

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

**In the Matter of:**

<b>ELECTRONIC APPLICATION OF</b>	)	
<b>KENTUCKY POWER COMPANY</b>	)	
<b>FOR APPROVAL OF AFFILIATE</b>	)	<b>Case No. 2021-00421</b>
<b>AGREEMENTS RELATED TO THE</b>	)	
<b>MITCHELL GENERATING STATION</b>	)	

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**INITIAL DATA REQUESTS OF ATTORNEY GENERAL AND KIUC**

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Comes now intervenors, the Attorney General of the Commonwealth of Kentucky, by his Office of Rate Intervention (“Attorney General”), and Kentucky Industrial Utility Customers (“KIUC”) and submit these Data Requests to Kentucky Power Company (hereinafter “Kentucky Power” or “company”) to be answered by December 22, 2021, in accord with the following:

- (1) In each case where a request seeks data provided in response to a staff request, reference to the appropriate requested item will be deemed a satisfactory response.
- (2) Identify the witness who will be prepared to answer questions concerning each request.
- (3) Repeat the question to which each response is intended to refer.
- (4) These requests shall be deemed continuing so as to require further and supplemental responses if the companies receive or generate additional information within the scope of these requests between the time of the response and the time of any hearing conducted hereon.
- (5) Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that

the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

(6) If you believe any request appears confusing, please request clarification directly from undersigned Counsel for the Office of Attorney General.

(7) To the extent that the specific document, workpaper or information as requested does not exist, but a similar document, workpaper or information does exist, provide the similar document, workpaper, or information.

(8) To the extent that any request may be answered by way of a computer printout, please identify each variable contained in the printout which would not be self-evident to a person not familiar with the printout.

(9) If the company has objections to any request on the grounds that the requested information is proprietary in nature, or for any other reason, notify the Office of the Attorney General as soon as possible, and in accordance with Commission direction.

(10) As used herein, the words "document" or "documents" are to be construed broadly and shall mean the original of the same (and all non-identical copies or drafts thereof) and if the original is not available, the best copy available. These terms shall include all information recorded in any written, graphic or other tangible form and shall include, without limiting the generality of the foregoing, all reports; memoranda; books or notebooks; written or recorded statements, interviews, affidavits and depositions; all letters or correspondence; telegrams, cables and telex messages; contracts, leases, insurance policies or other agreements; warnings and caution/hazard notices or labels; mechanical and electronic recordings and all information so stored, or transcripts of such recordings; calendars, appointment books, schedules, agendas and diary entries; notes or memoranda

of conversations (telephonic or otherwise), meetings or conferences; legal pleadings and transcripts of legal proceedings; maps, models, charts, diagrams, graphs and other demonstrative materials; financial statements, annual reports, balance sheets and other accounting records; quotations or offers; bulletins, newsletters, pamphlets, brochures and all other similar publications; summaries or compilations of data; deeds, titles, or other instruments of ownership; blueprints and specifications; manuals, guidelines, regulations, procedures, policies and instructional materials of any type; photographs or pictures, film, microfilm and microfiche; videotapes; articles; announcements and notices of any type; surveys, studies, evaluations, tests and all research and development (R&D) materials; newspaper clippings and press releases; time cards, employee schedules or rosters, and other payroll records; cancelled checks, invoices, bills and receipts; and writings of any kind and all other tangible things upon which any handwriting, typing, printing, drawings, representations, graphic matter, magnetic or electrical impulses, or other forms of communication are recorded or produced, including audio and video recordings, computer stored information (whether or not in printout form), computer-readable media or other electronically maintained or transmitted information regardless of the media or format in which they are stored, and all other rough drafts, revised drafts (including all handwritten notes or other marks on the same) and copies of documents as hereinbefore defined by whatever means made.

(11) For any document withheld on the basis of privilege, state the following: date; author; addressee; indicated or blind copies; all persons to whom distributed, shown, or explained; and, the nature and legal basis for the privilege asserted.

(12) In the event any document called for has been destroyed or transferred beyond the

control of the company, please state: the identity of the person by whom it was destroyed or transferred, and the person authorizing the destruction or transfer; the time, place, and method of destruction or transfer; and, the reason(s) for its destruction or transfer. If destroyed or disposed of by operation of a retention policy, state the retention policy.

(13) Provide written responses, together with any and all exhibits pertaining thereto, in one or more bound volumes, separately indexed and tabbed by each response, in compliance with Kentucky Public Service Commission Regulations.

