

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

JOINT APPLICANTS' RESPONSE TO INTERVENORS' BRIEFS

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I. INTRODUCTION

The scope of disagreement in the record has narrowed to whether Liberty Utilities Co.’s (“Liberty”) acquisition of Kentucky Power Company (“Kentucky Power”) from American Electric Power Company, Inc. (“AEP”) is in the public interest. None of the post-hearing briefs filed in the proceeding challenge whether Liberty has the financial, technical, or managerial ability to provide reasonable service, or whether the acquisition is made in accordance with law and for a proper purpose. In fact, the Attorney General (“AG”) and Kentucky Industrial Utility Customers’ (“KIUC”)¹ abandon their baseless argument in their brief that Liberty lacks the technical capability to provide reasonable service. Accordingly, the only remaining element contained in KRS 278.020(6) and (7) to be considered is whether the acquisition is consistent with the public interest. The record unequivocally demonstrates that it is.

The near singular focus of the Intervenors’ briefs is the nature and extent of conditions that the Commission should apply to any approval of the transaction. Liberty has put forth significant commitments that address the concerns of the parties and this Commission – it has proposed \$144.1 million in immediate rate relief to customers;² nearly \$700 million in reliability-focused transmission investment to finally swing the pendulum in favor of Kentucky Power customers in the AEP East Zone until it can complete an analysis of the best long-term solution for customers; the creation of upwards of 100 jobs in eastern Kentucky; and collaboration with the Commission and other stakeholders on securitization legislation as a means to bring further rate relief for customers given the particular rate challenges faced by Kentucky Power.

¹ This Response refers to the Attorney General and KIUC collectively as “AG/KIUC.”

² The total of \$144.1 million is comprised of the \$40 million Eastern Kentucky Fuel Relief Fund and net present value of the projected savings of the Big Sandy Decommissioning Rider deferral, as shown in Joint Applicants’ Response to KPSC PHDR 4.

The Commission should not be distracted by the Intervenor’s preoccupation with factors that are unrelated to the acquisition. The transaction should be judged based on the statutory standards, not by factors that exist regardless of the owner of Kentucky Power. Comparing the benefits of the transaction along with the further opportunity for change through a fresh look by Liberty at many facets of the business clearly reflects that the public-interest standard is met. The Commission should approve the transaction with the commitments proposed by Liberty and bring a new day for the customers of Kentucky Power.

II. THE TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST

Because the Intervenor has not made an argument regarding the other five statutory elements required for a transfer of control of Kentucky Power, only the AG/KIUC’s combined arguments regarding the public interest standard remain for the Joint Applicants to address.³ In their Post-Hearing Brief, the AG/KIUC wrongly suggest that the public interest standard requires applicants to prove that there will be positive impacts to rates and service.⁴ To the contrary, the Commission has held that KRS 278.020 only requires the acquisition to not “adversely affect the existing level of utility service or rates” or that adverse effects can be avoided through reasonable conditions.⁵

The record before the Commission demonstrates that Liberty’s acquisition will not “adversely affect the existing level of utility service and rates.” Liberty amply demonstrated that day-to-day utility service will continue with the same employees, augmented by a new workforce that will replace jobs that are currently performed out-of-state. New management will bring a

³ Walmart Inc. suggests that the acquisition is in the public interest. *See generally* Post-Hearing Brief of Walmart Inc. at 3-5 (filed Apr. 12, 2022). LS Power explicitly states that it takes no position as to the statutory elements. *See* LS Power Development, LLC’s Post-Hearing Brief at 3 (filed Apr. 12, 2022).

⁴ *See* AG/KIUC Post-Hearing Brief at 3, 8.

⁵ *Kentucky-American Water Co.*, Case No. 2002-00018, Rehearing Order at 9.

“fresh” look at how Kentucky Power is operated, free from affiliated interests, and a willingness to consider new approaches and views of stakeholders. Customers’ existing bills will be immediately lowered while Liberty explores opportunities to bring longer-term rate relief through securitization and other means. For all the reasons set forth in the Joint Applicants’ Post-Hearing and Response Briefs, the acquisition is consistent with the public interest and should be approved.

A. Liberty’s Approach to Transmission Issues Will Bring Near and Long-Term Benefits.

Liberty’s acquisition of Kentucky Power has both immediate and long-term benefits for Kentucky Power customers. For example, Kentucky Power’s customers will benefit from Liberty’s willingness to immediately focus on the Commission’s and parties’ concerns about Kentucky Power’s role as a transmission provider. In an effort to address the Commission’s directive that transmission planning and investment activities “must be substantively addressed in the near future,”⁶ Liberty has committed to the following: (1) participate in an informal conference with the Commission within 45 days after closing to discuss transmission related issues including but not limited to a framework for a reliability-focused transmission investment program and cost allocation, and (2) immediately upon close of the acquisition, Liberty is committed to fully vetting the transmission projects in Kentucky Power’s capital plan, and would be amenable to a Commission imposed condition to undertake certain reliability focused transmission investments in the near term, including accelerating projects to occur during the proposed period of study of

⁶ *Electronic Application of Kentucky Power for (1) a General Adjustment of Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; and (5) All Other Required Approvals and Relief*, Case No. 2020-00174 at 60 (Ky. PSC Jan. 13, 2021).

transmission options (i.e. within 2 years post closing) should the Commission find such an approach desirable.⁷

Liberty has also committed to thoroughly evaluate the benefits of continued participation in PJM, which has also been raised. As an experienced utility operator, Liberty understands the magnitude and complexity of the required analysis to consider continued PJM participation. It would be unreasonable to make a knee-jerk decision on an issue as significant as ongoing PJM participation. Liberty is committed to thoroughly analyzing these issues with an open mind and willingness to look at opportunities that another owner may not consider, ensuring that Liberty's decisions will maximize public benefit. Strangely, LS Power seemingly criticizes Liberty for being "deftly noncommittal" on a future course of action⁸ despite agreeing with Liberty Witnesses Steven Herling and Jeff Plewes on the complexity of PJM participation. But ultimately, LS Power suggests that "Liberty and Kentucky Power should initiate an evaluation of future PJM participation immediately upon closing of the Transaction,"⁹ which is precisely what Liberty has committed to do.

Upon approval of this transaction, the Commission will have a utility committed to immediately addressing its concerns to swing the pendulum to benefit Kentucky Power customers while conducting a rigorous analysis of the most appropriate path forward on transmission issues in a collaborative manner. Although some suggest that Liberty has a pre-determined outcome for that study, nothing could be further from the truth. Liberty's commitment is to determine the most

⁷ Joint Applicants' Post-Hearing Brief at Appendix; *see also id.* at 22-23. LS Power suggests that the Commission require Liberty to complete this analysis in two years from close of the transaction. This was Liberty's intention and is consistent with its commitment.

⁸ *See* LS Power Development, LLC's Post-Hearing Brief at 6, 8

⁹ *Id.* at 11.

cost-effective long-term approach for customers, and Liberty looks forward to working with stakeholders to finally advance this issue.

