

**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 : **Case No 2021-00481**
Liberty Utilities Co. For Approval Of The Transfer Of Ownership :
And Control Of Kentucky Power Company. :

**BRIEF OF ATTORNEY GENERAL AND
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.**

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The Attorney General, by his Office of Rate Invention (“AG”), and Kentucky Industrial Utility Customers, Inc. (“KIUC”) submit this Brief in support of their recommendations to the Kentucky Public Service Commission (“Commission” or “KPSC”). As proposed by American Electric Power Company, Inc. (“AEP”), Kentucky Power Company (“Kentucky Power”), and Liberty Utilities Co. (“Liberty”) (collectively, “Joint Applicants”), the acquisition of Kentucky Power by Liberty does not satisfy the public interest requirement of KRS 278.020(7). Accordingly, in the absence of several important modifications by the Commission, that proposal should be rejected.

ARGUMENT

I. The Acquisition As Proposed By Joint Applicants Is In Furtherance Of Their Individual Private Interests, But Is Not Consistent With The Public Interest In Violation of KRS 278.020(7).

A. Joint Applicants Failed To Meet Their Burden Of Proof To Demonstrate That The Proposed Acquisition Is Consistent With The Public Interest.

KRS 278.020(7) provides that no entity shall acquire control of a Kentucky utility without having first obtained the approval of the Commission. The same statute directs that the Commission will approve a proposed acquisition “*when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest.*” The Legislature has not limited the Commission’s authority to ensure that the sale of a state-regulated monopoly utility is in the interest of retail customers. While a public utility holding company can protect its own private interest when selling a utility, customers must rely on the Commission’s broad authority for protection.

As the Commission held in Case No. 2002-00018, the “*public interest*” standard set forth under KRS 278.020(7) requires any party seeking approval of a transfer of control to prove “*that the proposed transfer will not adversely affect the existing level of utility service or rates or that any potentially adverse effects can be avoided through the Commission's imposition of reasonable conditions on the acquiring party.*”¹ The acquiring party is also required to prove “*that the proposed transfer is likely to benefit the public through improved service quality, enhanced service reliability, the availability of additional services, lower rates, or a reduction in utility expenses to provide present services. Such benefits, however, need not be immediate or readily quantifiable.*”²

¹ *In the Matter of: Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water Aqua Holdings GMBH*, Case No. 2002-00018 (May 30, 2002) (“Kentucky-American Order”) at 7.

² Kentucky-American Order at 7-8.

Liberty itself recognizes that the focus of the “*public interest*” inquiry is “*first and foremost*” on the rate impact of a proposed transfer of control on retail customers. Liberty witness Eichler testified that “[s]ubject to the Commission’s own views and findings, public interest in the context of a utility acquisition is first and foremost a function of the impact on customers. This includes customer rates paid for service, operational safety, reliability and service quality and continuity.”³ Joint Applicants have failed to meet their burden to prove that the proposed acquisition will have a long-term positive impact on rates.

As an initial matter, the record contains no comprehensive analysis of the impacts to customers that will result from the proposed acquisition as compared to the status quo.⁴ In Response to Data Requests, Joint Applicants conceded that they did not conduct a comparative rate impact analysis between the two scenarios nor did they analyze impacts on service quality and reliability resulting from the proposed transfer of control.⁵ Further, Joint Applicants stated that they had not performed analyses regarding the impacts to retail customers of terminating Kentucky Power’s participation in existing AEP agreements, including the AEP Power Coordination Agreement, nor the potential impacts of Kentucky Power leaving the AEP Joint Fixed Resource Requirement (“FRR”) plan.⁶

And nowhere in the record do Joint Applicants make commitments to produce cost of service-based savings for customers or to achieve a certain level of service reliability. Joint Applicants merely point to the current Kentucky Power rate case stay-out that is in effect until January 1, 2024.⁷ However, AG-KIUC witness Mr. Lane Kollen quantified at least \$578 million in increased costs to Kentucky Power’s retail customers resulting from the proposed

³ Direct Testimony of Peter Eichler on behalf of Liberty Utilities Co. at 29:9-12.

⁴ Direct Testimony of Lane Kollen at 13:9-15:6.

⁵ Joint Applicants’ Response to KIUC 1-8 and 1-9.

⁶ Joint Applicants’ Response to KIUC 1-10 and 1-12 through 1-16.

⁷ Joint Applicants’ Response to KIUC 1-8.

acquisition.⁸ Mr. Kollen's quantification of the impact on rates is the only comprehensive analysis in the case.

B. \$1.4 Billion In New Cash And A \$585 Million Equity Premium Makes Selling To The Highest Bidder Consistent With AEP's Private Interest.

It is easy to discern how the proposed acquisition of Kentucky Power by Liberty is in both AEP's and Liberty's private interests. AEP benefits from securing approximately \$1.4 billion in cash (after taxes and transaction fees) by selling a regulated Kentucky utility with a statutorily-created monopoly service territory serving captive customers.⁹ Rather than continuing to earn a low return on its investments in Kentucky (Kentucky Power's earned return on equity in 2021 was 6.2%),¹⁰ AEP can use that \$1.4 billion in cash to invest in more profitable operations, such as building transmission and renewable resources. The planned transmission investments will be particularly profitable given the opportunity for rider recovery with more advantageous capital structures and higher approved ROEs than other types of capital investments.¹¹ And the influx of cash will allow AEP to prevent a dilution to its stock price by foregoing the need to issue additional equity to make those investments. Also, dividends must be paid on new shares, but not on the cash received through this transaction.

In its SEC 10-K, AEP's touts these benefits, stating of the Liberty sale that "*AEP expects to receive approximately \$1.45 billion in cash, net of taxes and transaction fees. AEP plans to use the proceeds to eliminate forecasted equity needs in 2022 as the company invests in regulated renewables, transmission and other projects.*"¹² AEP's investor presentation likewise explains that the approximately \$1.4 billion in cash received from the Liberty transaction will be

⁸ Direct Testimony of Lane Kollen at 19:1.

⁹ KIUC Confidential Ex. 1 at 2; KIUC Ex. 10 at 3, 5, 7-8 11 and 15.

¹⁰ KIUC Ex. 10 at 16.

¹¹ KIUC Ex. 10 at 18.

¹² KIUC Ex. 10 at 5.

“utilized to eliminate 2022 forecasted equity needs of \$1.4 billion” and that the “proceeds we will use to invest in regulated renewables and transmission.”¹³ AEP also concedes that the

Liberty sale [REDACTED]

[REDACTED] and that the sale [REDACTED]

[REDACTED].¹⁴

KIUC provided a realistic and concrete example illustrating how the additional cash proceeds will be used by AEP, consistent with its representations to investors. KIUC Ex. 11 shows \$78 million of additional annual earned after-tax return on the cash proceeds from this transaction:

AEP's Use of \$1.4 Billion of Cash Proceeds from Kentucky Sale To Invest in Regulated Renewables and Transmission \$ Millions							
	Source	Amount	2021 Earned ROE	2021 Earned Return	Opportunity Earned ROE	Annual Opportunity Earned Return	Additional Annual Earned Return
AEP's Cash Proceeds Upon Sale to Liberty	Numerous Presentations	1,400.000					
KPCo's Per Books Equity as of December 31, 2021	KPCo 2021 Annual Report	874.355	6.90% ⁽¹⁾	60.330	10.35%	90.496	30.165
KTCO's Per Books Equity as of December 31, 2020	KTCO's 2020 Form 1	62.750	10.35% ⁽²⁾	6.495	10.35%	6.495	-
Remaining Amount of Cash Proceeds Available		462.895	0.00% ⁽³⁾	-	10.35%	47.910	47.910
Total Use of AEP's Cash Proceeds		1,400.000		66.825		144.900	78.075
(1) - January 13, 2022 AEP Investor Presentation Earned ROE.							
(2) - Standard FERC Approved ROE for PJM Transmission Tariffs (Inclusive of RTO Incentive Adder of 0.50%) as Confirmed on page 123.11 in KTCO's 2020 Form 1.							
(3) - Currently Not Earning a Return.							

¹³ KIUC Ex. 10 at 3 and 11.

¹⁴ KIUC Confidential Ex. 1 at 3.

AEP had a fiduciary duty to its shareholders to sell Kentucky Power to the highest bidder. \$1.4 billion in new cash got the job done. But the highest bidder is not necessarily the proper owner of a state granted monopoly service territory, or in the best interest of retail customers. That decision is ultimately left to this Commission.

While other metrics surrounding AEP's "gain" from the Liberty transaction have been introduced in this case, including \$40 million in AEP after-tax book earnings and the \$585 million acquisition premium that Liberty would pay to AEP,¹⁵ the best metric by which to assess AEP's private interest in the transaction is the approximately \$1.4 billion in cash that it will secure from Liberty to reinvest in new ways to produce greater returns than it currently receives through Kentucky Power. That is the metric most important to AEP's Board of Directors. It is also the metric most important to Wall Street. AG-KIUC stress the extremely profitable nature of this transaction to AEP in order to demonstrate to the Commission that if the acquisition is approved, AEP has sufficient resources to compensate ratepayers for more than the \$20 million it has already agreed to pay.

C. Liberty Is Paying A \$585 Million Premium To Secure A Monopoly Service Territory With The Potential For Rate Base Growth.

Liberty's private interest is also discernable through the record of this proceeding. In its investor presentations, Liberty's parent company, Algonquin, describes the acquisition as an earnings growth opportunity. Algonquin describes Kentucky Power as an electric utility [REDACTED]

[REDACTED]

[REDACTED]¹⁶ Algonquin notes that the projected capex

[REDACTED]

¹⁵ Rebuttal Testimony of James X. Lllende at 3:3-7; Direct Testimony of Lane Kollen at 4:4-7.

¹⁶ Joint Applicants Response to AG First Set of Data Requests, Item No. 49, Supplemental Confidential Attachment 1 at 261.

[REDACTED]

[REDACTED] ¹⁷ Algonquin's plan includes [REDACTED].¹⁸ It is therefore evident that acquiring Kentucky Power provides Liberty with a substantial opportunity to increase its earnings through expansive rate base growth within the Eastern Kentucky region.

Liberty is not paying \$2.846 billion for just a fifty-one year old 780 MW coal-fired power plant in West Virginia that: had a capacity factor of 26.37% in 2020, was idle for much of 2021, has a substantial decommissioning liability, and may run only an additional six years (Mitchell); a fifty-nine year old 260 MW coal plant that was converted to run on natural gas which also has significant decommissioning liability and an expected retirement date of 2030 (Big Sandy 1); a 390 MW unit power contract for Indiana coal generation that will expire in eight months (Rockport); a distribution system that is unreliable and costly to maintain and that needs significant capital upgrades; and a transmission system.

Instead, AEP is selling, and Liberty is buying, a state government-awarded monopoly service territory.¹⁹ The value is the monopoly. AEP did not pay anything to the Commonwealth of Kentucky for this monopoly. But it will receive a \$585 million premium on its equity investment.

While the private interests of both AEP and Liberty are quickly discernable, the public interest served by the proposed acquisition is not. Although certain singular cost and/or savings items have been examined in the record of this case, the complete picture has not been presented by the Joint Applicants. Given this lack of comprehensive analysis by the Joint Applicants, the

¹⁷ Joint Applicants Response to AG First Set of Data Requests, Item No. 49, Supplemental Confidential Attachment 1 at 261 and 268.

¹⁸ Joint Applicants Response to AG First Set of Data Requests, Item No. 49, Supplemental Confidential Attachment 1 at 277.

¹⁹ Direct Testimony of Stephen J. Baron at 11:1-15.

acquisition as proposed fails to satisfy the “*public interest*” standard required under KRS 278.020(7).

