interest in the Mitchell Plant.

51. The New Mitchell Agreements allow this Commission to retain regulatory control of Kentucky Power's 50 percent undivided interest in the Mitchell Plant.

52. The New Mitchell Agreements, including any change in ownership, control, or the right to control Kentucky Power's undivided 50 percent interest in the Mitchell Plant is consistent with the public interest for the reasons identified in paragraphs 46 through 51 above.

Requested Decision Date

53. The October 8 Order and the October 28 Order direct that the operation of the Plant and ELG permits be placed in Wheeling Power's name. Kentucky Power requests a decision as soon as possible, but no later than by February 17, 2022 to ensure the timely transfer of permits, ordering of equipment and materials, and to enable the physical ELG work to be completed by Wheeling Power by the necessary permit deadlines.

Exhibits And Testimony

54. The Company submits the following exhibits to this application:

EXHIBIT 1 - The Company's November 19, 2021 Certificate of Existence

EXHIBIT 2 - Summary of Principal Terms of Proposed Mitchell Plant Operations and Maintenance Agreement

EXHIBIT 3 - Summary of Principal Terms of Proposed Mitchell Plant Ownership Agreement

55. The Company also submits with this application the following testimony with exhibits, which are incorporated by and made a part of this Application:

Witness	Brief description of testimony	Exhibits	Brief description of exhibits
D. Brett Mattison	Provide an overview of the public service commission decisions giving rise to this Application	DBM-1	Mitchell Plant Operating Agreement – FERC Rate Schedule No. 303
	Discuss Kentucky Power's involvement in the negotiations that produced the Agreements	DBM-2	Mitchell Plant Operations and Maintenance Agreement (Proposed)
	Describe the Agreements and the need to transition to those Agreements	DBM-3	Mitchell Plant Ownership Agreement (Proposed)
	Provide an overview of the options for the Mitchell Plant before the end of 2028, and the process for Kentucky Power to exit the Mitchell Plant in 2028		
	Demonstrate that the Agreements comply with Kentucky law and are otherwise reasonable, in the public interest, and will result in rates that are fair, prudent, and reasonable		
Timothy C. Kerns	Describe the Mitchell Plant and how the proposed changes to the Mitchell Operating Agreement will impact operation of the plant	None	N/A
	Describe Wheeling Power Company's ability to safely and reliably operate the Mitchell Plant through 2028 and beyond		
	Describe how the proposed changes to the Mitchell Operating Agreement will not affect the costs to operate the Plant.		

Communications

56. Kentucky Power respectfully requests that communications in this matter be addressed to the e-mail addresses identified on Kentucky Power's November 5, 2021 Notice of Election of Use of Electronic Filing Procedures.

WHEREFORE, Kentucky Power Company requests that the Commission issue an Order on or before February 17, 2022:

(1) Granting Kentucky Power all approvals required by and consistent with the Commission's October 8, 2021 Order and October 28, 2021 Order in Case No. 2021-00370, to authorize the Company to enter into the proposed Mitchell Plant Ownership Agreement and the Mitchell Plant Operations and Maintenance Agreement with respect to the Mitchell Plant located in Moundsville, West Virginia; and

(2) Granting Kentucky Power such other relief as may be appropriate.

Respectfully submitted,

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Certificate of Existence

Authentication number: 258378
Visit https://web.sos.ky.gov/ftshow/certvalidate.aspx to authenticate this certificate.

I, Michael G. Adams, Secretary of State of the Commonwealth of Kentucky, do hereby certify that according to the records in the Office of the Secretary of State,

KENTUCKY POWER COMPANY

is a corporation duly incorporated and existing under KRS Chapter 14A and KRS Chapter 271B, whose date of incorporation is July 21, 1919 and whose period of duration is perpetual.

I further certify that all fees and penalties owed to the Secretary of State have been paid; that Articles of Dissolution have not been filed; and that the most recent annual report required by KRS 14A.6-010 has been delivered to the Secretary of State.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at Frankfort, Kentucky, this 19th day of November, 2021, in the 230th year of the Commonwealth.