B. Liberty's Local Emphasis and Commitment to Continuity of Service Will Provide Immediate and Long-Term Benefits.

None of the Intervenors have challenged Liberty's commitment to placing local emphasis on Kentucky Power's service territory or its commitment to continuity of service. Eastern Kentucky—and Kentucky Power customers—will reap immediate and long-term benefits from Liberty's corporate philosophy supporting its local service territories. Liberty plans on adding upwards of 100 jobs that will be local to the Kentucky Power service territory, living, shopping, and paying taxes in Kentucky. This benefit alone is in stark contrast to AEP's model that maintained these positions outside of Kentucky.

Under Liberty ownership, Kentucky Power decisions will be made locally. Kentucky Power's future president will live in (and has already purchased a home in) Ashland. Kentucky Power's Board of Directors will include a local community leader. Additionally, Liberty will create a Vice President of Customer Advocacy to ensure that customer needs are always at the forefront of discussion and decision making at the utility.

Customers and the region will benefit from Liberty's decentralized model beyond the new Vice President of Customer Advocacy. Liberty will maintain Kentucky Power's headquarters in Ashland, as well as service centers in Ashland, Hazard, and Pikeville and area offices in Paintsville and Whitesburg. It will also continue to work with local governments and promote economic development in Kentucky.¹⁰

¹⁰ See generally Joint Applicants' Post-Hearing Brief at Appendix.

These benefits—unchallenged by the Intervenors—provide further support that Liberty’s acquisition of Kentucky Power is consistent with the public interest and should not be dismissed lightly as a benefit for Kentuckians.

C. The Eastern Kentucky Fuel Relief Fund Will Produce Immediate Benefits.

The Joint Applicant’s \$40 million commitment to create an Eastern Kentucky Fuel Relief Fund (“Fuel Fund”) is an immediate and quantifiable benefit that further shows that this acquisition, as proposed, is within the public interest.¹¹ The Fuel Fund will be supported exclusively through shareholder funds.¹² Residential-heat customers would average approximately \$256 of credits on their electricity bills, while residential-non-heat customers would average \$171 in credits.¹³ Even the AG/KIUC support the general concept of the proposal.¹⁴

To ensure that the Fuel Fund benefits those who most need assistance, Liberty proposed allocation of the Fuel Fund by customer classes, with the majority of the fund providing credits to residential heat customers.¹⁵ The estimated credits are designed to last approximately 12 months, but will remain in place until the \$40 million is depleted.¹⁶

Even though the AG/KIUC recognize “that it is reasonable for residential customers on fixed incomes to receive special treatment in this instance,”¹⁷ they also argue that “the Fuel Fund should be “distributed equally among all non-residential tariff classes”¹⁸ and that the unequal distribution of the Fuel Fund among all non-residential tariff classes violates KRS 278.170 as being

¹¹ *Kentucky-American Water Co.*, Case No. 2002-00018, Rehearing Order at 9 (stating that an acquiring entity could demonstrate “lower rates” as a part of the public-interest analysis).

¹² *Id.* at 13-14.

¹³ *Id.* at 15.

¹⁴ AG/KIUC Post-Hearing Brief at 9.

¹⁵ Eichler Rebuttal Testimony at 14.

¹⁶ *Id.* at 13-14.

¹⁷ *Id.* at 11.

¹⁸ AG/KIUC Post-Hearing Brief at 9.

“unreasonably preferential treatment.”¹⁹ While the Joint Applicants will defer to however the Commission deems best to distribute the \$40 million Fuel Fund, we must note not only inconsistency in the AG/KIUC position but the irony of it: if there were no benefit of the Fuel Fund to the transaction, there would be no reason to seek a larger “piece of the pie.”

The AG/KIUC also advocate that the full amount of the \$40 million fund simply be distributed over a 12-month period rather than using the fund to offset increased Fuel Adjustment Clause “FAC” rates, asserting that the proposal may last longer than 12 months to distribute the credits.²⁰ As Liberty Witness Peter Eichler testified, Liberty’s goal with its proposal was “to try and provide help where our perception was it was needed most.”²¹ Liberty recognizes that high fuel expenses and volatile swings in fuels prices can create a hardship for many Kentucky Power customers. The fund was designed to moderate and lessen the financial impact of price swings for customers, which will provide an added level of certainty to customers’ bills during tough economic times.

The AG/KIUC argue this change to the proposed Fuel Fund will ensure that customers receive savings of 14-16 percent. That percentage of savings for customers, however, reflects both the Fuel Fund and the Big Sandy Decommissioning Rider deferral (“BSDR Relief”). Between the Fuel Fund and the BSDR Relief, an average residential customer will save \$21 per month or 14% per month while both initiatives are active, and an average residential electric heat customer will save \$30 per month or 16% per month during the pendency of both initiatives. The Fuel Fund is intended to act in conjunction with the BSDR Relief to provide immediate savings for customers, and also to protect customers from swings in their monthly bills related the fuel costs. Although

¹⁹ *Id.*

²⁰ *Id.*

²¹ VR: 3/28/22; 11:20:20-11:21:16.

the fund is expected to be distributed over a 12-month period, it would remain available until depleted to serve its intended purpose if fuel costs are lower than anticipated. If the Fuel Fund is required to be distributed over 12 months, it necessarily will provide relief to customers over that 12-month period, even when the FAC is a credit, but it will not be available to offset fuel prices beyond 12 months when higher fuel costs turn the FAC positive.

There are alternatives to Liberty's suggested approach. For example, if the full \$40 million is not exhausted within 12 months, credits could cease and Liberty would recommend to the Commission how the remaining balance be used. At that time, circumstances could be different, and Liberty will have a year of experience in the territory to consider other options. Any remaining balance could be used for a number of causes, including weatherization programs for housing without proper insulation, low-income assistance, economic development, or could be maintained for future fuel volatility. With this approach, Liberty, the Commission, and Intervenors can decide the best path together at that time to have a positive impact for customers.

Ultimately, the Fuel Fund is Liberty's commitment to the customers of Kentucky Power, and it is further support for the fact that Liberty's acquisition of Kentucky Power will provide immediate, quantifiable benefits to Kentucky Power's customers, who will not otherwise receive this benefit if the acquisition is not approved. Liberty will defer to the Commission as to a reasonable approach on how the \$40 million should be allocated among the customer classifications. The important factor here is that the \$40 million fund is a direct benefit of the transaction in the public interest, and the AG/KIUC clearly want to benefit from it. Liberty has made recommendations but leaves it to the Commission to determine the best application of the fund that will be available on closing of the transaction.

D. Liberty’s Pursuit of Securitization Will Present Long-Term Benefits to Kentucky Power and the Commonwealth.

Liberty has also committed to providing a three-year rate holiday from recovery of the Big Sandy Decommissioning Rider.²² For the average residential customer, this will provide a reduction of nearly \$100 annually for three years. The AG/KIUC even acknowledge this holiday, along with the Fuel Fund, as a “welcome first step,”²³ confirming that it is an immediate benefit that customers will recognize if the acquisition is approved.