D. Joint Applicants’ Rebuttal Commitments Alone Are Not Sufficient To Satisfy the Public Interest Standard.

In their Rebuttal Testimony, Joint Applicants offer proposals aimed at strengthening their “*public interest*” case, including the establishment of a \$40 million Eastern Kentucky Fuel Relief (“EKFR”) Fund, a three-year Big Sandy Decommissioning Rider (“BSDR”) deferral, and support for securitization legislation.²⁰ We learned at the hearing that AEP is funding \$20 million of the EKFR. We also learned at the hearing that AEP has reduced the purchase price by \$3.5 million to help Liberty fund the carrying cost on the three-year BSDR deferral.²¹ But it is not clear whether this amount will be used to reduce future rates. Importantly, none of these proposals represent a clear, enforceable guarantee that no long-term adverse rate or service impacts will result from the proposed acquisition.

While Joint Applicants’ proposals are a welcome first step toward meeting that “*public interest*” standard, those proposals alone are not sufficient to guarantee that retail customers will experience no adverse impacts to their rates or service as a result of the proposed acquisition. Indeed, of the three proposals advanced in rebuttal, only the EKFR Fund provides concrete savings to retail customers. Although admittedly helpful to retail customers in the short term, the proposed BSDR deferral is in essence a “*pay me now, pay me later*” approach. And although that rider holiday combined with securitization could result in savings for customers (currently estimated at \$7.2 million from years four onward),²² any potential securitization benefits are merely speculative at this point given the status of current Kentucky law. If other utilities oppose securitization legislation, then new legislation may not happen. Nevertheless, if this transaction

²⁰ Rebuttal Testimony of Peter Eichler at 10:18-14:17.

²¹ Joint Applicants’ Response to Staff Post Hearing Data Requests, No. 13

²² Rebuttal Testimony of Peter Eichler at 12:3-11.

does close, then AG-KIUC will work with Liberty to achieve a new securitization law.

Moreover, the AG-KIUC's comprehensive analysis reflects that the \$578 million in increased costs resulting from the acquisition far outweigh the one-time, short-term savings proposed in Joint Applicants' Rebuttal Testimony. Accordingly, even with the rebuttal modifications proposed by Joint Applicants, the proposed acquisition fails to satisfy the requirements of KRS 278.020(7).

II. Any Commission Approval Of The Proposed Acquisition Should Be Conditioned On Several Important Modifications.

A. The Proposed Eastern Kentucky Fuel Relief Fund Should Be Modified To Distribute The Entire \$40 Million Over Twelve Months And All Non-Residential Customers Should Be Treated Equally.

While AG-KIUC support conditioning any approval of the proposed acquisition on adoption of the proposals offered in Joint Applicants' Rebuttal Testimony, two modifications should be made to the \$40 million EKFR Fund proposal.

First, the EKFR Fund should be distributed on a non-discriminatory basis to non-residential customers consistent with KRS 278.170. The EKFR Fund is intended to *"provide a credit on customer bills to offset any charges resulting from when the Fuel Adjustment Clause adjustment factor is positive."*²³ The EKFR Fund is therefore a Fuel Adjustment Clause ("FAC") offset. Pursuant to 807 KAR 5:056, Kentucky Power's FAC rates are collected on a per kilowatt hour basis among all customers, without distinguishing between tariff schedules. But Joint Applicants do not propose to use that same approach for purposes of the EKFR Fund. Rather, under Joint Applicants' EKFR Fund proposal, there is an eleven to one ratio between Rates GS and IGS, resulting in unreasonably preferential treatment in violation of KRS 278.170.

²³ Rebuttal Testimony of Peter Eichler at 13:19-21.

Under Joint Applicants’ proposal, over a twelve-month period residential customers are projected to receive a \$15.57/MWh credit, General Service (Commercial and Industrial) customers are projected to receive a \$10.91/MWh credit, Large General Service (Commercial and Industrial) customers are projected to receive a \$3.54/MWh credit, and Industrial General Service (Commercial and Industrial) customers are projected to receive a \$0.99/MWh credit, as shown below.²⁴

	<u>Eichler Recommended</u>	<u>%</u>	<u>2020 Form 1 MWh Billed</u>	<u>%</u>	<u>Credit Per MWh Billed</u>
Residential (Heat and Non-Heat)	\$ 30,000,000	75.0%	1,927,268	38.1%	\$ 15.57
General Service (Commercial and Industrial)	\$ 6,000,000	15.0%	550,132	10.9%	\$ 10.91
Large General Service (Municipal Water Works, Street Lighting, Commercial LGS, Industrial LGS)	\$ 2,000,000	5.0%	565,263	11.2%	\$ 3.54
Industrial (Industrial IGS, Commercial IGS and IRP)	\$ 2,000,000	5.0%	2,011,616	39.8%	\$ 0.99
Total	<u>\$ 40,000,000</u>	<u>100.0%</u>	<u>5,054,279</u>	<u>100.0%</u>	<u>\$ 7.91</u>

This proposed rate structure is discriminatory. There is no valid justification for awarding small commercial and industrial customers on Rate GS eleven times the credit awarded to large commercial and industrial customers on Rate IGS.

The principal distinction between the non-residential customers (both commercial and industrial) is their demand level and service voltage. As Kentucky Power’s 2020 FERC Form 1 reflects, commercial customers take service under rate schedules GS, LGS and IGS, as do industrial customers.²⁵ Indeed, 24 commercial customers take service under Tariff IGS and 971 industrial customers take service under Tariff GS.²⁶ Given that these customers are similarly situated regarding their nature of service and their responsibility for FAC costs, the EKFR Fund should be distributed equally among all non-residential tariff classes as set forth below.

²⁴ KIUC Ex. 2 at 1.

²⁵ KIUC Ex. 2 at 14.

²⁶ KIUC Ex. 2 at 14.

	AG-KIUC Recommended	%	2020 Form 1 MWh Billed	%	Credit Per MWh Billed
Residential (Heat and Non-Heat)	\$ 30,000,000	75.0%	1,927,268	38.1%	\$ 15.57
General Service (Commercial and Industrial)	\$ 1,759,290	4.4%	550,132	10.9%	\$ 3.20
Large General Service (Municipal Water Works, Street Lighting, Commercial LGS, Industrial LGS)	\$ 1,807,678	4.5%	565,263	11.2%	\$ 3.20
Industrial (Industrial IGS, Commercial IGS and IRP)	\$ 6,433,031	16.1%	2,011,616	39.8%	\$ 3.20
Total	<u>\$ 40,000,000</u>	<u>100.0%</u>	<u>5,054,279</u>	<u>100.0%</u>	<u>\$ 7.91</u>

It could very easily be argued that all customers (both residential and non-residential) should receive the same EKFR credit. But AG-KIUC recognize that it is reasonable for residential customers on fixed incomes to receive special treatment in this instance.

Second, the Commission should require that the full EKFR Fund be distributed to customers over a 12-month period in order to effectuate the one-time 14%-16% residential rate reduction advertised by Joint Applicants.²⁷ Otherwise, based upon current FAC rates, the actual rate reduction for residential customers would be much lower than 14%-16%. The Joint Applicant's proposal to use the EKFR Fund to off-set positive FAC rates will result in the \$40 million being refunded over much longer than twelve months. For example, Kentucky Power's January 2022 FAC rates were \$2.13/MWh.²⁸ Had Joint Applicants' EKFR Fund proposal, which offsets incremental FAC rates, been in effect at the time, the credit received by residential customers in January 2022 would have been \$2.13/MWh, not \$15.57/MWh. The immediate rate reduction would therefore be significantly less than projected by Joint Applicants since Joint Applicants' savings estimates are based upon a 12-month distribution of EKFR Funds to customers. The Commission should therefore require EKFR Funds to be distributed over the course of 12-months in order to ensure that the one-time 14%-16% residential reduction projected by Joint Applicants actually occurs.

²⁷ Rebuttal Testimony of Peter Eichler at 15:2-3.

²⁸ Kentucky Power Fuel Adjustment Clause Schedule (filed February 21, 2022) at 5.

B. AEP Should Compensate Ratepayers For The Out-Of-State Transmission Subsidies Currently Being Recovered in Rates.

1. The Commission Has Already Put AEP On Notice That Changes Must Be Made To The Current Multi-State Transmission Cost Allocation.

As the Commission and the parties to this case are well-aware, Kentucky Power's retail customers have been subsidizing out-of-state transmission spending by AEP affiliate companies for years.²⁹ Indeed, the cumulative subsidy assigned by Kentucky Power, relative to its load, from 2017 through 2022 is approximately \$66 million.³⁰

The Commission has repeatedly recognized this transmission subsidization issue and expressly instructed Kentucky Power to remedy that issue. In Case No. 2020-00174, the Commission stated that it was “*putting [Kentucky Power] on notice that its transmission planning and investment activities are not sustainable and must be substantively addressed in the near future.*”³¹ The Commission went on to direct that Kentucky Power “*...must address the burden these increasing expenses will represent to its dwindling customer base. **Failure by Kentucky Power to take immediate steps to materially address this issue will force the Commission, whether it is through its statutory authority at the retail level or its advocacy at the wholesale level, to address these concerns itself.***”³²

On March 25, 2022, the Commission filed a Protest at FERC in response to AEP transmission tariff filings related to the proposed Liberty acquisition.³³ In that Protest, the Commission argues that leaving Kentucky Power in the AEP Transmission Zone “*will not address the unjustified cost shifts occurring within the AEP transmission zone.*”³⁴ The Commission explains that “*[a]s long as Kentucky Power and Kentucky Transmission remain*

²⁹ Direct Testimony of Stephen J. Baron at 12:17-22:3.

³⁰ Direct Testimony of Stephen J. Baron at 13:2-3.

³¹ Order, Case No. 2020-00174 (January 13, 2021) at 60.

³² Order, Case No. 2020-00174 (January 13, 2021) at 63 (emphasis added).

³³ Protest of the Kentucky Public Service Commission, FERC Docket Nos. ER22-1195-000 *et al.*, (“KPSC Protest”).

³⁴ KPSC Protest at 2.

*within the AEP transmission zone for purposes of allocating PJM related transmission costs, Kentucky Power and its customers will be forced to pay for transmission projects in the AEP transmission zone from which they do not benefit or benefit at levels less than roughly commensurate with allocated costs.*³⁵ The Commission posits “*whether Kentucky Power and Kentucky Transmission’s inclusion in the AEP transmission zone results in just and reasonable rates and whether continued membership in PJM is beneficial.*”³⁶ And ultimately, the Commission recommends that AEP’s FERC filings be rejected since they do not address whether Kentucky Power and Kentucky Transmission should remain in the AEP Transmission Zone.

2. AEP Should Be Incentivized To Cooperate With The Commission’s FERC Protest To Establish A Standalone Transmission Zone for Kentucky Power Or Combine It With An Existing Zone.

As the Commission recognized, the potential sale of Kentucky Power to Liberty presents a valuable opportunity to address this transmission subsidization issue. Because under Liberty’s ownership, Kentucky Power will no longer be a party to the AEP East Transmission Agreement, it will be treated as a non-AEP affiliated load-serving entity within the AEP East Transmission Zone under the PJM Consolidated Transmission Owners’ Agreement (“CTOA”).³⁷ This change is important since Kentucky Power currently pays a substantial annual penalty based on a comparison of its charges under the AEP Zonal Network Integration Transmission Service (“NITS”) rate versus what it would pay for only its own transmission investment.³⁸ That penalty now amounts to about \$15 million in 2022 in excess transmission charges for NITS service.³⁹

³⁵ KPSC Protest at 2.

³⁶ KPSC Protest at 6.

³⁷ Direct Testimony of Stephen J. Baron at 17:18-19.

³⁸ Direct Testimony of Stephen J. Baron at 18:5-7.

³⁹ Direct Testimony of Stephen J. Baron at 18:7-9. Liberty points to the allocation change from 12 CP to 1 CP within the AEP Transmission Zone as a potential benefit to customers, but historical data reflects that this allocation change will average out over time to produce roughly the same result as if the 12 CP approach were maintained. Direct Testimony of Stephen J. Baron at 23:1-24:4.

