

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

In the Matter of:

ELECTRONIC JOINT APPLICATION OF)	
AMERICAN ELECTRIC POWER COMPANY, INC.,)	
KENTUCKY POWER COMPANY AND LIBERTY)	CASE NO.
UTILITIES CO. FOR APPROVAL OF THE)	2021-00481
TRANSFER OF OWNERSHIP AND CONTROL OF)	
KENTUCKY POWER COMPANY)	

SIERRA CLUB’S POST-HEARING RESPONSE BRIEF

Sierra Club submits this brief in response to the initial post-hearing briefs filed by the other parties in this proceeding, namely (1) the brief submitted jointly by the Applicants, Liberty Utilities Company (“Liberty”) and Kentucky Power Company (“KPC”), (2) the brief submitted jointly by intervenors the Attorney General (“AG”) and Kentucky Industrial Utility Customers (“KIUC”), and (3) the brief submitted by intervenor Walmart. Sierra Club did not file testimony and did not submit an initial post-hearing brief in this case.

I. Response to the Applicants

Sierra Club agrees that, fundamentally, the Applicants have successfully established the requisite elements of the legal standard for approval of the CPCN requested in this case. First, the evidence of record (not to mention public comments from various public officials as well as current and prospective customers of Liberty) plainly establishes that Liberty “has the financial, technical, and managerial abilities to provide reasonable service,” KRS 278.020(6), as it has previewed it will accomplish in KPC’s service territory, and as it has a proven track record of doing in other jurisdictions. Second, the record reflects that the proposed acquisition is “in accordance with law, for a proper purpose and is consistent with the public interest.”

KRS 278.020(7). The Applicants' brief addresses each of the foregoing elements in detail, and makes out more than a sufficient case that each is satisfied. There is no serious dispute in this case that Liberty's acquisition will be in accordance with law and for a proper purpose, and Sierra Club believes that the reliable, lower-cost, job-fostering service that Liberty will provide to ratepayers is consistent, at least, with the public interest.

II. Response to the AG and KIUC

Sierra Club offers qualified critiques and limited opposition to certain contentions and recommendations in the AG/KIUC joint initial brief, without opining on the rest of the parties' positions. Specifically, Sierra Club believes that Part II-F of the brief (pp. 36-42), contending that that Liberty should be required to use least-cost planning and competitive bidding to secure future generation resources, is doubly misguided—in its substance and in its ultimate request.

First, the substance of Part II-F of the brief focuses primarily on assailing an energy policy strawman that literally no one is actually advocating. The AG/KIUC suggesting that Liberty is supposedly in a “rush to convert Kentucky Power's system to 100% renewables” (p. 41), underscoring that the “current reality is that fossil fuel generation is still necessary” (*id.*), and lecturing the reader that a 100% renewable energy grid will raise bills and is currently incapable of providing reliable power 24 hours a day, 365 days of the year (*e.g.*, pp. 37-38). The thing is, Liberty has not actually signaled a rush to convert to 100% renewables—as other characterizations by the AG/KIUC elsewhere appear to concede—and precisely no one (including Sierra Club) contends that such a conversion would be feasible or appropriate anytime soon. Rather, all that Liberty has indicated, as the AG/KIUC brief itself puts it (p. 37), is a plan to “add[] significant quantities of renewable supply-side resources to its portfolio.” That is entirely unremarkable, as such could be said about practically every major utility across the

country, north to south, east to west, red and blue—including, most pertinent here, AEP. In other words, not only is the fact of a utility signaling a plan to add (subject to all requisite approvals) renewables to a diverse portfolio both unproblematic for reliable, cost-effective service, and exceedingly common now across the power sector, but it is already the status quo for the ownership of KPC’s current customers and service territory. Thus, the AG/KIUC’s parade of horrors about renewables (never mind its heavy reliance on editorial columns for cited authorities) creates the specter of an impending problem when, in truth, there is simply no basis to expect anything from Liberty other than commonplace proposals that, if and as they come, will be subject to all the normal regulatory processes and approvals that the law requires for comparable resource additions of any nature.

Second, and more to the point in terms of what Part II-F of the brief ultimately requests (after dismantling the aforementioned strawman), in asking the Commission to “condition that approval on Kentucky Power using a resource-neutral least-cost planning approach and acquiring future generation via a competitive bidding process” (p. 42), the AG/KIUC appear to be either (a) requesting that the Commission graft a new, additional layer of binding obligations in resource planning and procurement that are not required of utilities under Kentucky law or PSC precedent, or (b) simply underscoring currently applicable requirements that Liberty would need to abide by as a matter of course. Either way, the Commission can and should impose nothing now in response to the AG/KIUC’s request. On the one hand, to the extent that the obligations on utilities with respect to planning and procurements that are set out by Kentucky statute, and PSC regulations and precedent, for IRP proceedings, CPCN dockets, and rate cases, do not already require resource-neutral, least-cost planning informed by competitive bidding, in a given situation for a given procurement, it would be inappropriate and indeed unlawful for the PSC to

effectively promulgate new obligations here—for a single utility, with no concrete resource plan or proposal before it, in an acquisition docket. On the other hand, to the extent the AG/KIUC would contend that current law would already require what they are requesting, the Commission need not and should not take any action now in response, as Liberty has made crystal clear that it will abide by Kentucky law and, in any case, Liberty will in fact be subject to all required proceedings and approvals for any resource additions that it may propose in the future. The Commission can and will weigh in at appropriate future juncture, based on actual proposals with a concrete record, and in the appropriate forum, in proceedings provided by law for planning, preapprovals, and rate recovery.

Sierra Club offers no opinion on the rest of the AG/KIUC brief or the arguments and recommendations therein.

III. Response to Walmart

Sierra Club expresses its fundamental concurrence with the observations, arguments, and recommendations in Walmart’s initial post-hearing brief. For economy’s sake, Sierra Club will not delve into the three main points that Walmart makes; suffice it to say that Sierra Club finds them all well-founded, appropriate, and helpful.

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Sierra Club thanks the Commission for its consideration of this post-hearing response brief and for its thoughtful deliberations in this case more broadly.

Dated: April 18, 2022

Respectfully submitted,



Of counsel
(not licensed in Kentucky):

Matthew E. Miller, Esq.
Sierra Club
2528 California St
Denver, CO
Phone: (517) 230-7420
Email: matthew.miller@sierraclub.org

Joe F. Childers, Esq.
Childers & Baxter PLLC
300 Lexington Building
201 West Short Street
Lexington, KY 40507
Phone: (859) 253-9824
Fax: (859) 258-9288
Email: joe@jchilderslaw.com

Counsel for Sierra Club

CERTIFICATE OF SERVICE

This is to certify that the foregoing copy of SIERRA CLUB'S POST-HEARING RESPONSE BRIEF in this action is being electronically transmitted to the Commission on April 18, 2022; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.



JOE F. CHILDERS