Beyond that immediate benefit, Liberty is committed to pursuing securitization legislation that will be a long-term benefit to Kentucky Power customers and others across the Commonwealth. The Commission and KIUC have previously indicated their support for securitization.²⁴ The AG/KIUC acknowledge that “that rider holiday combined with securitization could result in savings for customers,”²⁵ but then go on to complain that securitization is “speculative,” implying that any benefit it would bring should not be considered. While admittedly Liberty does not single handedly have the power to pass legislation in Kentucky, with the approval of this transaction, the Commission and the AG/KIUC will have additional support to approach the legislature to enact legislation that by AG/KIUC’s own admission could bring savings to Kentucky Power’s customers. Joint advocacy that includes stakeholders from both sides of the

²² AEP will reduce the purchase price to cover carrying charges associated with the deferral of the Big Sandy Decommissioning Rider. The AG/KIUC incorrectly suggest that it is “not clear” whether AEP’s contribution will reduce future rates. AEP’s contribution serves as a stimulant enabling Kentucky Power customers to receive reduced bills for a three-year period.

²³ AG/KIUC Post-Hearing Brief at 8.

²⁴ *Kentucky’s Elec. Generation, Transmission, Distribution Needs*, Case No. 2005-00095 at 59 WL 2250941, 243 P.U.R.4th 374 (Sept. 15, 2005)(“Securitization, an issue raised by KIUC, is something we believe merits further consideration.”); see also *Electronic Application of Kentucky Power Company for Approval of A Certificate of Public Convenience and Necessity for Environmental Project Construction at the Mitchell Generating Station, an Amended Environmental Compliance Plan, and Revised Environmental Surcharge Tariff Sheets*, Case No. 2021-00004 at 18, 2021 WL 3059355, at *11 (Ky. PSC July 15, 2021)(describing AG/KIUC Witness Lane Kollen’s testimony regarding securitization).

²⁵ AG/KIUC Post-Hearing Brief at 8.

traditional debate should increase the likelihood of success for a securitization bill that is properly focused on the unique needs of customers in eastern Kentucky. This undoubtedly supports the public interest.

Moreover, Liberty brings not only the commitment to work collaboratively on securitization legislation but actual experience in securitization itself. As Mr. Eichler, explained, Liberty is currently seeking securitization of winter storm costs and costs related to the retirement of its Asbury plant in Missouri.²⁶ It was the first utility in Missouri to take advantage of recently passed securitization legislation, and its experience at the forefront of securitization will benefit Kentucky and Kentucky Power customers.²⁷ If this acquisition is approved, Liberty will use its experience in Missouri to partner with stakeholders to advocate for securitization legislation in Kentucky that makes sense. Not only will securitization be important for addressing the Big Sandy Decommissioning Rider, it will also be critical to addressing the Mitchell plant retirement in 2028, a point that AG/KIUC Witness Lane Kollen has previously made.²⁸ Conveniently, the AG/KIUC fail to quantify any benefit of this in their analysis, and instead remain focused on only seeing harm from the transaction. The Commission should allow the transaction to proceed so that Liberty, the AG/KIUC and other stakeholders can work together to deliver savings to customers through securitization.

E. It Is Illogical to Consider the Private Interest of a Seller and Buyer in an Arms-Length Transaction, as the AG/KIUC Advocate.

The AG/KIUC argue that the Commission should put a price tag on the “private interests” of the seller and purchaser of a utility and then expropriate that amount in the name of the “public

²⁶ Eichler Rebuttal Testimony at 12.

²⁷ *Id.* at 12-13.

²⁸ *Electronic Application of Kentucky Power Company for Approval of a Certificate of Public Convenience and Necessity for Environmental Project Construction at the Mitchell Generating Station, an Amended Environmental Compliance Plan, and Revised Environmental Surcharge Tariff Sheets*, Case No. 2021-00004 at 18, 2021 WL 3059355, at *11 (Ky. PSC July 15, 2021).

interest.” In any acquisition of a utility through an arms-length transaction, logic dictates that the buyer and seller will determine that it is in each of their best interest to enter into the transaction; otherwise, the transaction would not occur. Thus, it would be illogical to require consideration of the private interests of a buyer and seller in an arms-length transaction. Nevertheless, the AG/KIUC advocate for this position and despite the lack of any legal support for it.

As Joint Applicants explained in their Post-Hearing Brief, the AG/KIUC’s focus on AEP’s expected financial benefit from the transaction is misplaced and is beyond the Commission’s statutory purview in this case.²⁹ Joint Applicants’ brief also demonstrated how the AG/KIUC’s articulation of the claimed AEP benefit has shifted over time – first to the equity (or acquisition) premium that Liberty will recognize on its books (and which the AG/KIUC later conceded is irrelevant to AEP), then to the cash proceeds from the sale – and how each of those characterizations is incorrect.³⁰ Having been proven incorrect as to each of their prior characterizations of AEP’s benefit, the AG/KIUC’s brief now focuses on the return that they claim AEP will earn from its redeployment of the cash proceeds, as set forth in KIUC Exhibit 11.³¹ The AG/KIUC’s ever shifting argument underscores the lack of any factual basis for their argument. Moreover, contrary to the AG/KIUC’s characterization of that document, the record demonstrates that KIUC Exhibit 11 is not a “realistic [or] concrete example” of how AEP will use the cash proceeds from the sale of Kentucky Power,³² but rather that it is incomplete, misleading, not

²⁹ Joint Applicants’ Brief at 60-62.

³⁰ *Id.*

³¹ AG/KIUC Brief at 5-6. AG/KIUC also again refer to a purported “premium” that AEP will realize on its equity in Kentucky Power and characterize AEP as not having paid anything for Kentucky Power’s monopoly service territory. *Id.* at 7. This view again inappropriately conflates Liberty’s acquisition premium with AEP’s expected financial benefit from the transaction. It also ignores that AEP has been investing in Kentucky Power for more than 100 years, and that Kentucky Power’s earnings during much of that period have been insufficient to compensate AEP for its investment. See Haynes Direct Testimony at 6; Haynes Rebuttal Testimony at R5.

³² *Id.* at 5.

probative, and unreliable. The Commission should disregard KIUC Exhibit 11 in making its decision in this case.