Michael G. Adams

Michael G. Adams
Secretary of State
Commonwealth of Kentucky
258378/0028317

SUMMARY OF PRINCIPAL TERMS OF PROPOSED MITCHELL PLANT OPERATIONS AND MAINTENANCE AGREEMENT

*This summary outlines certain of the principal terms of the proposed Mitchell Plant Operations and Maintenance Agreement (the "***O&M Agreement***") by and between Kentucky Power Company ("***Kentucky Power***") and Wheeling Power Company ("***Wheeling Power***" and together with Kentucky Power, each an "***Owner***" and together the "***Owners***"). Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the O&M Agreement.*

Operation of Mitchell Plant:	Operator shall perform, using former employees of Kentucky Power that work at the Mitchell Power Generation Facility (the "**Facility**", as further defined in the O&M Agreement) and that will be transferred to Wheeling Power, the Services in its capacity as an independent contractor and as principal on its own behalf as an Owner. The Owners retain the ultimate authority and obligation to determine whether and to what extent the Facility operates, and Operator shall not cause the Facility to generate power except as expressly directed to do so by the Owners.
Provision of Services:	Operator shall operate and maintain the Facility and perform such other duties as directed by the Owners, including performing and, as applicable, contracting for the benefit of the Owners with suppliers and service providers to perform, the Services and shall be responsible for the day-to-day operation and maintenance of the Facility.
Procurement:	Operator shall sign contracts and purchase orders for goods and services to be delivered to the Facility in the name of Operator as agent for the Owners (e.g., coal supply contracts).
Standards of Performance of the Services:	Operator shall perform the Services in accordance with (i) the Manuals, (ii) the applicable Budget and Plan, (iii) Applicable Laws, (iv) Prudent Operation and Maintenance Practices, (v) insurer requirements delivered to Operator by the Owners in writing, (vi) the requirements in the Facility Agreements, (vii) this Agreement and (viii) as directed by the Owners pursuant to the Ownership Agreement.
Dispatch:	Operator shall use commercially reasonable efforts to comply with any applicable dispatch instructions of the System Operator and, to the extent applicable, the directions of the Operating Committee.
Licenses and Permits:	Operator shall review all Applicable Laws containing or establishing compliance requirements in connection with the operation and maintenance and Decommissioning of the Facility and shall use commercially reasonable efforts to obtain and maintain, for the benefit of both Owners, all Permits required by Applicable Law for the ownership, operation, maintenance and Decommissioning of the Facility and for Operator's performance of the Services.

	Operator (or an Affiliate thereof) shall register with NERC as the "Generator Owner" and "Generator Operator" for the Facility.
Plans and Budgets:	No later than 90 days prior to each operating Year, Operator shall deliver to the Operating Committee for the Operating Committee's review, revision if applicable and approval (i) a proposed annual operating budget, (ii) any proposed amendments to the annual capital budget, (iii) an annual operating plan and (iv) a six (6) Year future forecast of operating and capital expenses. Except as otherwise permitted in response to an Emergency, Operator shall obtain the Operating Committee's written approval (i) for any expenditures resulting in cumulative budget overruns exceeding ten percent (10%) in the aggregate in any Year with respect to either the operating Budget or capital expense Budget, or (ii) for any unbudgeted expenditure or capital project having a projected cost of more than $100,000.
Limitations on Authority:	Operator has no authority to make policies or decisions with respect to the overall operation or maintenance of the Facility, which matters are reserved to the Owners. Without the consent of the Operating Committee, Operator is prohibited from (i) disposing of assets; (ii) making expenditures except in conformity with this Agreement; (iii) taking any action reserved for the Operating Committee; (iv) taking any action regarding lawsuits and settlements; or (v) pursuing other transactions not permitted under this Agreement.
Compensation and Payment:	All Operating Costs shall initially be paid for by Operator (except as otherwise provided in this Agreement) and subsequently invoiced by the Operator monthly in arrears. The Non-Operator Owner (i.e., Kentucky Power) shall reimburse Operator for its allocated share in accordance with the Ownership Agreement of the fully distributed costs incurred in the provision of Services, including for labor, goods, services, capital expenditures, overhead, cost of capital, Taxes (other than income or franchise taxes), Permits and bonds.
Term:	Subject to certain early termination rights, this Agreement shall end on the date of termination of the Ownership Agreement.
Termination; Transition of Services:	Subject to limited exceptions, if the Agreement is terminated by a party, the Non-Operator Owner shall have the right to specify a transition period of no longer than 9 months during which Operator shall continue to provide the Services and seek to transition the operator role to a replacement operator.