Given this important change of circumstances, the Commission can now act to protect customers and to remedy this long-standing transmission subsidy by requiring AEP/Liberty to pursue granting Kentucky Power the freedom to become its own standalone transmission zone in PJM, or be combined with a different zone. Under the standalone approach, Kentucky Power's retail customers will be responsible only for transmission costs that were incurred for the benefit of Kentucky Power's system. And based upon the 2021 Kentucky Power/Kentucky Transco revenue requirement, a Kentucky Power transmission zone would already be larger than the current Dayton, East Kentucky Power Cooperative, Ohio Valley Electric Corporation, and Rockland Electric zones.⁴⁰

As a condition of any approval of the proposed acquisition, the Commission should therefore expressly require AEP and Liberty to seek an amendment to the CTOA and PJM OATT that would permit Kentucky Power to become a separate transmission zone (either alone or combined with a different zone).⁴¹ Additionally, in order to address AEP's potential conflict of interest in allowing Kentucky Power to exit the AEP Transmission Zone, the Commission should incentivize AEP to help secure a separate transmission zone for Kentucky Power by requiring AEP to offset the current out-of-state subsidies in rates by \$15 million per year until the earlier of: 1) the date Kentucky Power secures a change to the PJM tariff allowing for Kentucky Power to become a standalone transmission zone; or 2) five years.⁴² That \$15 million annual offset should flow through Kentucky Power's Purchase Power Adjustment rider.

⁴⁰ Direct Testimony of Stephen J. Baron at 26:1-5.

⁴¹ Direct Testimony of Stephen J. Baron at 26:7-12.

⁴² Direct Testimony of Stephen J. Baron at 27:9-16.

Under this approach, even if the CTOA/PJM OATT amendment process is ultimately unsuccessful, Kentucky Power's customers would still benefit from the proposed acquisition through the offset of the annual \$15 million transmission subsidy that they are currently paying to fund out-of-state transmission spending by AEP's affiliates.

Transmission spending in the AEP Zone is a huge issue. From 2019 to 2021, transmission costs in the AEP zone *increased* by 45% to \$95,597/MW-Year.⁴³ Over the same period, the transmission costs of East Kentucky Power Cooperative *decreased* by 21% to \$23,763/MW-Year.⁴⁴ There is no end in sight. For 2022-2026, AEP expects to spend \$14.4 Billion on transmission.⁴⁵ The sale of Kentucky Power gives the Commission the opportunity to control transmission costs in the Commonwealth without being held hostage to AEP's transmission spending in Michigan, Indiana, Ohio, West Virginia, Virginia and Tennessee. But AEP needs an incentive to cooperate at FERC to help make that happen. \$15 million for up to five years is that incentive.

While AEP has a legal right under the preemption doctrine to fully recover its FERC-approved transmission costs⁴⁶ the Commission has previously conditioned approval of a transfer of control on a Kentucky utility agreeing not to recover FERC-approved transmission costs.⁴⁷ Accordingly, the Commission could condition any approval of the proposed acquisition on a voluntary commitment by AEP to offset the out-of-state transmission subsidy in this case.

⁴³ KIUC Ex. 9.

⁴⁴ *Id.*

⁴⁵ KIUC Ex. 2 at 17.

⁴⁶ *See Nantahala Power and Light Company v. Thornburg*, 476 U.S. 953 (1986).

⁴⁷ *In the Matter of: Application of Duke Energy Kentucky, Inc. for Approval to Transfer Functional Control of Its Transmission Assets from the Midwest Independent Transmission System Operator to the PJM Interconnection Regional Transmission Organization and Request for Expedited Treatment*, Case No. 2010-00203, Order (December 22, 2010) at 11-13.

C. AEP Should Compensate Ratepayers For Prior Distribution System Under Investment and AEP's Corresponding Failure To Live Up To Its Reliability Commitments.

1. The Record Indicates That Kentucky Power's System Suffers From Significant Reliability Issues.

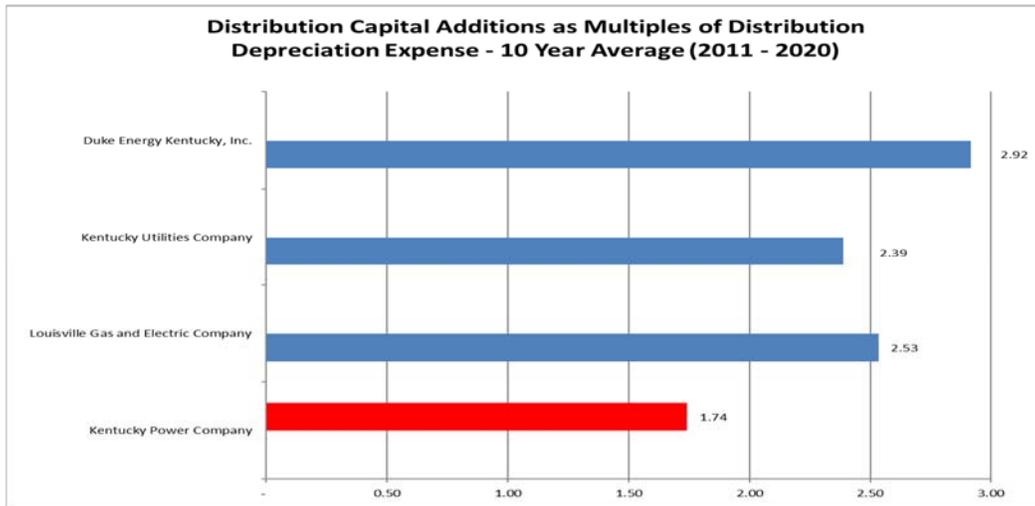
Unlike the housing market, where buyers typically pay a discount for *"fixer uppers,"* when selling a monopoly utility in a regulated service territory with captive customers, a *"fixer upper"* can actually elicit a higher market price. This is because investor-owned buyers of utilities are attracted to the opportunity for substantial rate base growth as compared to the lower rate base growth that otherwise may be achievable when buying a utility that is already in good working condition. Hence, there is a perverse incentive in the utility industry that makes paying a premium for a *"fixer upper"* a sensible business decision.

A non-profit consumer owned cooperative does not have an incentive to overpay for a *"fixer upper."* It does not view necessary system upgrades as an investment opportunity, only as a cost its members must pay.

In this case, there is ample evidence that Kentucky Power is just such a *"fixer upper"* utility. Liberty's own due diligence reflected that *"Kentucky Power's reliability is substantially below the industry standards and aside from the most recent year, has shown a declining trend..."*⁴⁸ And as AG-KIUC witness Kollen testified, and as the following chart reflects, *"the Company is substantially below the other investor-owned utilities in the Commonwealth in every year from 2011 through 2020 on...annual distribution plant investment as a multiple of depreciation expense."*⁴⁹

⁴⁸ Joint Applicants Response to KIUC 1-76.

⁴⁹ Direct Testimony of Lane Kollen at 47:7-48:3.



Kentucky Power’s reliability performance is also remarkably poor as measured by standard reliability indices, as the charts below reflect.⁵⁰

RELIABILITY AS MEASURED BY SAIDI AND CAIFI FOR KENTUCKY POWER COMPANY COMPARED TO OTHER KENTUCKY UTILITIES FIVE YEAR AVERAGE 2016-2020						
Utility Name	Total Customers	Total Circuits	SAIDI	SAIFI	SAIDI	SAIFI
			Excluding MED (5 Year Average)		Including MED (5 Year Average)	
Kentucky Power	165,077	230	443.62	2.22	856.39	2.52
Big Sandy RECC	12,845	36	455.06	3.36	607.46	3.80
Grayson Rural Electric	14,246	42	437.70	3.13	465.20	3.22
South Kentucky RECC	69,987	143	222.20	1.97	345.26	2.21
Licking Valley Rural	17,449	36	158.10	1.27	345.03	1.88
Jackson Purchase	30,337	91	108.07	1.17	343.12	1.73
Jackson Energy Coop.	51,320	112	203.30	1.68	313.80	1.94
Mead County RECC	30,282	79	103.85	1.34	303.09	1.65
Fleming Mason	25,163	45	153.74	1.18	297.41	1.49
Inter-County Energy	26,862	44	101.72	1.06	252.56	1.89
Shelby Energy Coop.	16,751	47	125.04	1.23	249.50	1.77
Blue Grass Energy	58,829	138	116.56	1.02	215.24	1.28
Owen Electric	63,142	129	98.30	1.16	211.61	1.50
Nolin RECC	35,709	84	66.47	0.94	207.67	1.38
LG&E	434,471	619	77.82	0.93	187.75	1.16
Duke KY	151,317	141	110.44	0.91	184.66	1.11
Kentucky Utilities	546,042	1,113	84.64	0.78	157.74	0.90
Farmers Rural Electric Coop.	24,638	68	126.10	1.41	155.51	1.53
Salt River Electric	53,975	106	78.20	0.95	145.60	1.22

*2020 Electric Distribution Utility Annual Reliability Report
 ** Does not include outages from February 2021 Ice Storms.

⁵⁰ Direct Testimony of Lane Kollen at 48:12-50:50:1.

RELIABILITY AS MEASURED BY SAIDI AND CAIFI FOR KENTUCKY POWER COMPANY COMPARED TO OTHER KENTUCKY UTILITIES						
FIVE YEAR AVERAGE 2011-2015						
Utility Name	Total Customers	Total Circuits	SAIDI	SAIFI	SAIDI	SAIFI
			Excluding MED (5 Year Average)		Including MED (5 Year Average)	
Grayson Rural Electric	14,969	42	366.50	2.74	1315.30	3.57
Kentucky Power	168,545	221	473.40	2.50	1047.50	2.96
Big Sandy RECC	13,000	36	172.12	2.56	575.00	2.91
Licking Valley Rural ¹	17,299	36	165.13	1.47	366.58	2.12
Jackson Energy Coop.	51,481	112	174.29	1.58	309.13	1.84
Clark Energy Coop	25,691	74	144.92	1.53	304.78	2.01
Fleming Mason	24,025	42	139.60	1.22	259.45	1.57
Farmers Rural Electric Coop.	24,192	59	213.52	1.90	254.66	2.10
Blue Grass Energy	56,312	131	121.22	1.16	240.65	1.45
Shelby Energy Coop.	15,854	41	109.22	0.98	239.91	1.45
LG&E	413,353	546	89.92	1.05	233.54	1.32
South Kentucky RECC	68,138	143	173.04	2.40	227.55	2.96
Inter-County Energy	26,333	42	93.71	1.07	215.72	1.59
Mead County RECC	29,261	72	90.96	1.24	214.36	2.24
Owen Electric	59,409	123	135.65	1.37	187.33	1.52
Duke KY	137,431	134	115.91	1.21	186.15	1.45
Cumberland Valley Electric	23,809	64	127.66	1.36	166.90	1.78
Kenergy	56,663	196	115.69	1.73	150.55	1.90
Kentucky Utilities	527,753	1,029	89.52	0.86	121.84	0.95
Salt River Electric	49,666	91	96.60	0.94	119.54	1.22
Nolin RECC	34,658	82	84.49	0.91	118.71	1.04

¹ Reflects 2016 reporting year and 2012 – 2016 average due to data filing inconsistencies with prior reports.
*2015 Electric Distribution Utility Annual Reliability Report

Kentucky Power’s distribution expense per customer is likewise excessive and far above the other investor-owned utilities in Kentucky. For instance, Kentucky Power’s distribution maintenance expense per customer on average from 2011-2020 was \$209.16. This compares to Duke Energy Kentucky’s average of \$56.71, Louisville Gas & Electric Company’s average of \$62.33, and Kentucky Utilities Company’s average of \$60.46.⁵¹

Moreover, the Company’s forecasts of capital expenditures under AEP ownership reflect significant increases in capital expenditures, despite almost no-load growth, thus confirming Liberty’s due diligence assessment of chronic underinvestment. The forecasts confirm the need to upgrade and harden the system in order to minimize future distribution maintenance expense and the costs to repair damage and restore service in response to future weather events.⁵²

⁵¹ Direct Testimony of Lane Kollen at 50:9-51:6.