AEP/Kentucky Power Witness Haynes explained that KIUC Exhibit 11 – and the annual additional earned return conclusion the AG/KIUC draw from it – are “just totally an assumption.”³³

Moreover, there are several obvious issues with the document:

1. It ignores that the cash proceeds from the transaction will not simply be reinvested, as the exhibit portrays, but will need to be used to repay a \$180 million intercompany debt receivable and satisfy AEP’s tax obligations on the transaction.³⁴
2. It incorrectly assumes that AEP will reinvest all cash proceeds into transmission, which is not the case.³⁵ As KIUC Exhibit 10 reflects, the proceeds also will be used to invest in regulated renewables projects jointly owned by Kentucky Power affiliates PSO and SWEPCO;³⁶ those companies had 2021 earned returns on equity of 6.8% and 8.6%, respectively³⁷ – both far lower than the 10.35% authorized transmission ROE used in KIUC Exhibit 11.
3. It assumes that AEP will earn its authorized return on equity, which may not happen.³⁸

These flaws in KIUC Exhibit 11 result in an overstated calculation of AEP’s purported “additional annual earned return” that is “nowhere near” the \$5 to \$10 million 2022 earnings accretion that AEP actually expects to realize.³⁹

Unlike KIUC Exhibit 11, AEP’s expected earnings accretion “reflect[s] all the cash [AEP] is going to get from this transaction and the use of that cash, [and] all the costs [AEP has] to pay.”⁴⁰

As AEP/Kentucky Power Witness Haynes explained, the \$5 to \$10 million estimated earnings

³³ VR: 3/29/22; 13:25:14-13:25:24.

³⁴ *Id.* at 14:36:16-14:37:12; Joint Applicants’ Brief at 61 (citing AEP/KPCo Exhibit 1, Section 2; VR: 3/29/22; 15:14:50-16:41).

³⁵ VR: 3/29/22; 14:37:12-14:37:26.

³⁶ *See, e.g.*, KIUC Exhibit 10 at 11.

³⁷ *Id.* at 16.

³⁸ *Id.* at 14:37:26-14:37:36.

³⁹ *Id.* at 14:38:11-14:38:48.

⁴⁰ *Id.* at 14:37:45-14:38:11.

impact is based on the expected 1 to 2 cent 2022 earnings per share accretion that AEP announced when it announced the sale of Kentucky Power.⁴¹ KIUC's claimed \$84 million "additional annual earned return" thus would translate to a far higher accretion of approximately 16 cents, which is not based on the facts as presented by Mr. Haynes but rather Mr. Kollen's unsubstantiated view.⁴² For these reasons, AG/KIUC's reliance upon KIUC Ex. 11 is misplaced, and their arguments about the financial benefit AEP will realize from the sale of Kentucky Power should be disregarded.

III. THE AG/KIUC CONCERNS ABOUT KENTUCKY POWER'S FUTURE GENERATION RESOURCES ARE UNFOUNDED.

Despite recognizing that "renewables may be a valuable component of an energy portfolio," and that the Mitchell plant is barely being picked up by the market, thereby calling into question its fundamental economics,⁴³ the AG/KIUC express unfounded concerns about what they perceive as Liberty's predetermined resource portfolio for the future. Simply put, there is no evidence in the record to support the AG/KIUC's conjecture.

The AG/KIUC ignore the Commission's regulatory role in a utility's generation facilities. The Commission and other parties will have an opportunity to review and comment on Kentucky Power's integrated resource plan ("IRP"). Liberty testified that it has significant experience conducting rigorous integrated resource planning, particularly on behalf of Empire Electric in Missouri. Liberty Witness Aaron Doll, in response to a question from the Chairman, explained that it was a process that required the utility to file a preferred plan and any deviation from the preferred plan.⁴⁴ Mr. Doll further explained that Liberty performs complex scenario analysis in determining the most cost-effective approach for customers.⁴⁵

⁴¹ *Id.* at 14:37:45-14:38; KIUC Exhibit 10 at 3, "Transaction Value" section, third bullet.

⁴² \$84 million / (\$5 million/1 cent earnings) = 15.6 cents.

⁴³ See AG/KIUC Brief at 7 (referencing that the Mitchell plant "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").

⁴⁴ VR: 3/28/22; 19:26:05-19:26:36.

⁴⁵ VR: 3/28/22; 19:27:50-19:28:37.

In contrast, the AG/KIUC's brief advances resource planning arguments that an electric utility's generation should be "a well-balanced mix of both dispatchable and renewable generation," based on articles in Utility Dive, the trade press, and a letter to the President of the United States.⁴⁶ Setting aside that the Commission should disregard this information, as none of it is in the record in this case,⁴⁷ it certainly cannot be the basis for making complex decisions that have long term consequences for customers. That is exactly the function of rigorous resource planning that relies on sophisticated analytics, not newspaper articles, to make supply side planning decisions.

And the IRP is only one opportunity for the Commission to have oversight on a utility's generation resources. KRS 278.020 requires a utility to obtain a certificate of public convenience and necessary ("CPCN") prior to constructing new generation. During such a case, the Commission will consider whether there is a need for such facilities and if there is an absence of wasteful duplication.⁴⁸ The Commission is well-equipped in CPCN cases to determine whether a utility's proposal is appropriate based on a holistic review, including analysis of costs.⁴⁹

Further, there has been a lot of discussion about the corporate goals of Liberty and its parent company related to renewables, which are no different than Kentucky Power and its parent AEP's goals. The record evidence demonstrates that both AEP and Algonquin, Liberty's parent, have

⁴⁶ AG/KIUC Post-Hearing Brief at nn. 130-148 and accompanying text.

⁴⁷ Ample Commission precedent exists as to why the Commission should not consider this information. *See Barker v. E. Kentucky Power Coop.*, Case No. 2013-00291 at 8 (Ky. PSC July 6, 2015)("[T]he information was not presented for the first time until it appeared in Complainants' brief, thereby depriving EKPC of an opportunity to address the allegations."); *Water Serv. Corp. of Kentucky*, Case No. 2013-00237 at 7 (Ky. PSC July 11, 2014); *Jessamine-S. Elkhorn Water Dist.*, Case No. 2012-00470 at 4-5 (Ky. PSC Jan. 3, 2014).

⁴⁸ *Application Of Kentucky Power Company For A Certificate Of Public Convenience And Necessity Authorizing The Transfer To The Company Of An Undivided Fifty Percent Interest In The Mitchell Generating Station And Associated Assets*, Case No. 2012-00578 at 26-27 (Ky. PSC Oct. 7, 2013).

⁴⁹ *See, e.g., Joint Application Of Louisville Gas & Electric Company And Kentucky Utilities Company For Certificates Of Public Convenience And Necessity For The Construction Of A Combined Cycle Combustion Turbine At The Green River Generating Station And A Solar Photovoltaic Facility At The E.W. Brown Generating Station*, Case No. 2014-00002 at (Ky. PSC Dec. 19, 2014)(approving a project that was not a lowest reasonable cost resource).

stated an identical corporate goal of net zero by 2050”⁵⁰ and that under AEP’s ownership, Kentucky Power is slated for a significant amount of renewable-energy generation. In fact, AEP is planning for 1,450 MW of renewable generation for Kentucky Power in 2030.⁵¹ These are goals that will face a robust IRP and Commission regulated approval process. Any assertion of an alternative generation path from the current ignores both the Commission’s oversight and role in determining generation and the common statements of the parent companies.