Plant Manager Replacement:	Upon (i) commencement of the Termination Transition Period or (ii) the occurrence of a termination for cause, the Non-Operator Owner may designate a qualified individual with significant experience as a project manager or similar senior operating role in respect of the management and operation of large coal-fired generation facilities with similar operating characteristics as the Facility to replace the existing Plant Manager and who shall upon such appointment be the Plant Manager.
Indemnification:	As a general matter, (i) Operator indemnifies Non-Operator Owner from and against all Liabilities incurred, assessed, sustained or suffered by the Non-Operator Owner to the extent caused by Operator's gross negligence, willful misconduct, actual fraud, willful violation of any Applicable Law, or willful breach of this Agreement and (ii) each Owner, severally with respect to its proportionate share in respect of its Ownership Interest, indemnifies Operator from and against all Liabilities to a third party incurred, assessed, sustained or suffered by or against Operator arising from or relating to Operator's performance of the Services, except to the extent caused by Operator's gross negligence, willful misconduct, actual fraud, willful violation of any Applicable Law, or willful breach of this Agreement.
Operator's Total Aggregate Liability:	Operator's total aggregate liability under this Agreement shall not exceed the sum of (i) an amount equal to twenty-five percent (25%) of the Operating Costs, but excluding Operating Costs relating to any services, goods, inventory and equipment provided hereunder by third parties other than Operator's Affiliates, incurred pursuant to this Agreement in the prior twelve (12) month period, *plus* (ii) the Non-Operating Owner's fifty percent (50%) share of any insurance proceeds actually received by the Operator or paid on the Operator's behalf with respect to the relevant loss or damages under the insurance policies procured by the Operator.

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The foregoing is intended to summarize certain basic terms of the O&M Agreement. It is not intended to be a definitive description of all of the terms of the O&M Agreement.

SUMMARY OF PRINCIPAL TERMS OF PROPOSED MITCHELL PLANT OWNERSHIP AGREEMENT

*This summary outlines certain of the principal terms of the proposed Mitchell Plant Ownership Agreement (the "***Ownership Agreement***") by and among Kentucky Power Company ("***Kentucky Power***"); Wheeling Power Company ("***Wheeling Power***" and together with Kentucky Power, each an "***Owner***" and together the "***Owners***"); and, solely with respect to its removal from the prior Mitchell Plant operating agreement, American Electric Power Service Corporation. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Ownership Agreement.*

Ownership of Mitchell Plant:

The Mitchell Power Generation Facility (the "**Mitchell Plant**", as further defined in the Ownership Agreement) is jointly owned by each of Kentucky Power and Wheeling Power in a 50-50 undivided ownership interest structure. Each Owner agrees not to seek partition or division of the Mitchell Plant or any Project Assets or contracts related thereto.

To the extent that either Owner funds or bears an amount greater than 50% of any capital expenditures or ELG Capital Expenditures (as defined below) as contemplated in the Capital Budget or as otherwise provided in this agreement, the directly resulting portion of any property, plant and equipment, or improvements thereto shall be owned by the Owners in proportion to their respective amounts funded and shall be included only in such proportion in each Owner's ownership accounts for regulatory, accounting, tax and other purposes.

The Capital Budget (which will be attached to the Ownership Agreement at the time of execution) will reflect, among other things, the capital budget for the period from the Effective Date through December 31, 2028, including the allocation of cost responsibility between the Owners.

Operation of Mitchell Plant:

Wheeling Power is designated as the Operator responsible for the day-to-day operations and maintenance of the Mitchell Plant and shall operate, maintain and Decommission the Mitchell Plant for the sole benefit of and on behalf of the Owners and in accordance with the terms and conditions of this Agreement and the O&M Agreement.

Apportionment of Capacity and Energy:

Each Owner is entitled to receive 50% of the Total Net Capability and the Total Net Generation and all associated energy, capacity, ancillary services and other energy products. In any hour, each Owner shall share 50% of the minimum load responsibility of each Unit. Unless otherwise agreed by the Owners, the Facility will be scheduled and dispatched on a joint and equal basis, including bidding the Mitchell Plant or any Unit as a single bid.