(14) “And” and “or” should be considered to be both conjunctive and disjunctive, unless specifically stated otherwise.

(15) “Each” and “any” should be considered to be both singular and plural, unless specifically stated otherwise.

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Respectfully submitted,

DANIEL J. CAMERON  
ATTORNEY GENERAL



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*Certificate of Service and Filing*

Pursuant to the Commission's Orders and in accord with all other applicable law, Counsel certifies that, on December 15th, 2021, an electronic copy of the forgoing was served by e-mail to the following.

moverstreet@stites.com

kglass@stites.com

this 15th day of December, 2021.

A handwritten signature in blue ink, appearing to read "J. Michael West". The signature is written in a cursive style with a horizontal line extending from the end.

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Assistant Attorney General

**Data Requests**

1. Discuss the reaction of Kentucky Power employees to news of the potential transaction with Liberty.
2. Have Kentucky Power and/or AEP made any agreements with Liberty specifically addressing the future operation of the Mitchell Plant? If yes, please provide.
3. Have Kentucky Power and/or AEP made any agreements with Liberty regarding the allocation of costs related to the operation of the Mitchell Plant? If yes, please provide.
4. Does Kentucky Power anticipate any further amendments to the Mitchell Operating Agreement and/or Ownership Agreement beyond those specified in this docket if the transaction with Liberty is approved?
5. Discuss the rights of Kentucky Power in the event of disagreement between the representatives of Kentucky Power and Wheeling?
6. Discuss whether Kentucky Power has a right to terminate the Operating Agreement or Ownership Agreement in the event that, at some time in the future, it determines that, in its judgment, the terms of one or both of those agreements no longer represent a fair deal.
7. Confirm that Kentucky Power will not pay for any capital and/or operating costs necessary to comply with ELG.
8. Discuss why Kentucky Power requested that a decision be issued in this matter prior to February 17, 2022.
9. Provide the status of any and all filings related to the changes at issue to the Operating Agreement and Ownership Agreement, including those filed at FERC and the West Virginia Public Service Commission, including:
  - a. The case number;
  - b. A description of the request for relief and legal basis for that relief; and
  - c. The procedural posture of the matter.
10. Provide a draft(s) of the Operating Agreement and Ownership agreement that identifies all differences between the versions of those agreements currently in effect and the versions proposed in this application.
11. Discuss with specificity all involvement Liberty had in the negotiation of the proposed Operating Agreement and Ownership Agreement.

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12. Refer to the proposed Mitchell Plant Ownership Agreement filed as Exhibit DBM-3 and the multiple references to the Mitchell Interest Purchase Agreement in Section 9.6.
  - a. Provide a copy of the referenced Mitchell Interest Purchase Agreement.
  - b. Explain why the Company did not file a copy of the Mitchell Interest Purchase Agreement with its Application or direct testimony in this proceeding.
13. Refer to the Mitchell Plant Ownership Agreement Section 9.6, which states in part the following:

Buyout Transaction. Unless an Early Retirement Event occurs, the Owners shall enter into the Mitchell Interest Purchase Agreement pursuant to which KPCo shall sell, transfer and assign to WPCo, and WPCo shall purchase and assume from KPCo, all of KPCo's Ownership Interest (the "KPCo Interest") (including its interest in the underlying land, common facilities, barge unloading and gypsum conveyor facilities, and inventory and spare parts with respect to the Mitchell Plant), with the closing of such transaction to occur on December 31, 2028 (or such earlier date as may be mutually agreed by the Owners), subject to and in accordance with the provisions of this Section 9.6.

- a. Confirm that the multiple references to the verb "shall" indicate that KPCo will be required to sell and WPCo will be required to purchase the KPCo ownership interest in the Mitchell Plant on December 31, 2028 unless an Early Retirement Event occurs. Confirm that such a sale and purchase will not be not discretionary to either KPCo or WPCo if there is no Early Retirement Event.
  - b. Provide a detailed description of the planned structure of the sale/purchase/transfer transaction mandated in Section 9.6 of the Mitchell Plant Ownership Agreement unless there is an Early Retirement Event, including, but not limited to, whether it will be a sale of assets and liabilities, a sale of a new entity with the KPCo Mitchell ownership interest included in the new entity, or some other transaction structure.
  - c. Provide a copy of all analyses, studies, and modeling of potential transaction structures for the Buyout Transaction, including the accounting, financing, ratemaking, and income tax effects, for each alternative structure identified and/or analyzed.
14. Refer to the Direct Testimony of Brett Mattison at 11-12 wherein he states the following:

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Section 9.6 of the new Mitchell Plant Ownership Agreement addresses the potential transfer of Kentucky Power's 50% interest in the Mitchell Plant to Wheeling Power should Wheeling Power elect to continue operating the Plant beyond 2028. Because this Commission did not approve ELG costs in the Kentucky CCR/ELG Case, and as a result did not intend for Kentucky Power to pay for the Mitchell Plant's operations past 2028, the option to acquire ownership of the Mitchell Plant will allow the Company to divest its interest in the Mitchell Plant at that time, consistent with this Commission's decision that Kentucky Power should not make the ELG investment necessary for the Mitchell Plant's continued operation after that date.

Confirm that the terms "potential" and "option" as used by Mr. Mattison in his testimony are not terms that are reflected in the proposed Mitchell Plant Ownership Agreement and that, in fact, the sale and purchase of the KPCo interest in the Mitchell Plant is *mandatory* unless an Early Retirement Event occurs. If this is not correct, then provide a corrected statement and reconcile Mr. Mattison's use of the terms "potential" and "option" with the use of the multiple uses of the term "shall" in Section 9.6 of the Mitchell Plant Ownership Agreement.

15. Provide a copy of all memos, emails, and all other documentation of the Company's identification and evaluations of each potential transaction structure for the sale/purchase/transfer of the KPCo Mitchell Plant interest to/by WPCo.
16. Provide a copy of all memos, emails, studies, research, analyses, reports, and all other documentation of the work performed by outside consultants and/or advisors related to the Mitchell Agreements filed in this proceeding, Mitchell Interest Purchase Agreement, each potential transaction structure, and all potential consequences of each such sale/purchase/transfer transaction structure
17. Describe the effects on each utility (KPCo and WPCo) that the sale/purchase/transfer have on the capacity resources used to calculate the required planning reserve margin for the 2028 PJM planning year ending May 2029?
18. Refer to Section 9.6 of the Mitchell Plant Ownership Agreement. Provide the template that KPCo will use to determine and quantify the Mitchell Plant gross plant (by FERC plant account/subaccount, including intangible, general, and common plant that is or will be assigned and/or allocated to the Mitchell Plant), accumulated depreciation, ADIT by temporary difference, each other asset and liability account that is related, assigned, or allocable to the Mitchell Plant by FERC account/subaccount, and the tax basis for each of these asset and liability accounts/subaccounts that KPCo will sell or transfer to WPCo under the terms of the Buyout Transaction and provide the amounts in the template format at December 31, 2020, budgeted or forecast at December 31, 2021, and forecast at December 31, 2028.

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19. Refer to the definition of Fair Market Value set forth in the Definitions section and to Section 9.6(a) setting forth the formula for the Buyout Price of the Proposed Mitchell Plant Ownership Agreement and Section. Explain why appraisals are required and the sale/purchase/transfer price is not simply set at net book value.
20. Describe KPCo's proposal for the excess deferred income taxes regulatory liability related to the KPCo Mitchell Plant interest for accounting and ratemaking purposes upon the sale/transfer of that interest to WPCo.
21. Provide a copy of the Power Coordination Agreement ("PCA") among APCo, I&M, KPCo and WPCo.
22. Provide a copy of the AEP System Integration Agreement.
23. Provide a copy of the AEP Tax Allocation Agreement.
24. Provide KPCo's federal taxable income or loss, NOL carryforward and NOL ADIT before reimbursement by AEP pursuant to the AEP Tax Allocation Agreement, and NOL carryforward and NOL ADIT after reimbursement by AEP pursuant to the AEP Tax Allocation Agreement at December 31 for each year 2016 through 2021.
25. Describe all implications and effects on KPCo as a party to the PCA of the sale/transfer of the KPCo Mitchell interest to WPCo. Provide a copy of all analyses, studies, communications, and all other documentation prepared by or on behalf of KPCo that addresses these implications and effects on KPCo. If none, then so state.
26. Describe the present status of all ash pond remediation and each other environmental requirement at the Mitchell Plant.
27. Describe all additional work, including the scope, schedule, and costs that remain for ash pond remediation and each other environmental requirement at the Mitchell Plant.
28. Describe the KPCo accounting for the Mitchell Plant ash pond remediation, including asset retirement obligations and regulatory assets and/or liabilities, and provide the KPCo trial balance as of December 31, 2020 and each month thereafter with the related accounting assets, liabilities, and expenses specifically identified and marked for ease of reference.
29. Describe KPCo's ratemaking recovery of the costs for the Mitchell Plant ash pond remediation. Provide the most recent filing for these costs, including, but not limited to, the Environmental Surcharge filings and the detail necessary to identify and quantify the Mitchell Plant costs.
30. Confirm that WPCo is not a merchant generator but, rather, is a regulated utility subject to cost-based regulation.