IV. NEARLY ALL ISSUES RAISED BY THE AG/KIUC ARE UNRELATED TO THE TRANSACTION.

The vast majority of issues raised by the AG/KIUC are based on factors that exist regardless of whether Liberty acquires Kentucky Power. For example, the AG/KIUC’s newly contrived assertion that Kentucky Power under AEP ownership historically underinvested in its distribution system has no connection to Liberty’s proposed acquisition of Kentucky Power, notwithstanding that the assertion also is unfounded and has been squarely disproven. In addition, the purported out-of-state transmission subsidies currently being recovered in rates also exist regardless of Liberty’s proposed acquisition. A review of these types of items quickly reveals the flaws in the AG/KIUC’s arguments.⁵²

A. The AG/KIUC Mischaracterize a 1999 Merger Commitment and Ignore a Decade’s Worth of Reliability Actions.

Joint Applicants demonstrated in their Post-Hearing Brief that the AG/KIUC failed to carry their burden of demonstrating that AEP underinvested in Kentucky Power’s distribution system, or that Kentucky Power and its customers were harmed as a result of any claimed

⁵⁰ Liberty Hearing Exhibit 1 at 35; VR: 3/28/22; 14:55:30-14:75:45; VR: 3/28/22; 15:15:51-15:16:33

⁵¹ Liberty Hearing Exhibit 1 at 13.

⁵² This list could be expanded. For example, the \$6.2 million annual Rockport Capacity Charge (Tariff C.C.) that expires in December 2022 was approved in 2004, long before Liberty’s proposed acquisition was contemplated. Out of the interests of economy, the Joint Applicants focus on these limited examples to demonstrate their point.

underinvestment.⁵³ Joint Applicants also showed that the AG/KIUC lack any legal basis for conditioning approval of the proposed transaction on the payment of \$354.6 million (or any fraction thereof) by AEP to Kentucky Power or its customers.⁵⁴ The AG/KIUC’s final argument in support of their unprecedented effort to require an “exit fee” for owning and operating Kentucky Power for over a century is that AEP violated the Commission’s June 14, 1999 Order in Case No. 99-149 approving the merger of AEP and Central and South West Corporation (“CSW”).⁵⁵ This argument fares no better than their earlier, and equally flawed, underinvestment claim. The AG/KIUC mischaracterize and attempt to expand the limited merger commitment at issue and conveniently ignore that that the Commission eliminated Kentucky Power’s reporting obligation related to it in 2011.

Parties to Case No. 99-149 included AEP, Kentucky Power, the Attorney General, and KIUC. All parties to the case agreed as part of the settlement agreement, and Commission approved, that AEP and Kentucky Power would implement “the AEP/Kentucky Power Service Quality Program.”⁵⁶ The parties also agreed that AEP and Kentucky Power would file annual reports in Case No. 99-149 demonstrating their compliance with the commitments made in settlement agreement and Order approving the merger.⁵⁷ Among the reporting requirements was AEP/Kentucky Power’s filing of “service reliability reports annually indicating its calendar year Kentucky Customer Average Interruption Duration Frequency Index (CAIDI) and Kentucky

⁵³ Joint Applicants Brief at 37-50; AG/KIUC Brief at 16-20.

⁵⁴ Joint Applicants Brief at 50-56.

⁵⁵ AG/KIUC Brief at 20-23.

⁵⁶ Order, *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 Appendix at ¶ 9 (June 14, 1999) (“Merger Order”).

⁵⁷ Merger Order at 15.

System Average Interruption Frequency Index (SAIFI).”⁵⁸ The Commission’s Order approving the settlement agreement incorporated the terms of the agreement “as if fully set forth herein.”⁵⁹

The AG/KIUC parse language from the AEP/Kentucky Service Quality Program, as incorporated in the Commission’s Order, as evidence that AEP and Kentucky Power violated the Commission’s June 14, 1999, Order.⁶⁰ Their reading is both too broad and without context. The excerpted language is not the \$354.6 million check that the AG/KIUC would pretend. Rather, as made clear by the complementary provisions of the agreement, the language is part of a much narrower commitment:

AEP/Kentucky Power (the Company) has as one of its highest priorities a desire to maintain and improve the quality and reliability of service to its customers. The Company commits that current levels of customer service and service reliability ***shall not degrade as a result of the merger*** and ***shall undertake all reasonable efforts*** to improve the quality and reliability of its service. In order to assure the Commission and Kentucky customers of continued excellent service quality ***in the post-merger environment***, the Company commits and agrees to do the following:

1. 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.

...

to completely inspect its Kentucky electric facilities every two years and perform tree trimming, lightning arrestor replacement, animal guarding and pole cross arm replacements.

...

[and to] undertake ***all reasonable expenditures*** to achieve the goal of limiting customer outages.⁶¹

Simply put, AEP/Kentucky Power agreed to use reasonable efforts, and to make reasonable expenditures, directed toward the express, but limited, requirement that the AEP-CSW merger not degrade the historic levels of customer service and customer reliability. There is no evidence of record, and the AG/KIUC do not contend even in this proceeding, that the Company’s reliability

⁵⁸ Merger Order, Appendix, Attachment C at 1.

⁵⁹ Merger Order at 15.

⁶⁰ AG/KIUC Brief at 20-23.

⁶¹ Merger Order, Appendix, Attachment C at 1 (emphasis supplied).

metrics, about which they complain for the first time in more two decades, degraded as a result of the merger of AEP and CSW.

The Commission in 2010 supplemented the Company's merger agreement distribution reliability reporting obligations as part of its approval of the Company's distribution vegetation management plan.⁶² The Company subsequently sought Commission approval in Case No. 99-149 to eliminate filing its merger agreement-required reports regarding distribution reliability indices, inspection and maintenance of distribution facilities, and efforts to improve distribution reliability, among others, because the lapse of time and integration of AEP and CSW prevented events from being fairly attributed to the merger.⁶³ These developments, coupled with overlapping reporting requirements from subsequent cases, rendered the reports in Case No. 99-149 unnecessary or redundant.⁶⁴ The Commission granted the request on October 20, 2011.⁶⁵

Kentucky Power in the intervening decade filed with the Commission and served on the Attorney General and KIUC annual (or more frequent) reports detailing its system distribution reliability metrics and its circuit-by-circuit efforts to improve distribution reliability.⁶⁶ It also filed with the Commission its "Electric Distribution Utility Annual Reliability Report" listing outage causes by circuit. Kentucky Power in addition has been before the Commission five times for general rate adjustments in the two decades following the Commission's merger Order. In each

⁶² *Application Of Kentucky Power Company For General Adjustment Of Electric Rates*, Case No. 2009-00459 at 8-9 (Ky. PSC June 28, 2010).

⁶³ *Application, Request Of Kentucky Power Company And American Electric Power Company, Inc. To Modify The Filing Requirements Of The June 14, 1999 Order In Case No. 99-149*, Case No. 2011-00179 at ¶ 3 (filed May 13, 2011).