Retirement of Mitchell Plant:

If, prior to a Buyout Transaction, an Early Retirement Event (as defined below) occurs, each Owner shall (i) cause each Unit to permanently cease operations on December 31, 2028, or such other date permitted by

Applicable Law as the Operating Committee may determine, and (ii) be responsible for and pay 50% of all Decommissioning Costs.

"**Early Retirement Event**" means the delivery of a written notice by Wheeling Power to Kentucky Power irrevocably committing to permanently cease operations of the Mitchell Plant effective on or, with Kentucky Power consent, prior to December 31, 2028, which notice shall be consistent with Wheeling Power's current filings at such time with the WVPSC in respect of the Mitchell Plant.

Working Capital Requirements:

The Owners shall periodically mutually determine the amount, timing and invoicing processes for funds required for use as working capital, for operating, capital and other expenses incurred in the operation, maintenance and Decommissioning (including the Decommissioning Costs) of the Mitchell Plant, and in buying equipment, materials, parts, fuel and other supplies and services necessary to operate, maintain and Decommission the Mitchell Plant and to make the timely payments of any expenses required under the O&M Agreement.

Each Owner shall provide 50% of any such amount required by the Owners, except as otherwise provided in the Ownership Agreement.

Investments in Fuel:

Each Owner shall be responsible for, and own, 50% of the common coal stock piles, fuel oil and consumables.

Apportionment of Station Costs:

Fuel Expense:

In each calendar month, each Owner's respective shares of the Mitchell Plant fuel consumed expense shall be proportionate to each Owner's dispatch of the Mitchell Plant in such month.

Operations, Maintenance Expense:

Each Owner's respective share of the Mitchell Plant steam expenses and emission tons shall be proportionate to each Owner's dispatch of the Mitchell Plant in such month.

Administrative and General Expenses shall be assigned to the Mitchell Plant through an annual wages and salaries allocator applied to monthly Administrative & General Expenses. Each Owner shall be responsible for 50% of this monthly amount.

Each Owner shall be individually responsible for any fees, costs or other charges in respect of, or which are attributable to, the sale or transmission of the capacity or energy associated with its Ownership Interest.

Replacements, Additions, Improvements or Upgrades:

The cost of any replacement, addition, improvement or upgrade of any portion of the Mitchell Plant, and any restoration or remediation required in connection therewith, shall be allocated between the Owners in accordance with the allocations for such capital items contained in the Capital Budget.

For items not contained in the Capital Budget, the costs of such capital item shall be allocated as follows, unless the Operating Committee agrees upon a different allocation:

--Capital expenditures (other than ELG Capital Expenditures) that the Operating Committee determines have been or will be incurred exclusively for one Owner shall be allocated exclusively to, and paid for by, that Owner.

--ELG Capital Expenditures shall be allocated exclusively to, and paid for exclusively by, Wheeling Power and CCR Capital Expenditures shall be allocated 50% to (and paid for by) each Owner, provided that the determination of which costs are ELG Capital Expenditures and which are CCR Capital Expenditures shall be determined by a Technical Expert to be retained by the Operating Committee.

--If the in-service date of a capital item is reasonably anticipated by the Operating Committee to be after December 31, 2028, then the capital expenditures for such capital item shall be allocated exclusively to, and paid for by, Wheeling Power.

--If the Operating Committee determines that a capital item (other than an ELG Upgrade) has a Depreciable Life that extends beyond December 31, 2028, then (i) Kentucky Power shall be responsible for and shall pay 50% of the expenditures for such capital item, multiplied by (A) the number of months (not to exceed the Depreciable Life of such capital item) between the reasonably anticipated in-service date of such capital item and December 31, 2028, divided by (B) the Depreciable Life of such capital item and (ii) Wheeling Power shall be responsible for the remaining amount of such capital expenditure not allocated to Kentucky Power pursuant to the foregoing clause (i).

--Any other capital expenditures shall be allocated 50% to (and paid for by) each Owner, subject to the written approval of the Operating Committee for budget overruns to the extent required pursuant to the O&M Agreement.

Early Retirement and Decommissioning:

In the event of an Early Retirement Event, each Owner shall be responsible for 50% of all Decommissioning Costs, unless a different allocation is expressly specified for such item in the Capital Budget (as agreed by the Owners) or the Owners mutually agree to allocate such costs in another manner.