⁵² Direct Testimony of Lane Kollen at 51:10-52:4 (citing Joint Applicants Supplemental Response to KIUC 1-61, Attachment 3; KIUC Ex. 4.

Kentucky Power Company			
Actual and Budgeted Distribution Plant Capital Additions			
(\$ Millions)			
Historic Actual		Forecast	
2011	30.063	2022	77.802
2012	49.857	2023	77.471
2013	49.458	2024	83.167
2014	41.495	2025	119.467
2015	38.204	2026	98.574
2016	36.074	2027	105.265
2017	39.656	2028	100.789
2018	44.255	2029	78.150
2019	63.742	2030	72.127
2020	<u>68.429</u>		
Average	<u>46.123</u>	Average	<u>90.312</u>

AEP's chronic underinvestment in distribution made business sense from an investor perspective. During the periods examined above, AEP had the opportunity to allocate and deploy its capital more profitably elsewhere. A dollar invested by AEP in its Kentucky distribution system in 2021 earned a 6.2% return on equity, is applied to an equity capital structure of 43% and is recovered through base rates with the associated regulatory lag. In contrast, a dollar invested by AEP in any of its FERC-regulated Transcos earns a 10.35% return on equity, is applied to an equity capital structure of 55% and is recovered through a formula rate using a forecasted test year including a true-up with no regulatory lag.⁵³

2. It Is Unreasonable For AEP To Increase The Sales Price of Kentucky Power At The Expense of Consumers Because Of Significant Distribution Rate Base Investment Opportunities For The New Owner.

Ironically, AEP's chronic underinvestment in Kentucky Power's distribution system appears to be one of the major factors attracting Liberty as a potential buyer of Kentucky Power. As AG-KIUC witness Kollen testified, under Liberty ownership, Kentucky Power will have to incur substantial investment costs in order to address the chronic underinvestment under AEP

⁵³ Direct Testimony of Lane Kollen at 52:5-53:2.

ownership in order to minimize the costs to repair the system and restore service in response to future severe weather events, achieve reliability improvements, and achieve savings in distribution maintenance expense from present excessive levels.⁵⁴ The need to remedy these distribution issues means there is a substantial opportunity for rate base growth in the coming years. Algonquin's investor presentations appear to recognize this substantial opportunity, listing [REDACTED]

[REDACTED].⁵⁵ Hence, Kentucky Power's chronic distribution underinvestment was a material factor in the \$585 million acquisition premium offered to AEP for the system.

3. AEP Failed To Adhere To Its Past Reliability Commitments To This Commission And Should Be Required To Compensate Consumers For That Failure.

AEP made express commitments to this Commission to improve or at least maintain a certain level of reliability for customers, which it did not uphold. In Case No. 99-149, the AEP/Kentucky Power/Central and South West Corporation merger case, AEP/Kentucky Power agreed to at least maintain service quality and reliability at then existing levels, which were set forth in the Stipulation resolving the case.⁵⁶ In its Order approving that merger, the Commission held “[w]hile we recognize the difficulties presented by the terrain and topography in portions of Kentucky Power's service territory, the Commission reminds Kentucky Power that its top priority must be service quality and reliability. In the event that Kentucky Power's quality of service experiences a decline, the Commission is prepared to require additional measures be taken.”⁵⁷ In the Settlement Agreement in that case, AEP/Kentucky Power committed that it shall

⁵⁴ Direct Testimony of Lane Kollen at 54:3-7.

⁵⁵ Joint Applicants Responses to KPSC First Set of Data Requests, Item 68, Confidential Attachment Item at 6.

⁵⁶ *In the Matter of: Joint Application of Kentucky Power Company, American Electric Power Company, Inc., and Central and South West Corporation Regarding a Proposed Merger*, Case No. 99-149, Order (June 14, 1999) (“AEP-CSW Order”) at 8 and attached Stipulation, Attachment C at 1 (committing “to maintain the overall quality and reliability of its electric service at levels no less than it has achieved in the calendar years 1995-1998.”).

⁵⁷ AEP-CSW Order at 9.

improve reliability and achieve the goal of limited outages. AEP “*shall undertake all reasonable efforts to improve the quality and reliability of its service.*”⁵⁸ The Settlement Agreement also provides that the “*Company will undertake all reasonable expenditures to achieve the goal of limited customer outages.*”⁵⁹

AEP/Kentucky Power have failed to live up to their reliability commitment to this Commission. Kentucky Power’s SAIFI (including all storms) for 1995-1998 averaged 1.5465.⁶⁰ For 2011-2015, its SAIFI increased to 2.96.⁶¹ For 2016-2020, it averaged 2.52.⁶²

With respect to the SAIDI reliability measure, for 2011-2015 Kentucky Power was second worst in the Commonwealth, almost nine times as unreliable as Kentucky Utilities Company (“KU”). For 2016-2020, Kentucky Power’s SAIDI score was by far the worst in the Commonwealth, more than five times as bad as KU.⁶³

On a national basis, the customers of Kentucky Power receive just about the most unreliable service in the Country. According to 2020 EIA Data, Kentucky Power ranks:

- 28th worst in SAIDI (with MED) out of 689 national utilities listed;
- 29th worst in CAIDI (with MED) out of 652 national utilities listed;
- 99th worst in SAIFI (with MED) out of 652 national utilities listed.⁶⁴

The Commission should enforce AEP’s commitment to improve reliability. AEP promised to invest in the Kentucky Power distribution system to provide reliable service, especially to the people who rely on electric service to heat their homes in winter to stay alive. AEP failed. Just as AEP was put on notice that it must address the transmission subsidies, AEP was put on notice

⁵⁸ KIUC Ex. 11

⁵⁹ Id.

⁶⁰ KIUC Ex. 11.

⁶¹ KIUC Ex. 6.

⁶² Id.

⁶³ KIUC Ex. 6.

⁶⁴ AG-KIUC Joint Response to Joint Applicants Data Request Item No. 25.

in 1999 that if reliability did not improve, “*the Commission is prepared to require additional measures be taken.*” Therefore, it is in the public interest to require AEP, as a condition of the acquisition, to contribute funds to help remedy its chronic distribution underinvestment that Liberty and Kentucky Power’s retail customers will have to address. The Commission previously required a selling company to contribute capital to uphold past commitments.⁶⁵ It should do so again here.

On January 1, 2024, Kentucky Power’s three-year base rate freeze will expire. Liberty expects to file a base rate case (probably with a future test year) for new rates reflective of its standalone cost structure to be effective on that date. That rate case will likely include spending for needed distribution system upgrades as well as the amortization of the \$59 million Rockport and \$42.5 million ice storm regulatory assets. However, there will be a compounding effect on ratepayers. Just when new base rates become effective on January 1, 2024, the Federal Tax Cut (“FTC”) Tariff will expire. The loss of the FTC bill credit will cause industrial rates to go up by 10.7%.⁶⁶ The loss of the FTC bill credit will cause residential rates to go up by \$21.87/MWh for the four winter months December-March, or 18.3%,⁶⁷ precisely when electric heat customers can afford it least. In mid-2025, the three-year BSDR holiday will end and recovery will restart. This will all happen in the face of rapidly rising coal, natural gas and market energy prices, all of which are automatically reflected in the FAC.

Something has to give. Eastern Kentucky consumers cannot afford to pay for these rising costs *plus* costs to upgrade the neglected distribution system. Without compensation from AEP, the result could very well be continued unreliable service and financial hardship. Mr. Kollen

⁶⁵ *In the Matter of: The Joint Petition of Kentucky-American Water Company, Thames Water Aqua Holdings GMBH, RWE Aktiengesellschaft, Thames Water Aqua US Holdings, Inc. and American Water Works Company, Inc. for Approval of a Change in Control of Kentucky-American Water Company*, Case No. 2006-00197, Order (April 16, 2007).

⁶⁶ KIUC Ex. 3.

⁶⁷ *Id.*

quantified the compensation required from AEP for its failure to live up to its prior reliability commitments and its chronic under investment in the distribution system at \$354.5 million. That is the amount AEP should be required to pay.

D. AEP Should Compensate Ratepayers For The Costs Of Selling Kentucky Power to The Highest Bidder Who Must Build And Operate A Small Stand-Alone Utility From The Ground Up.

1. Increased Costs From Operating A Small Standalone Utility.

AEPSC currently provides an extensive list of services to Kentucky Power that encompasses the full range of utility operations and administration.⁶⁸ But at the close of the proposed Liberty acquisition, Kentucky Power will withdraw from the AEPSC Service Agreement and no longer obtain the economies and other benefits from the provision of centralized services by AEPSC, except to the extent certain of those services temporarily will be provided pursuant to a new Transition Services Agreement (“TSA”). Instead, Liberty will restructure Kentucky Power to provide or obtain those services locally, including hiring approximately 100 new employees.⁶⁹ Liberty’s standalone utility business model will increase the Company’s non-fuel operation and maintenance (“O&M”) expenses and administrative and general (“A&G”) expenses by at least 5% to 10%, or \$83.9 million on a present value basis.⁷⁰

AG-KIUC of course support increased local employment. But it should not come entirely at the expense of Kentucky Power’s 165,000 ratepayers. Instead, AEP should be required to contribute since AEP selected the highest bidder to acquire Kentucky Power, not the lowest cost or best operator of the system. Both KU and EKPC have existing generation, transmission, and distribution operations that could accommodate the Kentucky Power system. Both KU and

⁶⁸ A list of the services provided by AEPSC to the Company is set forth in paragraph 1 of the Service Agreement.

⁶⁹ Direct Testimony of Lane Kollen at 21:11-22:1.

⁷⁰ Direct Testimony of Lane Kollen at 22:7-10.

EKPC have contiguous service territories. And EKPC is a member of PJM. Merging Kentucky Power and EKPC into one transmission zone would satisfy the Commission's FERC Protest. Combining Kentucky Power with an existing local utility would almost certainly produce real savings, consistent with the public interest. But AEP operated in its own private interest in selecting Liberty.

Liberty claims that its proposed standalone utility business model will result in economies and produce savings for customers. However, that claim is not supported by credible evidence.

The only quantitative analysis relied upon by Liberty to support its claim of operational savings was provided in Response to Staff 1-17. This Excel spreadsheet shows that by operating as a standalone utility, Liberty expects to provide service for \$8.9 million per year less than AEP. \$7.6 million (85%) of the claimed savings result from the transmission and distribution functions.⁷¹ Liberty simply looked at twelve categories of costs and made one of three assumptions. Liberty could do the same job as AEP for either 1) the same cost; 2) 25% cheaper; or 3) 50% cheaper. These round number estimates do not suggest a rigorous analysis. The witness sponsoring this Excel spreadsheet could not identify what actual jobs or duties were included in any of the twelve cost categories. It seemed largely like guess work.⁷² The biggest category of cost savings came from the function "*Other Transmission*." This accounted for \$4.3 million of the claimed \$8.9 million of savings. But the witness really had no idea what was included in "*Other Transmission*" or how Liberty could do it for \$4.3 million cheaper.⁷³ This is a thin evidentiary basis upon which to approve the \$2.846 Billion sale of a major utility.

Additionally, Liberty conceded it did not develop a budget or forecast of Kentucky Power's cost structure under Liberty ownership and its standalone utility model and instead simply relied

⁷¹ KIUC Ex. 8.

⁷² Hearing Tr. (March 28, 2022) at 17:33:17.

⁷³ Id.

upon Kentucky Power's forecast of its cost structure under AEP ownership for its initial expense and capital budgets.⁷⁴ Nor did Liberty perform any staffing or other studies that demonstrate it can achieve savings. There is no basis to believe that Liberty's Excel spreadsheet assumptions reflect the cost and difficulty of getting skilled workers to relocate to Ashland. Working remotely from elsewhere does not count as local employment. Liberty's analysis is not a realistic study of Kentucky Power's cost structure under Liberty ownership, such as Liberty would develop for budget purposes, nor the type of comprehensive savings analyses produced in other Commission transfer of control cases.