⁶⁴ *Id.*

⁶⁵ *Request Of Kentucky Power Company And American Electric Power Company, Inc. To Modify The Filing Requirements Of The June 14, 1999 Order In Case No. 99-149*, Case No. 2011-00179 at 3 (Ky. PSC Oct. 20, 2011) (stating that the "information is either otherwise filed with the Commission or the filing of such information is no longer necessary")

⁶⁶ Each of these filings fully apprised the AG/KIUC (and the Commission) of the Company's distribution reliability metrics without a murmur that AEP/Kentucky Power violated the reliability requirements of the Merger Order, or a request by the AG/KIUC that the Commission take "the additional measures" foreshadowed by the Commission in the Merger Order.

proceeding, Kentucky Power's books, distribution investments, distribution O&M expense, and all aspects of its service, including its distribution reliability metrics, have been subject to both the AG's and KIUC's close scrutiny. Yet, even in the face of the Commission's express warning in its Order approving the merger settlement agreement that it was "prepared to require additional measures be taken" in "the event that Kentucky Power's quality of service experiences a decline,"⁶⁷ no party has ever alleged, prior to this case, that the Company violated the reliability commitment it undertook as part of the merger case settlement.

The Commission's decades-long construction of the Case No. 99-149 settlement agreement,⁶⁸ as acquiesced by the AG/KIUC, is fully consistent with the limited nature of AEP/Kentucky Power's reliability undertaking as part of the merger settlement. Kentucky Power fully complied with its obligations under the Commission's Order in Case No. 99-149. The AG/KIUC's thirteenth-hour arguments to the contrary are nothing more than the opportunistic money grab that is evident on the face of the arguments.

The AG/KIUC's claim for \$354.6 million for the Company's alleged violation of the Commission's Order in Case No. 99-149 also has no legal basis. KRS 278.990(1) provides the statutory remedy for violations of Commission Orders. Where "a statute provides a precise procedure, an administrative agency may not add to such a provision."⁶⁹ Nor may the AG/KIUC circumvent the statutory procedure by, as they do here, beseeching the Commission to invoke a less well-defined statutory grant.⁷⁰ Moreover, KRS 278.990 limits both the amount⁷¹ and

⁶⁷ Merger Order at 8.

⁶⁸ Like its own regulations, *Twin Resources, LLC v. Workman*, 394 S.W.3d 417, 420-421 (Ky. App. 2013), the Commission's construction of its orders should be accorded "great weight" when determining their meaning.

⁶⁹ *South Central Bell Tel. Co. v. Utility Regulatory Comm'n*, 637 S.W.2d 649, 653 (Ky. 1982).

⁷⁰ *See id.* ("We believe that granting the Commission the authority, in a rate case, to penalize the utility for poor service would be an improper extension of the statutory procedure.")

⁷¹ KRS 278.990(1) (limiting penalties for violation of Commission Orders to \$2,500).

recipient⁷² of any amounts payable for alleged violations of Commission orders. Finally, as explained in the Joint Applicant's Post-Hearing Brief,⁷³ the Commission lacks jurisdiction to award damages even if they otherwise could be awarded for violation of Commission Orders.⁷⁴

B. The AG/KIUC's Transmission Subsidy Argument is Without Merit.

Joint Applicants addressed in their Post-Hearing Brief most of the AG/KIUC's arguments regarding the claimed transmission cost subsidy paid by Kentucky Power.⁷⁵ Notwithstanding the AG/KIUC's protestations before this Commission, there can be no disputing several facts: (1) As a load serving entity ("LSE"), Kentucky Power is required by law to pay the applicable transmission rates on file at FERC; (2) FERC in setting the rates currently paid by Kentucky Power as a load serving entity has deemed the rates to be just and reasonable; (3) Kentucky Power will pay those rates regardless of the identity of Kentucky Power's owner; (4) There are two available methods to challenge those rates at FERC: a 205 action to demonstrate that different proposed rates are also just and reasonable, or a more challenging 206 action to argue that the present rates are unjust and unreasonable and should be changed; (5) No such petitions have been filed by the AG/KIUC, or anyone else, and; (6) It is uncertain whether such a petition would be successful in changing the PJM Consolidated Transmission Owners Agreement. (7) It is unknown what the effect of Kentucky Power leaving the AEP transmission zone would be on Kentucky Power's wholesale transmission costs.⁷⁶

⁷² KRS 278.990(2) requires that "all penalties recovered in such actions shall be paid into the State Treasury and credited to the general fund."

⁷³ Joint Applicants Brief at 54-56.

⁷⁴ The AG/KIUC also fail to demonstrate that any part of the \$354.6 million they seek to extract from AEP for the alleged violation of the Commission's Order Case No. 99-149 was proximately caused by the claimed violation. *See Yung v. Grant Thornton, LLP*, 563 S.W.3d 22, 59 (Ky. 2018) ("For recovery in Kentucky under a theory of fraud or negligence, the plaintiff must establish that the defendant proximately caused the damages.")

⁷⁵ Joint Applicants Brief at 22-23, 57-59, 62-65.

⁷⁶ *Id.* 57-58; Baron Direct Testimony at 18; Herling Rebuttal Testimony at 2.

It would be contrary to the public interest to seize the so-called “opportunity” that the AG/KIUC identify⁷⁷ and impose on AEP, as a condition of approval of the acquisition by Liberty, a financial “incentive” to force change that may not be in Kentucky Power’s best interest and that could result in higher transmission costs and negate the customer benefits that will be realized through Liberty’s commitments in this case if the transaction is approved. Such opportunistic effort to circumvent or relitigate matters that have already been determined by the Commission in previous cases,⁷⁸ or that are the result of existing law and existing legal requirements, is inconsistent with the regulatory compact. So too would be imposing a financial burden on AEP for being unable to change a tariff that FERC has found to be just and reasonable.

Specifically, it is intrinsically illogical for the AG/KIUC to argue that burdening the transaction would in any way incentivize AEP to obtain at FERC a change that AEP admittedly cannot obtain unilaterally.⁷⁹ The illogical and confiscatory nature of the AG/KIUC’s argument is made manifest by the fact that under their proposal the \$15 million per year condition would continue to be exacted from AEP for five years even if FERC ultimately maintained the current rates by finding them just and reasonable (or not unjust or unreasonable), further indicating how their argument is unrelated to whether Kentucky Power is owned by Liberty. If adopted, the approach the AG/KIUC propose would set a very negative precedent for efforts to bring to customers the benefits available only through voluntary commitments made by acquiring entities in transactions such as the Liberty acquisition of Kentucky Power.

Further, the AG/KIUC urge the Commission to unlawfully penalize AEP to bring about claimed benefits where the only reasonable conclusion to be drawn from this record is that

⁷⁷ AG/KIUC Brief at 13.

⁷⁸ See Joint Applicants Brief at 57-59.