As used herein:

"**Decommissioning Costs**" means all costs and obligations expended or incurred in the performance of all work reasonably necessary or undertaken to Decommission the Mitchell Plant, including work associated with the preparation and implementation of Decommissioning plans and the preparation, submittal and prosecution of all necessary applications with Governmental Authorities as required to Decommission the Mitchell Plant in accordance with Applicable Law.

"**ELG Capital Expenditures**" means all capital expenditures associated with implementation of the ELG Upgrades.

"**ELG Rule**" means the Steam Electric Reconsideration Rule, 85 Fed. Reg. 64,650 (Oct. 13, 2020), and any regulations thereunder promulgated by the USEPA or the State of West Virginia.

"**ELG Upgrades**" means any improvements or upgrades to the Mitchell Plant to enable Wheeling Power to comply with the ELG Rule.

Operating Committee and Capital Budget: Each Owner shall name one representative to the Operating Committee and all decisions of such committee shall be made on a unanimous basis, including in connection with changes to the Capital Budget, provided that an Owner's representative shall have the right to amend the Capital Budget to include any capital expenditures for which such Owner shall be allocated greater than 75% of the costs up to an aggregate amount of that does not exceed $3 million per year allocated to the other Owner. If the Operating Committee cannot agree upon the Depreciable Life of a capital item or the allocation of the expenditure between the Owners (including determining which capital expenditures are ELG Capital Expenditures and which are CCR Capital Expenditures), the matter shall be resolved pursuant to certain Technical Dispute procedures in the Ownership Agreement.

Emission Allowances: Prior to the earlier of any Buyout Transaction or December 31, 2028 (or earlier retirement of the Mitchell Plant), to the extent that Emission Allowances are required for operation, each Owner will be entitled to receive for its own benefit 50% of any Emissions Allowances allocated to the Mitchell Plant. Each Owner will be responsible for acquiring any additional Emission Allowances needed to satisfy the Emission Allowances required because of such Owner's dispatch of the Mitchell Plant.

Buyout Transaction: Wheeling Power and Kentucky Power have committed to undertake a Buyout Transaction pursuant to which Wheeling Power shall purchase Kentucky Power's Ownership Interest in the Mitchell Plant on or prior to December 31, 2028 unless an Early Retirement Event occurs.

The purchase price to be paid by Wheeling Power for Kentucky Power's Ownership Interest in the Mitchell Plant shall an amount determined as follows:

(i) an amount mutually agreed by the Owners and approved by each of the WVPSC and the KPSC or,

(ii) if no such amount is agreed by the Owners prior to June 30, 2027, an amount equal to

(A) the Adjusted Fair Market Value of the Kentucky Power Ownership Interest as of the closing date of the consummation of the Buyout Transaction (with Fair Market Value determined through an appraisal process utilizing the average of the determinations of up to three nationally or regionally recognized appraisal firms), minus

(B) 50% of the estimated Decommissioning Costs (as determined through an appraisal process utilizing the average of the determinations of up to three nationally or regionally recognized appraisal firms) for retirement of the Mitchell Plant as if such Decommissioning were to commence as of the date of transfer of the Kentucky Power Ownership Interest to Wheeling Power, plus

(C) the weighted-average cost of Kentucky Power's investment in the common coal pile for the Mitchell Plant.

Adjusted Fair Market Value means any positive amount (if any, and zero otherwise) equal to the Fair Market Value of the Kentucky Power Ownership Interest minus the CapEx Adjustment. The CapEx Adjustment means (a) 50% of any capital expenditures (or portion thereof), including ELG Capital Expenditures, to the extent funded by Wheeling Power in an amount in excess of 50% of the total amount thereof on or prior to December 31, 2028, plus (b) an amount equal to the WACC for the amounts included in clause (a), applied to all of such amounts using the then-applicable WACC from the dates of funding through the closing date of the consummation of the Buyout Transaction. Certain components of the purchase price for the interests shall be subject to a customary closing estimation and post-closing true-up mechanism to be set forth in the purchase agreement to be entered into by the parties for the sale of the Kentucky Power Ownership Interest.

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The foregoing is intended to summarize certain basic terms of the Ownership Agreement. It is not intended to be a definitive description of all of the terms of the Ownership Agreement.