Liberty's claim of savings resulting from its acquisition of the Empire Utility District ("EUD") cited by Mr. Balashov is also flawed. His analysis reflects non-fuel operating expense savings from the retirement of EUD's coal-fired capacity. Such savings are *not* the result of efficiencies or economies due to Liberty ownership. Coal plants are very labor-intensive, with high fixed and variable non-fuel operating expenses. Replacing a coal plant with renewables (which have few employees after construction is completed and very low operating expenses) will of course show non-fuel operating expense savings. That will naturally occur no matter who the owner is.

In addition to the lack of evidentiary support, Liberty's claimed savings from building a new utility from the ground up is not borne out by Kentucky's decades of experience with utility acquisitions and mergers. This Commission has repeatedly approved the creation of *larger* utility holding companies in order to reduce customer costs by creating economies of scale and greater efficiencies.

For instance, in approving the merger of Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E") in 1997, the Commission found that "[t]he

⁷⁴ Joint Applicants' Response to KIUC 1-48.

*merger is intended to allow the Applicants to successfully position themselves in the new competitive environment that is emerging in the electric industry. More specifically, the Applicants contend that by merging they will be able to better control their costs and achieve economies of scale.*⁷⁵ In that proceeding, KU-LG&E provided an extensive and detailed analysis performed by Deloitte & Touche to quantify potential merger savings, which showed expected cumulative 10-year total non-fuel savings of \$764 million, with the costs to achieve those savings of \$77 million.⁷⁶ The net non-fuel savings over the first five years of \$235 million was shared evenly between ratepayers and shareholders.⁷⁷ This was achieved through a five-year merger surcredit.⁷⁸

In 1999, in approving the AEP-CSW merger, the Commission noted that the transaction was expected to achieve \$2.4 billion in non-fuel savings over ten years.⁷⁹ The Commission explained that *“[o]f this amount, Kentucky Power will be allocated \$73.8 million. These savings are expected to result from the elimination of duplicative functions and positions and greater economies of scale the merger is expected to produce.”*⁸⁰ Over the first eight years, customers received 55% of the net non-fuel savings through a merger surcredit, with shareholders retaining 45%.⁸¹ Kentucky Power also agreed to a three-year rate case stay-out.⁸²

Similarly, in the Cinergy/Union Light, Heat & Power (“ULH&P”) acquisition case in 1994, the Commission noted numerous cost reductions resulting from the acquisition, including economies of scale, *“with approximately \$95 million allocated to ULH&P.”*⁸³ And in the

⁷⁵ *In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of Merger*, Case No. 97-300, Order (September 12, 1997) (“KU-LG&E Merger Order”) at 2.

⁷⁶ KU-LG&E Merger Order at 9.

⁷⁷ KU-LG&E Merger Order at 9.

⁷⁸ KU-LG&E Merger Order at 9.

⁷⁹ AEP-CSW Order at 3.

⁸⁰ AEP-CSW Order at 3.

⁸¹ AEP-CSW Order at 5.

⁸² AEP-CSW Order at 5-6.

⁸³ *In the Matter of: Application of the Cincinnati Gas & Electric Company and Cinergy Corp. for Approval of the Acquisition of Control of the Union Light, Heat & Power Company by Cinergy Corp.*, Case No. 94-104 at 3-4.

subsequent Cinergy/Duke merger case in 2005, the merger of two already large utilities created additional non-fuel economies and savings, resulting in \$7.6 million of those savings passing through to retail customers via a five-year merger surcredit.⁸⁴

The same pattern holds true even in respect to Kentucky cooperative cases. In the 1999 Green Rivers/Henderson Union merger, the Commission determined that savings of between \$14.5 million and \$23.6 million could be achieved through a consolidation of the two cooperatives. The Commission found that *“[b]ased upon a review of the record, the Commission finds that the proposed consolidation should provide significant long-term benefits to the member-consumers of Green River and Henderson Union. The Commission is convinced that the positive financial impact and economies of scale achievable through consolidation will allow Green River and Henderson Union to best serve their member-consumers in the future.”*⁸⁵ The Commission reached the same conclusion on the positive economies of scale regarding the consolidation of two EKPC distribution cooperatives (Blue Grass and Fox Creek).⁸⁶

Liberty’s proposed approach is the polar opposite of the approved transactions discussed above. Further, there is no reliable evidence in the record demonstrating that deaffiliation from a large utility holding company such as AEP, AEPSC, and a multitude of affiliate agreements can or will provide efficiencies, economies of scale, and savings to customers. The approved transactions above support the logic of the inverse as well – efficiencies gained through affiliation can be lost through deaffiliation.

The Commission should rely upon the analysis of AG-KIUC witness Kollen, who has been involved in dozens of utility mergers and acquisition proceedings. He conservatively quantified

⁸⁴ *In the Matter of: Joint Application of Duke Energy Corporation, Duke Energy Holding Corp., Deer Acquisition Corp., et al.*, Case No. 2005-00228, Order (November 29, 2005), Appendix A.

⁸⁵ *In the Matter of: The Application of Green River Electric Corporation and Henderson Union Electric Cooperative Corporation for Approval of Consolidation*, Case No. 99-136, Order (June 18, 1999) at 4.

⁸⁶ *In the Matter of: Application of Blue Grass Rural Electric Cooperative Corporation and Fox Creek Rural Electric Cooperative Corporation for an Order Approving Consolidation of the Two (2) Named Rural Electric Cooperatives*, Case No. 97-424, Order (December 12, 1997).

the increase in operating expenses from the loss of economies resulting from Liberty's standalone utility business model at \$7.7 million to \$15.3 million annually.⁸⁷ Over ten years, the increase in operating expenses is estimated at \$76.7 million to \$153.4 million with a midpoint of \$115.1 million on a nominal dollar basis, or \$83.9 million on a net present value basis.⁸⁸

E. AEP Should Compensate Ratepayers For The Costs of Deaffiliation.

1. The 2023 Kentucky Power ROE Make Whole Provision In The Rockport Settlement Must Be Amended Because Transition And Integration Costs Will Be Included in Per Books Earnings.

The costs of transitioning Kentucky Power to Liberty ownership will include capitalized costs for new assets, including transmission and distribution operations control centers, and operating expenses, including the depreciation expense and other expenses related to the incremental capital costs, and well as the operating expenses to integrate the Company into Liberty's organization and systems.⁸⁹ Such transition and integration costs will likely be incurred in the latter half of 2022, through 2023, and even into 2024 and 2025. Any return on capitalized transition costs incurred in 2022 and 2023 and any transition expenses incurred in 2023 will reduce Kentucky Power's earned return in 2023.⁹⁰

While Liberty claims that it does not allocate one-time transition costs to customers, its representations are unclear.⁹¹ Moreover, Joint Applicants refuse to hold customers harmless from transition and integration costs.⁹² Consequently, it is important that the Commission expressly condition any approval of the proposed acquisition on holding retail customers harmless for all transition and integration costs.

⁸⁷ Direct Testimony of Lane Kollen at 27:6-9.

⁸⁸ Direct Testimony of Lane Kollen at 27:9-11.

⁸⁹ Direct Testimony of Lane Kollen at 35:19-25.

⁹⁰ Direct Testimony of Lane Kollen at 38:10-19.

⁹¹ Direct Testimony of Lane Kollen at 36:1-38:2.

⁹² Direct Testimony of Lane Kollen at 38:10-13 (citing Joint Applicants' Response to KIUC 1-50).

This condition is particularly critical because of the Settlement surrounding the Rockport Unit Purchase Agreement (“UPA”) approved by the Commission in Case No. 2017-00179. Under that Settlement, the \$50.8 million in annual fixed cost savings from the termination of the Rockport UPA on December 8, 2022 are to be flowed through Kentucky Power’s PPA rider in their entirety, offset only for any amortization of the Rockport deferrals starting in December 2022 and for the revenue equivalent of any deficiency in earnings compared to the Company’s authorized return on equity in calendar year 2023.

In addition, beginning December 9, 2022 the \$6.2 million annual Rockport Capacity Charge (Tariff C.C.) will terminate. The Capacity Charge is an above cost-of-service charge that AEP demanded as part of the 18-year extension of the Rockport UPA in 2004. Due to that Capacity Charge, over the 18-year Rockport UPA term, customers will have paid AEP a premium of \$105.7 million in nominal dollars, or \$186.6 million on a net present value basis in 2022 dollars, over and above the actual costs of Rockport.⁹³ This is \$186.6 million of additional cash that AEP extracted from Kentucky.

Kentucky Power’s currently authorized ROE is 9.25% on a base rate, environmental surcharge, and BSDR blended basis. Under the Settlement, the Rockport Offset for 2023 is assumed to be a straightforward process using per books revenues and expenses with no ratemaking adjustments. However, at the time, no one could have predicted the proposed sale of Kentucky Power to Liberty.⁹⁴

Now, in light of the significant change in circumstances, it would be unreasonable to use 2023 per books expenses to perform the Rockport Settlement calculation since that calculation would include the Liberty transition and integration costs. This would reduce earnings and unreasonably increase the portion of the \$50.8 million in annual Rockport fixed cost savings

⁹³ Direct Testimony of Lane Kollen at 44:1-4.

⁹⁴ Direct Testimony of Lane Kollen at 39:18-22.

retained by the Company under Liberty ownership.⁹⁵

There are two ways to remedy this problem. One alternative is to direct Kentucky Power to exclude all transition and integration costs from the calculation of its earned return in 2023. This would require an extensive review of Kentucky Power's costs, which would be the equivalent of a mini-rate case. The other alternative is to modify the basis of the calculation so that it relies on the actual earned return during a recent historic period to ensure that there are no transition or integration costs included in the calculation. Relying on this historic test year approach would simplify the calculation and review process while still preserving the bargain previously approved. The most recent per books data is for the twelve months ending September 30, 2021. Using that test year, Kentucky Power would be entitled to retain \$27.542 million of the Rockport fixed expense savings to earn its average authorized return of 9.25%.⁹⁶

If the historic test year approach is used, two test year adjustments are necessary to preserve the 2017 rate case bargain. The first adjustment would be to include the Rockport replacement capacity costs in the calculation of the rate of return. This would increase the portion of the \$50.8 million in fixed expense savings retained by Kentucky Power, similar to the effect if 2023 per books earnings were used. The second adjustment would be to reduce revenues by the \$6.2 million Capacity Charge because that would have also been excluded if 2023 per books earnings are used. This also would increase the portion of the \$50.8 million fixed expense savings retained by Kentucky Power. The Capacity Charge has always been excluded from ratemaking and has been treated as a below the line item.⁹⁷

As Liberty is aware,⁹⁸ the Commission has previously placed Kentucky Power on notice that it will "*review and clarify*" Kentucky Power's ability to use the fixed expense savings from

⁹⁵ Direct Testimony of Lane Kollen at 39:22-40:3.

⁹⁶ Direct Testimony of Lane Kollen at 40:8-18.

⁹⁷ Direct Testimony of Lane Kollen at 40:19-41:7.

⁹⁸ Direct Testimony of Lane Kollen at 442:4-9.

the expiration of the Rockport UPA. In its Order in Case No. 2020-00174, the Commission stated that it would “review and clarify items related to . . . Kentucky Power’s ability to use the savings from the expiration of the Rockport UPA”.⁹⁹

Regardless of its intent to review and clarify the use of the fixed expense savings in a separate matter, the proposed Liberty acquisition significantly impacts those savings if the transition and integration costs are not excluded from the calculation of the 2023 earned return.