⁷⁹ *Id.*

significantly more analysis would be required to even estimate the likelihood such benefits would exist in the event FERC ordered a different method to calculate the transmission rates that presently Kentucky Power is required to pay by law.⁸⁰ This is exactly the type of analysis Liberty has committed to undertake. Stated otherwise, the AG/KIUC not only urge the Commission to put the cart before the horse, but also that the Commission put Kentucky Power's customers at risk of unanticipated detriments in doing so.

The AG/KIUC's position also completely ignores the cyclical nature of Kentucky Power's transmission investment needs, and specifically that the forecasted upcoming necessary transmission investment by Kentucky Power may significantly affect the balance of Kentucky Power's transmission investment.⁸¹ Contrary to KIUC's and AG's argument, Kentucky Power and its customers may benefit from the fact approximately 95% of the costs associated with Kentucky Power's transmission projects would be borne by other members of the AEP transmission zone in PJM, and only the remaining 5% would be allocated to Kentucky Power under the current transmission rates.

Liberty has committed to work collaboratively with the Commission and other stakeholders to explore the transmission cost imbalance that the Commission identified in its order in Case 2020-00174 approving the tracker recovery mechanism currently in place for Kentucky Power's PJM LSE OATT costs.⁸² Approval of the transaction is a step towards further addressing those concerns. Denial of the transaction, or the imposition of requirements that would cause the transaction not to occur, would be a step backwards. Therefore, such denial or inapposite burden would be contrary to the public interest.

⁸⁰ Herling Rebuttal Testimony at 9-10.

⁸¹ Joint Applicants' Brief at 58.

⁸² Joint Applicants' Brief at Appendix.

Finally, the AG/KIUC misapply the holding from the Commission’s decision in Case No. 2010-00203⁸³ for the proposition that “the Commission has previously conditioned approval of a transfer of control on a Kentucky utility agreeing not to recover FERC-approved transmission costs.”⁸⁴ That case involved the transfer of the functional control of utility assets under KRS 278.218, not the transfer of a utility under KRS 278.020 through a stock sale as is at issue here. Next, the amounts at issue in Case No. 2010-00203 (MISO exit fees and “transmission expansion fees that may be charged by both the Midwest ISO and PJM in the same period or overlapping periods”) directly resulted from the proposed transfer of functional control of the assets. Here, by contrast, the FERC transmission rates about which the AG/KIUC complain are payable without regard to whether Kentucky Power is owned by AEP or Liberty. Moreover, the Commission required Duke Kentucky to forego either double recovery of the same type of expense, or the recovery of expenses that customers would not receive the benefit of following Duke Kentucky’s exist from MISO. The AG/KIUC, by contrast, are demanding that AEP pay to Kentucky Power the costs of transmission benefits Kentucky Power and its customers will continue to receive. Most fundamentally, the Supremacy Clause of the Constitution of the United States may not be evaded, as the AG/KIUC urge, through the transparent expedient of conditioning a state approval upon a party foregoing its protections and rights under the laws of the United States.⁸⁵

⁸³ *In the Matter of: Application of Duke Energy Kentucky, Inc. For Approval To Transfer Functional Control Of Its Transmission Assets From Midwest Independent Transmission System Operator To PJM Interconnection Regional Transmission Organization And Request For Expedited Treatment*, Case No. 2010-00203.

⁸⁴ AG/KIUC Post-Hearing Brief at 15.

⁸⁵ *United States v. Georgia Public Service Comm’n*, 371 U.S. 285, 293 (1963) (“a state is without power by reason of the Supremacy Clause to provide the conditions on which the Federal Government will effectuate its policies. Whether the federal policy is a wise one is for the Congress and the Chief Executive to determine.”); *see also Texas Emp’r Ins. Ass’n v. United States*, 569 F.2d 874, 875 (5th Cir. 1978) (“Under the Supremacy Clause of the Constitution, Art. VI, cl. 2, a state may not condition a workmen’s compensation scheme in a manner which frustrates the purpose of a national statute.”).

These are just two of many examples of the AG/KIUC's strained interpretation of Commission precedent that the Joint Applicants should be required to agree to additional conditions in order to meet the statutory standards. The Commission should see through the AG/KIUC's veiled attempt to extract highly punitive and unreasonable measures based on an incomplete presentation of historical facts and misapplication of past decisions, and reject those arguments.

V. THE AG/KIUC'S POSITION THAT THE SELLER OF A KENTUCKY UTILITY BE REQUIRED TO PAY TO SELL THE UTILITY FAILS AS A MATTER OF LAW AND WOULD CHILL UTILITY M&A AND BUSINESS IN THE COMMONWEALTH.

The AG/KIUC's position that AEP should be required to share its profits from the transaction and compensate customers as a condition of the transfer of Kentucky Power also fails as a matter of law, as Joint Applicants explained in their Post-Hearing Brief.⁸⁶ Two aspects of the AG/KIUC's Post-Hearing Brief on this topic warrant further response.

First, the AG/KIUC's Post-Hearing Brief selectively cites portions of the May 2002 decision in the *Kentucky-American Water* transfer-of-control case⁸⁷ but tellingly omits the Commission's holding foreclosing the very argument they now advance:

We find no legal support for [the] proposition [that shareholders share with customers cash benefits created by a proposed transaction]. Courts have long recognized that ratepayers are not entitled to a share of the proportion of the proceeds of the sale of capital stock To the extent that . . . ratepayers bore no risk as to the fluctuations in the price of [the seller parent's] shares, we find no basis to support any claim to entitlement to any share of the increase in that stock's price as a result of the [transaction].⁸⁸

⁸⁶ Joint Applicants' Brief at 50-62.

⁸⁷ AG/KIUC Brief at 2 (citing *Kentucky-American Water Co.*, Initial Order, Case No. 2002-00018 (Ky. PSC May 30, 2002)).

⁸⁸ *Kentucky-American Water Co.*, Initial Order, Case No. 2002-00018 at 8-9 (Ky. PSC May 30, 2002)(emphasis added); see also Joint Applicants' Brief at 52-53.

Second, although the AG/KIUC's Post-Hearing Brief sometimes characterizes aspects of the payment they seek from AEP as being a "penalty,"⁸⁹ the AG/KIUC elsewhere characterize their demand as a request that the Commission condition approval of the transfer on AEP's agreement to financial contributions.⁹⁰

To be clear, Joint Applicants and the AG/KIUC appear to agree: There is no basis for the imposition of a penalty under KRS 278.990.⁹¹ Equally importantly, it is worth reiterating again that the standard for which the AG/KIUC are advocating in this proceeding would have a significantly chilling effect on investment, including merger and acquisition activity, in the Commonwealth.⁹² "[I]nvestors are watching this case closely for what it will reveal about the state's business climate."⁹³ The Commission should reject the AG/KIUC's attempt to extract an inappropriate pound of flesh from a Kentucky utility's seller, which surely would not be received as a constructive regulatory action by those considering investment in Kentucky.⁹⁴

VI. THE COMMISSION HAS ORDERED KENTUCKY POWER'S NEXT BASE RATE ADJUSTMENT TO BE FILED NO LATER THAN JANUARY 1, 2024.

In its brief, LS Power explicitly states that it is not taking a position on whether the statutory standards set forth in KRS 278.020 are met by this acquisition.⁹⁵ In addition, LS Power Witness Thomas Hoatson did not provide any testimony on a potential delay of Kentucky Power's next general adjustment of rates. Nevertheless, LS Power now advocates that the Commission should condition the acquisition on a commitment that Kentucky Power will not seek a general adjustment of rates until January 1, 2026.