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31. Confirm that KPCo acquired its present Mitchell Plant interests from the Ohio Power Company through the purchase of assets and specific liabilities and did so at net book value, not an appraisal-based fair market value. Confirm that Appalachian Power acquired its interest in Mitchell from Ohio Power at net book cost, and that Appalachian Power subsequently sold/transferred that interest to Wheeling at net book cost.
32. Provide a copy of the KPCo purchase and sale agreement pursuant to which it acquired its present Mitchell Plant interests.
33. Provide a copy of the AEP/KPCo Cost Allocation Manual (“CAM”). Indicate whether the CAM was filed and/or approved by the Kentucky Commission. If so, provide the case number and date of the Order, if the Commission issued an Order approving it.
34. Describe the CertainTeed Contract in greater detail than set forth in the Definitions section of the proposed Mitchell Plant Ownership Agreement. Provide a copy of the contract.
35. For each of the last five years, provide the revenue received from the CertainTeed contract by KPCo and by Wheeling. Please describe how KPCo’s share of this revenue is reflected in rates.
36. Refer to page 123.63 of the KPCo FERC Form 1, which describes and quantifies sales by and to KPCo and other AEP affiliates. KPCo states that the sales and purchases were at net book value. Confirm that such sales and purchases were made at net book value, consistent with the provisions of the AEP/KPCo CAM.
37. Provide a copy of all estimates and/or appraisals of fair market value for the Mitchell Plant prepared by or for AEP, KPCo, and/or WPCo prepared within the last two years, including all supporting documentation and calculations in live format with all formulas intact. If none, then so state, and explain why no such estimates and/or appraisals have been performed.
38. Provide the number of Mitchell Plant employees living in Kentucky, West Virginia, and each other state in the most recent month for which actual information is available.
39. Provide the number of KPCo employees, other than those employees specifically working at the Mitchell Plant, that provide services to the Mitchell Plant, the cost which are charged to the Mitchell Plant functional O&M expense and related A&G expense accounts. Provide a list of the positions and a brief description of the responsibilities for each position.
40. Provide the number of AEPSC employees, other than those employees specifically working at the Mitchell Plant, that provide services to the Mitchell Plant, the cost of which are charged to the Mitchell Plant functional O&M expense and related A&G expense accounts. Provide a list of the positions and a brief description of the responsibilities for each position.

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41. Provide the tons of coal purchased and the cost in dollars by mine where produced for each calendar year 2019 and 2020, and each month in 2021, including December when the actual purchases are available.
42. Provide the amount of the Mitchell Plant decommissioning costs included in the KPCo accumulated depreciation at December 31, 2020 and at the end of each month thereafter through December 31, 2021. To the extent that these amounts are recorded as regulatory liabilities for GAAP purposes, provide the trial balance amounts at December 31, 2020 and at the end of each month thereafter through December 31, 2020.
43. Quantify all Mitchell Plant costs included in the Company's base revenue requirement. Provide the amounts included in each component of rate base and each operating expense. Provide in Excel spreadsheet live format with all formulas intact.
44. Quantify all Mitchell Plant costs included in the KPCo's environmental surcharge revenue requirement. Provide the amounts included in each component of rate base and each operating expense. Provide in Excel spreadsheet live format with all formulas intact.
45. Describe KPCo's proposal to adjust base rates when the Mitchell Plant is sold/transferred to WPCo pursuant to the Buyout Transaction that is set forth in the proposed Mitchell Plant Ownership Agreement.
46. Describe KPCo's proposal to adjust environmental surcharge rates when the Mitchell Plant is sold/transferred to WPCo pursuant to the Buyout Transaction that is set forth in the proposed Mitchell Plant Ownership Agreement.
47. What is the current net book cost of KPCo's share of Mitchell? What is the net book cost estimated to be at the end of 2028?