2. Increased Financing Costs Due to Terminating The Sale of Receivables To AEP Credit

Kentucky Power currently sells its receivables daily to AEP Credit, Inc. This practice accelerates the receipt of cash compared to waiting for customer payments and significantly reduces the Company’s cash working capital requirements and the related financing costs.¹⁰⁰ Kentucky Power’s receivables are discounted to reflect a short-term debt interest rate and the cash from the receivables sales displaces common equity and long-term debt and the associated financing costs at the Company’s grossed-up weighted average cost of capital.¹⁰¹

Under the proposed acquisition, Kentucky Power will no longer sell its receivables in this manner. Joint Applicants have not analyzed the lost savings that will result from ending this practice. However, Joint Applicants state that terminating the Company’s sale of its receivables “is not expected to have a major effect on customers” and compare Liberty’s cost of short-term debt to AEP’s cost of short-term debt.¹⁰²

This claim is incorrect and based upon a false comparison. Joint Applicants relied solely upon Liberty’s cost of short-term debt in comparison to the Company’s access to AEP’s cost of

⁹⁹ *In the Matter of: Electronic Application of Kentucky Power Company...*, Case No. 2020-00174, Order (January 13, 2021) at 65.

¹⁰⁰ Direct Testimony of Lane Kollen at 28:16-19.

¹⁰¹ Direct Testimony of Lane Kollen at 28:19-22.

¹⁰² Direct Testimony of Lane Kollen at 29:5-9 (citing Joint Applicants Response to KIUC 1-18).

short-term debt through the AEP Money Pool. However, the correct comparison is to the Company's grossed-up cost of capital, which is the cost to finance the accounts receivables if there is no receivables financing under Liberty ownership similar to that with AEP Credit, Inc. under AEP ownership. On cross-examination at the hearing, Liberty witness Mr. Mosindy conceded that this was the correct comparison.¹⁰³ Terminating the sale of the Company's receivables will increase the cost of financing, and that increased cost is due solely to the acquisition.¹⁰⁴ AG-KIUC witness Kollen conservatively quantified the increase in annual financing costs resulting from the end of Kentucky Power's current sale of receivables practice at \$2.1 million on average and at least \$15.3 million over ten years on a net present value basis.¹⁰⁵

3. Increased Financing Costs Due To Loss Of The AEP Tax Allocation Agreement.

Under the current AEP Tax Allocation Agreement, AEP reimburses each member of the AEP affiliate group, which presently includes Kentucky Power, for the tax effects of the current year net operating loss to the extent that AEP is able to utilize that loss in whole or part against taxable income from other members of the AEP affiliate group.¹⁰⁶ In each year that Kentucky Power has a net operating loss, it records an increment to the prior year asset net operating loss Accumulated Deferred Income Taxes ("ADIT") for the tax effects of the current tax year net operating loss. In a second step each year, the Company records the reimbursements from AEP as reductions (credits) to the asset net operating loss ADIT. In this manner, the Company does not have to finance the net operating loss ADIT because it is reimbursed by AEP. Consequently, the Company does not include a net operating loss ADIT in rate base.¹⁰⁷

¹⁰³ Hearing Tr. (March 28, 2022) at approximately 17:14:50 – 17:15:30.

¹⁰⁴ Direct Testimony of Lane Kollen at 29:11-16.

¹⁰⁵ Direct Testimony of Lane Kollen at 30:1-3.

¹⁰⁶ Direct Testimony of Lane Kollen at 30:8-13.

¹⁰⁷ Direct Testimony of Lane Kollen at 30:15-22.

This reimbursement practice has been very valuable to Kentucky Power. Joint Applicants quantified the reimbursements in response to AG-KIUC discovery in Case No. 2021-00421.¹⁰⁸ If the asset net operating loss ADIT had been included in rate base in the last base rate case, it would have increased the annual revenue requirement by approximately \$1.9 million. If the asset net operating loss ADIT were included in rate base at December 31, 2021, it would increase the annual revenue requirement by \$3.8 million.¹⁰⁹

In the absence of the current AEP reimbursement practice, Kentucky Power, under Liberty's ownership, will begin including net operating loss ADIT in rate base, which will increase the revenue requirement by the amount of the asset net operating loss ADIT times the grossed-up rate of return.¹¹⁰ Liberty does not reimburse its subsidiaries for the tax effects of their net operating losses.¹¹¹

AG-KIUC witness Kollen estimated that the loss of the reimbursement approach will increase Kentucky Power's annual financing costs by \$4.2 million or more, on average over the next ten years, depending on the cumulative tax effects of its actual net operating losses and its grossed-up rate of return under Liberty ownership.¹¹² The loss of this reimbursement will also result in additional financing costs on the asset net operating loss ADIT, which will grow each year under Liberty ownership, if Kentucky Power's history under AEP ownership is used as a guide to the future tax losses under Liberty ownership, and could increase Kentucky Power's costs by \$27.8 million or more on a net present value basis over the next ten years.¹¹³

¹⁰⁸ Direct Testimony of Lane Kollen at 31:4-7 (citing Joint Applicants' Response to AG-KIUC 1-24 in Case No 2021-00421).

¹⁰⁹ Direct Testimony of Lane Kollen at 31:7-11.

¹¹⁰ Direct Testimony of Lane Kollen at 30:22-31:2.

¹¹¹ Direct Testimony of Lane Kollen at 31:16-32:8 (citing Joints Applicants' Responses to KIUC 2-16(e), KIUC 1-74, and KIUC 2-4).

¹¹² Direct Testimony of Lane Kollen at 32:13-16.

¹¹³ Direct Testimony of Lane Kollen at 32:16-20.

AEP witness Llende claimed that if AEP retained ownership of the Company, then it would have added the Net Operating Loss ADIT to rate base for ratemaking purposes even though this was inconsistent with the Company's accounting for Generally Accepted Accounting Principles ("GAAP") and with the specific reimbursement provisions of the AEP Tax Allocation Agreement. The Company has never made a claim for the net operating loss ADIT in rate base in prior rate proceedings. Nor would this be justified. In any event, this clearly would be a change from the Company's present ratemaking treatment. Based on the Company's present ratemaking treatment under AEP ownership, this valuable tax benefit is lost under Liberty ownership.

4. Increased Financing Costs Due To Loss Of Shared Inventory And Spare Parts With Other AEP Utility Affiliates.

Kentucky Power is presently a party to three AEP affiliate transactions agreements for sharing materials and supplies and capitalized spare parts whereby the inventory of certain materials and supplies and spare parts is shared among the AEP utility affiliates in order to ensure availability and minimize the investment and the related financing costs.¹¹⁴ Liberty does not have a similar agreement, meaning that Kentucky Power will have to increase its inventory investment to ensure availability of spare parts as a locally based standalone utility.¹¹⁵ AG-KIUC witness Kollen testified that the impact of this loss of sharing will increase Kentucky Power's annual financing costs by \$1.9 million based on an estimated increase in materials and supplies and spare parts inventories of \$25 million times the Company's grossed-up rate of return. The actual cost may be more or less depending on the actual increase in those inventories.¹¹⁶ Over the next ten years, the increased investment in those inventories could result in additional financing costs of \$13.9 million on a net present value basis.¹¹⁷

¹¹⁴ Direct Testimony of Lane Kollen at 33:7-11.

¹¹⁵ Direct Testimony of Lane Kollen at 33:13-16.

¹¹⁶ Direct Testimony of Lane Kollen at 34:4-6.

¹¹⁷ Direct Testimony of Lane Kollen at 34:7-9.

5. Increased Costs Due to Debt Downrating Caused By Deaffiliation From AEP.

S&P has placed Kentucky Power on negative credit watch, with the expectation that it will downrate the Company's long-term debt to BBB from BBB+ if the Liberty acquisition closes. This is due solely to the disaffiliation from AEP.¹¹⁸ The S&P notice notes that AEP has a stronger credit profile than does Liberty and that the expected downrating would align the Company's rating with that of Algonquin.¹¹⁹

The downrating will result in an increase in the cost of future issuances of long-term debt. The cost of new long-term debt will be greater the lower the debt ratings, though the differential has varied historically.¹²⁰ AG-KIUC witness Kollen quantified the increase in annual financing costs at \$0.2 million in the first year and increasing by a similar amount each subsequent year, assuming that the Company issues \$100 million in new long-term debt each year and assuming that the downrating will result in an increase of 20 basis points on average compared to the former higher rating.¹²¹ Over the next ten years, the increase in financing costs will be \$7.3 million on a net present value basis.¹²²

6. Increased Costs Related To The Transaction Itself That Are Required Pursuant To The Stock Purchase Agreement.

The Stock Purchase Agreement requires Kentucky Power to indemnify the former directors and officers of Kentucky Power under AEP ownership for losses and/or claims originating prior to the closing date for six years after the closing date. Kentucky Power likely will purchase D&O tail insurance to cover this assumed risk. At the same time, Kentucky Power will incur insurance costs to indemnify the directors and officers of Kentucky Power under

¹¹⁸ Direct Testimony of Lane Kollen at 34:16-18.

¹¹⁹ Direct Testimony of Lane Kollen at 34:18-20 (citing Joint Applicants' Response to KIUC 2-40).

¹²⁰ Direct Testimony of Lane Kollen at 35:1-4.

¹²¹ Direct Testimony of Lane Kollen at 35:8-12.

¹²² Direct Testimony of Lane Kollen at 35:12-13.

Liberty ownership. The costs incurred for the losses and/or claims originating prior to the closing date are due solely to the transaction itself and are not displaced by the new insurance costs under Liberty ownership.¹²³

The Stock Purchase Agreement also restricts the ability of Kentucky Power to recover damages against the representations and warranties of AEP as the Seller. It does allow Liberty or Kentucky Power to acquire insurance to cover the representations and warranties of AEP, but only so long as there is no right of subrogation against the Sellers, and no right to pursue any claim against Sellers or any of their respective Affiliates or Representatives, except in the case of fraud.¹²⁴

To ensure that these costs are not recovered through customers' rates, the Commission should condition any approval of the acquisition on these costs being excluded from the calculation of the revenue equivalent of the earnings deficiency recoverable as an offset to the Rockport fixed expense savings through the PPA rider in calendar year 2023. In addition, it should condition its approval so that these costs are excluded from the calculation of the base revenue requirement or any other revenue requirement in any future rate proceeding.¹²⁵

F. Liberty Should Be Required To Use Least-Cost Planning and Competitive Bidding To Secure Future Generation Resources.

Liberty's investor presentations indicate a strong preference for renewable resources and a "*greening the fleet*" approach.¹²⁶ However, while renewables may be a valuable component of an energy portfolio, resource planning should be conducted in a thoughtful, resource-neutral and comprehensive manner designed to develop a diversified and reliable generation fleet at the

¹²³ Direct Testimony of Lane Kollen at 44:16-45:2 (citing Stock Purchase Agreement at 4.12).

¹²⁴ Direct Testimony of Lane Kollen at 45:2-8.

¹²⁵ Direct Testimony of Lane Kollen at 45:10-18.

¹²⁶ See, e.g., Eichler direct testimony at 43:17-18; Response to AG DR-1-73, Attachment 2021 Q3 -Exhibit 99.5-Earnings Press Release vF Nov 11, pp. 1-2 of 8.

least possible cost. An all-of-the-above energy policy is the only way affordable, reliable, and resilient energy *can* be obtained. Experience-based data proves that a well-balanced mix of both dispatchable and renewable generation resources ensures competitive, reliable, and resilient energy that is essential for Kentucky's economy.

Liberty indicates it will be adding significant quantities of renewable supply-side resources to its portfolio. Such a large-scale, rapid adoption of renewable resources in Kentucky raises several generation planning concerns. First, Kentucky's climate does not provide adequate wind and solar capacity to make large-scale, rapid adoptions of renewable resources cost-effective for utility customers. Liberty's President, David Swain, acknowledged the difficulty of wind and solar development in Kentucky during his testimony at the public hearing.¹²⁷ Renewables are only reliable and economical when the sun is shining and the wind is blowing.¹²⁸ As Mr. Swain testified it would be difficult to put solar in the hollers where the sun shines from 10:00 a.m. – 3:00 p.m. and the flat bottom land is too valuable.¹²⁹

Second, electricity must flow when it is needed. Overreliance on intermittent renewable supply-side resources, by their very definition, could jeopardize Kentucky's ability to meet this essential standard. Indeed, the nation is already experiencing major reliability problems in those regions where such a major switch to renewable sources is occurring, and which lack adequate dispatchable resources such as baseload generation to complement renewable resources.¹³⁰ The Northwest and Southwest face growing risks as renewables continue to replace flexible and resilient coal and natural gas plants, which can be dispatched when the sun goes down and wind

¹²⁷ Hearing Tr. (March 28, 2022) at 14:56:48 – 15:05:24.

¹²⁸ Hearing Tr. (March 28, 2022) at 15:09:05 – 15:09:24.

¹²⁹ Hearing Tr. (March 28, 2022) at 15:01:30 – 15:05:24.

¹³⁰ See, e.g., "Ensuring Electricity Reliability Must Be Job Number One For FERC," *Utility Dive*, July 29, 2021, accessible at: <https://www.utilitydive.com/news/ensuring-electricity-reliability-must-be-job-number-one-for-ferc/604034/>; and "Renewable Energy Boom Risks More Blackouts Without Adequate Investment In Grid Reliability," *Forbes*, April 20, 2021, accessible at: <https://www.forbes.com/sites/michaelshellenberger/2021/04/20/why-renewables-cause-blackouts-and-increasevulnerability-to-extreme-weather/?sh=347adada4e7>.

turbines do not spin.¹³¹ Meaningful battery capacity for wind and solar generation does not exist and is too costly.¹³² Moreover, Liberty witness Swain could not identify one location where reliable electric service is met twenty-four hours a day seven days a week by renewable energy.¹³³

If the acquisition is approved, Kentucky Power would be located in the PJM region. Steve Mitnick, Executive Editor of *Public Utilities Fortnightly*, recently noted that “[n]o question we’ll be adding gobs of wind and solar to the PJM region in coming years. But no amount of renewable additions will be sufficient – after we take offline many tens of thousands of coal and gas generation – to carry PJM’s system through evenings and prolonged weather patterns adverse to wind and solar generation.”¹³⁴ And in response to a U.S. Energy Department representative’s estimate that our nation’s grid decarbonization will require three hundred gigawatts of long-duration storage, Mr. Mitnick found that “[u]nless we install a whole lot of long-duration storage, a lot more than the numbers above, it’s hard to see how the U.S. grid will perform reliably. . . . But we may need to continue, for longer than many wish, to rely upon gas-fired plants to get us through evenings and prolonged weather patterns.”¹³⁵

Third, Liberty’s repeated deference to Kentucky’s non-binding Integrated Resource Planning (“IRP”) process as the future solution for these issues should be approached with caution.¹³⁶ While some states contiguous to Kentucky have areas with greater renewable energy capacity factors, the Commission’s IRP regulations do not require Kentucky’s electric generating utilities to factor in costs of additional transmission capacity that are frequently necessary to

¹³¹ “Natural gas a critical ‘reliability fuel’ as renewables grow, NERC says,” *S&P Global Market Intelligence*, December 17, 2021, accessible at: <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/natural-gas-a-critical-reliability-fuel-as-renewables-grow-nerc-says-68130328> .

¹³² “Wind and Solar Energy Don’t Work,” *Powerline*, February 10, 2021, accessible at: <https://www.powerlineblog.com/archives/2021/02/wind-and-solar-energy-dont-work.php> .

¹³³ Swain hearing testimony, Hearing Tr. (March 28, 2022) at 15:12:08 - 15:12:28.

¹³⁴ “A Shot of Storage,” Steve Mitnick, February 23, 2022, accessible at <https://us2.campaign-archive.com/?u=885e77a4ab25dfc514b9e4332&id=7aa16de7b0>.

¹³⁵ *Id.*

¹³⁶ See, e.g., Swain hearing testimony, Hearing Tr. (March 28, 2022) at 15:13:30 - 15:14:10; 15:17:30 - 15:17:45; 15:21:00 – 15:21:45

wheel out-of-state power into the utilities' respective service territories. Liberty's refusal to provide all data relevant to that inquiry now so that the Commission and the public might understand its generation resource planning intentions leaves such stakeholders forced to rely on promises, not concrete plans. This is consistent with the Algonquin messaging strategy reflected in Liberty's Project Nickel Due Diligence Report, which addressed [REDACTED]

[REDACTED]¹³⁷ "Greening the fleet" may increase Algonquin's share price by boosting its ESG score, but that would just be another example of private interest prevailing over Kentucky's public interest.

Fourth, Liberty's intended renewable energy transition may unreasonably increase Kentucky Power customers' utility bills. Recently, Wisconsin's Public Service Commission ("WPSC") approved Xcel Energy and Alliant Energy settlements that raised electric and natural gas rates for next year. WPSC Commissioner Ellen Nowak voted against the settlements saying, *"[w]e should be going toward renewables, but the race to get there -- it's going to have consequences that can be done in a more economical way that has fewer impacts on ratepayers."* Chair Rebecca Valcq noted, *"I'm concerned that the agreement doesn't go far enough to protect customers, especially from bearing the brunt of the cost from retired coal plants."*¹³⁸ And in New York, ConEd is proposing double digit rate increases to fund clean energy investments necessary to meet New York state's climate goals.¹³⁹

¹³⁷ Joint Applicants' Confidential Response to AG 1-63, JA_R_AG_1_63_Confidential Attachment_Project Nickel Due Diligence Report, at 66.

¹³⁸ "Higher utility bills in store for Xcel and Alliant customers as utilities make clean energy transition," *Wisconsin Public Radio*, November 22, 2021, accessible at: <https://www.wpr.org/higher-utility-bills-store-xcel-and-alliant-customers-utilities-make-clean-energy-transition>.

¹³⁹ "Customers, advocacy groups and elected official oppose ConEd's proposed double-digit rate increase" *Utility Dive* April 5, 2022, accessible at: https://www.utilitydive.com/news/customers-advocacy-groups-officials-oppose-coned-rate-hike/621559/?utm_source=Sailthru&utm_medium=email&utm_campaign=Issue:%202022-04-05%20Utility%20Dive%20Newsletter%20%5Bissue:40858%5D&utm_term=Utility%20Dive.

The increased cost burden on customers from the transition to renewables is being felt globally as well. Bjorn Lomborg, President of the Copenhagen Consensus noted that *“the European Union, which gets 17% of its electricity from solar and wind -- the highest percentage in the world -- also has some of the highest consumer electricity costs.”*¹⁴⁰ However, the European Union may be shifting its philosophy somewhat as it is now *“set to include nuclear and natural gas on the list of industries eligible for ‘green’ investment.”*¹⁴¹ When asked directly about whether the European Union’s anti-carbon energy policy is a good fit for the United States, Mr. Swain could not provide a straightforward answer, no doubt constrained by Algonquin’s net-zero corporate policy to which he must adhere.¹⁴²

Fifth, overreliance upon renewable resources may hinder Kentucky Power’s ability to meet projected increases in electric demand. As a recent PJM report notes, *“the proliferation of intermittent resources will also increase the need for controllable resources such as gas-fired combustion turbines and combined-cycle plants that can ramp and/or start up quickly.”*¹⁴³ The increasing electrification of homes and cars will likewise increase demand. However, the intermittency of renewables may make it more difficult to balance the grid as supply and demand naturally fluctuate in an increasingly electrified world. Californians already experience rolling blackouts, and it was reported recently that the New York Independent System Operator (“NYISO”) could face rolling blackouts this summer if a sustained heat wave occurs.¹⁴⁴

¹⁴⁰ “Want to Lock Down the Climate?” Bjorn Lomborg, President of the Copenhagen Consensus, *Wall Street Journal* Opinion, September 30, 2021, accessible at: <https://www.wsj.com/articles/covid-lockdown-climate-fossil-fuels-electricity-energy-production-africa-carbon-emission-11632943155>.

¹⁴¹ “A European Revelation on Climate” *Wall Street Journal* Editorial Board, January 3, 2022, accessible at <https://www.wsj.com/articles/a-european-revelation-on-climate-green-energy-nuclear-natural-gas-france-germany-11641228156>.

¹⁴² Swain hearing testimony, Hearing Tr. (March 28, 2022) at approximately 15:09:50 – 15:10:25; 15:15:10 – 15:16:32; and 15:19:00 – 15:20:10.

¹⁴³ “Reliability in PJM: Today and Tomorrow,” PJM Interconnection, March 11, 2021, at 25, accessible at: <https://pjm.com/-/media/library/reports-notice/special-reports/2021/20210311-reliability-in-pjm-today-and-tomorrow.ashx>.

¹⁴⁴ “America’s Power Grid is Increasingly Unreliable,” Katherine Blunt, *Wall Street Journal*, February 18, 2022, accessible at: <https://www.wsj.com/articles/americas-power-grid-is-increasingly-unreliable-11645196772>.

Sixth, renewables may result in a less resilient grid. As East Kentucky Power Cooperative CEO Anthony “Tony” Campbell noted in his letter to President Biden concerning grid reliability, *“the emerging picture is of an electric grid that is steadily becoming less fuel secure . . .”*¹⁴⁵ Vistra CEO Curt Morgan noted that *“PJM did a study that said that, with 50% penetration of renewables, they need a 70% reserve margin.”*¹⁴⁶ Moreover, AEP’s own Nick Akins, in a letter to congressional offices, stated that the Administration’s Clean Electricity Performance Program would *“adversely impact reliability and resilience of the electric grid.”*¹⁴⁷ In fact, PJM cautions that in a scenario of accelerated renewables adoption, *“...the total hours of transmission line congestion increased by about 50%, and a significant amount of renewable curtailment was needed to manage transmission limitations and minimum generation events.”*¹⁴⁸

Any utility buying Kentucky Power should pursue the steps necessary to ensure affordability, reliability, and resiliency are not compromised in the race to *“green the fleet.”* Kentucky has not adopted a renewable energy policy. Hence, there is no rush to convert Kentucky Power’s system to 100% renewables. The long-term dependability and reliability of Kentucky Power’s service territory should not be dictated by an ideological policy that ignores economic and engineering realities. The current reality is that fossil fuel generation is still necessary and will play a vital role in both the Commonwealth and the nation’s future energy needs.

¹⁴⁵ EKPC President & CEO Anthony “Tony” Campbell Letter to President Biden, July 13, 2021. Copy attached as Exhibit 1.

¹⁴⁶ “IPPs See Danger in Swift Move from Gas and Coal,” *RTO Insider*, December 15, 2021, accessible at: <https://www.rtoinsider.com/articles/29241-ipp-see-danger-swift-move-from-gas-coal>. See also “Energy Transition in PJM: Frameworks for Analysis,” PJM, December 15, 2021, at 8, accessible at: <https://www.pjm.com/-/media/library/reports-notices/special-reports/2021/20211215-energy-transition-in-pjm-frameworks-for-analysis.ashx>.

¹⁴⁷ “Major utility questions Biden’s signature climate plan” *E&E News*, September 15, 2021, accessible at: <https://www.eenews.net/articles/major-utility-questions-bidens-signature-climate-plan/>.

¹⁴⁸ “Energy Transition in PJM: Frameworks for Analysis,” PJM, December 15, 2021, at 12, accessible at: <https://www.pjm.com/-/media/library/reports-notices/special-reports/2021/20211215-energy-transition-in-pjm-frameworks-for-analysis.ashx>.

Consequently, in order to ensure that Kentucky Power's retail customers receive both affordable and reliable service should the proposed acquisition be approved, the Commission should condition that approval on Kentucky Power using a resource-neutral least-cost planning approach and acquiring future generation via a competitive bidding process.

III. The Commission Should Establish a Cost Mitigation Credit Rider to Flow-Through To Customers Financial Compensation Required Of AEP.

To pass through all non-fuel and non-transmission-related compensation required from AEP as a condition of approval of the proposed acquisition, the Commission should establish a Cost Mitigation Credit ("CMC") Rider.¹⁴⁹ As the transfer of control cases above reflect, the Commission has repeatedly established such savings credit mechanisms. Doing so here is thus consistent with Commission precedent. Additionally, the Kentucky Supreme Court has held that the Commission can establish a rider *"based upon (1) its plenary ratemaking authority derived from KRS 278.030 and KRS 278.040, which essentially require that the PSC act to ensure that rates are "fair, just and reasonable" and (2) the absence of any statutes specifically requiring a particular procedure when determining if rates are fair, just, and reasonable."*¹⁵⁰

AG-KIUC recommend that the CMC Rider be based upon Kentucky Power's current Federal Tax Cut ("FTC") Tariff established in Case No. 2018-00035.¹⁵¹ Compensation from AEP would be allocated to the residential and non-residential classes based upon their respective total revenue. A separate per kWh bill credit would then be developed for each class. There also should be an annual true-up to reflect actual kWh and revenues.¹⁵²

A bill credit rider also has the added advantage of transparency since customers will be able to see the effects of this Commission Order directly on their monthly bills.

¹⁴⁹ Direct Testimony of Stephen J. Baron at 24:16-19.

¹⁵⁰ *Ky. PSC v. Commonwealth ex rel. Conway*, 324 S.W.3d 373, 380-381 (Ky. 2010).

¹⁵¹ Direct Testimony of Stephen J. Baron at 35:4-8.

¹⁵² Direct Testimony of Stephen J. Baron at 36:9-10.

CONCLUSION

WHEREFORE, the Commission should deny the application for failure to satisfy the public interest standard, or in the alternative adopt AG-KIUC's recommendations, including approving the proposed acquisition only if the following conditions are met in order to ensure that the proposed acquisition is consistent with the public interest in accordance with KRS 278.020(7):

- AEP should pay Kentucky Power \$578 million to be recorded as a regulatory liability for the benefit of customers as compensation for harm and to offset increased costs resulting from the proposed acquisition.
- Liberty should be prohibited from recovering in rates any transition or integration costs whether through an increase in the equity offset to the Rockport fixed expense savings in the PPA rider in 2023 or base rates after 2023.
- AEP and Liberty should file and obtain Commission approval of all intercompany agreements that will affect rates before they are filed at FERC and before they are executed.
- Resolution of the Mitchell issues should not be prematurely decided simply because that is a condition to the transaction closing.
- Liberty should be limited to no greater than a 45% common equity ratio for rates effective in 2024, consistent with its proposal in response to discovery.¹⁵³
- Liberty should be required to use least cost planning for future resources and competitively bid those future resources.

¹⁵³ Joint Applicants' Response to KIUC 1-42 (*"Liberty intends to assume Kentucky Power's current capital structure of 43.25% until 2024 at which time it is assumed that the equity thickness will be modestly strengthened to 45% and remain at that level"*).

Respectfully submitted,

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**COUNSEL FOR KENTUCKY INDUSTRIAL
UTILITY CUSTOMERS, INC.**

April 12, 2022



July 13, 2021

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

President Biden,

The events of 2021 continue to heighten my concern that the reliability of the U.S. power grid may be compromised if policy-makers do not navigate the evolution in the generation portfolio carefully, especially as policies carry us farther from conventional generation technologies.

The May cyberattack leading to the temporary shutdown of the Colonial pipeline points to the critical importance of fuel security for electric utilities. Although the Colonial pipeline crisis primarily affected vehicle fuel, the implications are clear for other fuels dependent on pipeline delivery. On May 13, North American Electric Reliability Corp.'s President and CEO Jim Robb noted his concerns related to the electricity industry:

"The Colonial pipeline attack underscores the interconnectedness of electricity with other infrastructures and is the reason we must redouble our focus on the reliability of the pipeline system that delivers essential fuel. If this had happened to a major natural gas line serving electricity generators under extreme cold weather conditions, the results could have been catastrophic."¹

This follows the February winter storms, which exposed weather-related deficiencies in the fuel-delivery system for natural gas-fueled power plants in Texas and surrounding states, leaving millions without electric service for extended periods during the bitterly cold weather.

As I have emphasized in my previous letters, my primary concern is maintaining reliable, affordable electric service for the people and businesses of Kentucky, especially during extreme weather events such as this year's winter storms. Like Mr. Robb, I am very concerned when I consider the potential consequences if a fortune-seeking hacker or, worse, an adversarial nation-state finds a way to disrupt fuel deliveries to power plants in the midst of an ongoing extreme weather event.

¹ NERC, "Electric-Gas Interdependencies, Potential Summer Energy Shortfalls are Focus of Board Discussions," May 13, 2021. <https://www.nerc.com/news/Headlines%20DL/Board%2013MAY21.pdf>.

It is worth taking a moment to consider how various electric-generating technologies are fueled, and how and when those fuels are delivered to generators.

Nuclear and coal are two technologies that, for decades, have produced dependable supplies of electricity for the U.S. Fuel can be delivered months or years ahead of time and stored securely on site for nuclear- and coal-fueled generators. The refueling process for a nuclear unit is complex; but, once complete, the plant can operate for long periods before refueling is required. Coal plants typically store 30 to 60 days of fuel on site. Coal can be delivered by truck, train or barge. Such transportation flexibility provides valuable options for emergencies, such as when a railroad track is damaged or river travel is disrupted.

Wind and solar generators rely on real-time wind and solar irradiance conditions to produce electricity. If the wind does not turn a turbine or the sun does not shine on a solar panel, no energy is generated. When these technologies generate more electricity than needed in the moment, the energy can be stored for later. But I strongly urge you and your policy advisors to have a realistic understanding of the limitations of current utility-scale battery technology. For the most part, batteries may be able to provide a few hours of energy for limited geographic areas. The future of utility-scale battery technology is promising, but it is a grave mistake to assume it, paired with renewables, can provide anywhere near the 24/7/365 reliability Americans are accustomed to. Furthermore, deployment of batteries has not begun to reach a level that could make an appreciable difference over a widespread area. EKPC operates within PJM, which estimates a summer peak of 149,000 MW for 2021²; the installed capacity of utility-scale batteries within the RTO as of May 2020 was 280 MW³.

For natural gas, the fuel delivery mode is almost universally by pipe. Most natural gas power plants are served by a single pipeline; any interruption to the pipe or somewhere upstream can mean almost instantaneous power plant outages. Some natural gas plants, including EKPC's, have on-site storage of alternative fuel, such as oil, which can usually keep the plant running for another day or so. Beyond that timeframe, continuing to run the plant at full capacity without pipeline access can mean a tremendous undertaking of quickly sourcing and delivering dozens or even hundreds of truckloads of oil daily.

For many, the Colonial pipeline crisis revealed a vital fact—a large swath of the U.S. is heavily dependent on a single pipeline for its vehicle fuel. Likewise, Americans should understand they are increasingly dependent on natural gas pipelines for reliable electric service, but pipeline capacity is not growing nearly as fast as the capacity of the power plants they support. In the past decade, major interstate pipeline capacity for natural gas has expanded just 24 percent⁴ while natural gas's share of U.S. electric

² PJM Interconnection, "PJM Summer Outlook Forecasts Adequate Supplies To Serve Electric Demand," 5/20/21 press release, <https://www.pjm.com/-/media/about-pjm/newsroom/2021-releases/20210520-pjm-summer-outlook-forecasts-adequate-supplies-to-serve-electric-demand-this-summer.ashx>.

³ PJM Interconnection, "Energy Storage Offers Efficiency, Flexibility to Power the Grid," May 18, 2020, <https://www.pjm.com/-/media/about-pjm/newsroom/fact-sheets/energy-storage-fact-sheet.ashx>.

⁴ U.S. Energy Information Administration (U.S. EIA), Major Pipeline Crossing Multiple State Borders (Capacity in MMcf/d), 2007-2020, <https://www.eia.gov/naturalgas/pipelines/EIA-StatetoStateCapacity.xlsx> downloaded 5/28/21.

generation ballooned from 15 percent to 35 percent.⁵ In fact, since 2005, natural gas deliveries to power plants have doubled.⁶

And it is important to note that for many regions, natural gas is the primary—sometimes only—fuel to fill in gaps when renewables are not available. Plants fueled by other reliable technologies that could help fill the gap are steadily declining. While natural gas power plant capacity expanded during the past decade, 95 gigawatts (GW) of coal capacity was closed or switched to another fuel, and another 25 GW is slated to shut down by 2025.⁷ U.S. electric utilities also retired nearly 9,000 MW of nuclear capacity in the past 10 years. In the next five years, the federal government forecasts no new coal plants will be built.⁸ Two new nuclear units totaling 2,200 MW have been under construction for more than a decade at the Vogtle plant in Georgia, our nation's first new nuclear units in nearly 30 years. The project's numerous delays and over \$13 billion in cost overruns are likely to deter proposals for new nuclear for the foreseeable future.

The emerging picture is of an electric grid that is steadily becoming less fuel secure, and that is troubling to me. I am concerned the U.S. is moving toward a grid featuring reliability similar to California's, one that is over-reliant on intermittent energy resources, voluntary service curtailments and imports from other regions. And, when those tools fail to close the gap, it is a grid that is subject to rolling blackouts, as California learned last summer.

NERC's 2021 Summer Reliability Assessment noted that most of the U.S. west of the Rockies, along with Texas, the upper Midwest and New England, are at "elevated risk to energy emergencies." And California was singled out as being at risk during normal peak summer hours and at "high risk" if demand is above normal.⁹ As California ISO (CAISO) released its own projections for how it hopes to meet demand for electricity this summer, CAISO CEO Elliott Mainzer commented:

"New resources are coming online by summer, and we have taken the lessons learned from last year to make modifications to our market and operations. This makes us cautiously optimistic that there will be enough electricity to meet demand this summer."¹⁰

Given California's experience last summer, I am doubtful "cautious optimism" provides much reassurance to those who depend on reliable electric service, including residential customers cooling their homes and industrial customers keeping their operations running and employees working.

⁵ U.S. EIA, Electric Power Annual 2019, Table 3.2.A Net Generation by Energy Source, 2009-2019. Downloaded from <https://www.eia.gov/electricity/annual/>, 5/21/21

⁶ U.S. EIA, U.S. Natural Gas Consumption by End Use, http://www.eia.gov/dnav/ng/ng_cons_sum_dcu_nus_a.htm, downloaded 5/22/21.

⁷ U.S. EIA, "As U.S. coal-fired capacity and utilization decline, operators consider seasonal operation," Sept. 1, 2020. <https://www.eia.gov/todayinenergy/detail.php?id=44976>

⁸ U.S. EIA, Preliminary Monthly Electric Generator Inventory (based on Form EIA-860M as a supplement to Form EIA-860), downloaded from <https://www.eia.gov/electricity/data/eia860m/> on 5/22/21

⁹ North American Electric Reliability Corp., "2021 Summer Reliability Assessment," May 2021.

¹⁰ California ISO, "California ISO Summer Assessment reaffirms that grid is better positioned for this summer, but reliability risks remain;" downloaded from <http://www.aiso.com/about/Pages/News/default.aspx>, 5/22/21.

As the Biden administration considers and implements policies that bring permanent change to America's energy landscape, fuel security should be given the priority it deserves in protecting the grid's reliability.

Sincerely,

A handwritten signature in black ink that reads "Anthony Campbell". The signature is written in a cursive, flowing style.

Anthony "Tony" Campbell
President & CEO

CC: U.S. Energy Cabinet Secretary Jennifer Granholm
FERC Chairman Richard Glick
Senate Minority Leader Mitch McConnell
Senator Rand Paul
Senator Joseph Manchin
Congressman Andy Barr
Congressman Hal Rogers
Congressman Brett Guthrie
Congressman Thomas Massie
Congressman James Comer
Congressman John Yarmuth
Governor Andy Beshear
Kentucky Senate President Robert Stivers
Kentucky Energy and Environment Secretary Rebecca Goodman
Kentucky PSC Chairman Michael Schmitt
Kentucky PSC Vice-chairman Kent Chandler
Kentucky PSC Commissioner Talina Mathews