⁸⁹ See, e.g., AG/KIUC Brief at 13.

⁹⁰ See e.g., *id.* at 15, 42.

⁹¹ Joint Applicants' Brief at 50, n. 231.

⁹² *Id.* at 53; Haynes Rebuttal Testimony at R6.

⁹³ Haynes Rebuttal Testimony at R6.

⁹⁴ *Id.*

⁹⁵ See LS Power Development, LLC's Post-Hearing Brief at 3 (filed Apr. 12, 2022).

There are multiple reasons why LS Power’s argument must be rejected. First and foremost, the Commission set the effective date of no later than January 1, 2024, for the next general adjustment of rates because it anticipated savings from the termination of the Rockport UPA.⁹⁶ If Kentucky Power were to do as LS Power proposes—notwithstanding the fact that it would be directly violating a Commission order—then Kentucky Power customers would not recognize any Rockport savings for an additional two years.⁹⁷ Second, LS Power has chosen not to take a position on whether the acquisition meets the statutory standards of KRS 278.020, and it therefore cannot now argue that any specific condition is necessary to make the acquisition meet those standards. Accordingly, LS Power’s position should be rejected for any one of these reasons.

VII. JOINT APPLICANTS’ INITIAL POST-HEARING BRIEF FULLY ADDRESSED THE MAJORITY OF INTERVENOR ARGUMENTS.

Joint Applicants anticipated and addressed in their Post-Hearing Brief each of the remaining arguments asserted in the intervenors’ briefs. Joint Applicants rely upon their previously articulated arguments and will not repeat them here. With time being of the essence and to assist the Commission in its review of the issues raised on brief, Joint Applicants provide the following list cataloging the remaining issues raised by intervenors and those portions of Joint Applicants’ Post-Hearing Brief in which each issue was addressed:

⁹⁶ *Electronic Application of Kentucky Power for (1) a General Adjustment of Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; and (5) All Other Required Approvals and Relief*, Case No. 2020-00174 at 32 (Ky. PSC Jan. 13, 2021).

⁹⁷ The AG/KIUC advocate that the Rockport Settlement must be amended to calculate per-book earnings absent transition and integration expenses. AG/KIUC Post-Hearing Brief at 28-31. Kentucky Power, under Liberty ownership, will track one-time transition and transaction costs, which can be removed from the 2023 book earnings if determined to be appropriate by the Commission to calculate the Rockport fixed cost offset that Kentucky Power will retain.

- The AG/KIUC’s arguments regarding transmission issues that are not further addressed above⁹⁸ are addressed on pages 22-23, 57-59, and 64-65 of Joint Applicants’ Post-Hearing Brief;
- The AG/KIUC’s arguments on lost economies and other benefits provided by AEP⁹⁹ are addressed on pages 30-32 of Joint Applicants’ Post-Hearing Brief;
- The AG/KIUC’s arguments about the sale of receivables¹⁰⁰ are addressed on page 33 of Joint Applicants’ Post-Hearing Brief;
- The AG/KIUC’s arguments about the tax effects of net operating losses¹⁰¹ are addressed on pages 33-35 of Joint Applicants’ Post-Hearing Brief;
- The AG/KIUC’s arguments about shared inventory and spare parts¹⁰² are addressed on pages 35-36 of Joint Applicants’ Post-Hearing Brief;
- The AG/KIUC’s arguments about costs associated with a credit rating downgrade¹⁰³ are addressed on paged 36-37 of Joint Applicants’ Post-Hearing Brief;
- The AG/KIUC’s arguments regarding AEP’s investment in Kentucky Power’s distribution system that are not addressed above¹⁰⁴ are addressed on pages 37-50 of Joint Applicants’ Post-Hearing Brief;
- The AG/KIUC’s argument that AEP pay a portion of its expected benefits from the transaction as a condition of selling Kentucky Power¹⁰⁵ is addressed on pages 50-56 and 60-62 of Joint Applicants’ Post-Hearing Brief; and

⁹⁸ AG/KIUC Brief at 12-15.

⁹⁹ *Id.* at 23-28.

¹⁰⁰ *Id.* at 31-32.

¹⁰¹ *Id.* at 32-34.

¹⁰² *Id.* at 34.

¹⁰³ *Id.* at 35.

¹⁰⁴ *Id.* at 16-20.

¹⁰⁵ *See generally id.* at 12-14, 22-23, 27-28, 31-35.

- The AG/KIUC’s attempt to reopen the Rockport settlement¹⁰⁶ that are not further addressed above¹⁰⁷ is addressed on pages 59-60 of Joint Applicants’ Post-Hearing Brief.

Those portions of Joint Applicants’ Post-Hearing Brief cited above are specifically incorporated herein by reference.

VIII. CONCLUSION

Liberty is excited about serving eastern Kentucky and stands ready, willing, and able to become the new owner of Kentucky Power. It has the financial, technical, and managerial ability to provide—and even enhance—service to Kentucky Power’s customers, and no party now challenges that fact. Liberty’s acquisition is also for a proper purpose, in accordance with law, and consistent with the public interest, as the acquisition will bring immediate and long-term benefit to Kentucky Power customers and the entire eastern Kentucky region.

Ultimately, the fact remains that the transaction is in the public interest, and without the closing of the transaction substantial benefits will be lost to the community and the customers. These benefits—including the \$40 million Fuel Fund, the three-year deferral of the BSDR, and the localization of approximately 100 jobs to eastern Kentucky—are available with a Commission approval of the request. Eastern Kentucky seems ready for a fresh start and all the opportunities that will bring. Liberty is well poised to provide those benefits and fresh look. Accordingly, the Joint Applicants respectfully request that the Commission authorize the change that is necessary to bring about these benefits and approve the Liberty’s acquisition of Kentucky Power.

¹⁰⁶ *Id.* at 28-31.

¹⁰⁷ *See supra* n. 97.

RESPECTFULLY SUBMITTED,



Mark R. Overstreet
Katie M. Glass
STITES & HARBISON PLLC
421 West Main Street
P. O. Box 634
Frankfort, Kentucky 40602-0634
Telephone: (502) 223-3477
Facsimile: (502) 779-8349
moverstreet@stites.com
kglass@stites.com

John C. Crespo (admitted pro hac vice)
Christen M. Blend (admitted pro hac vice)
Hector H. Garcia-Santana (admitted pro hac vice)
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-3727
jccrespo@aep.com
cblend@aep.com
hgarcial@aep.com

**Counsel for Kentucky Power Company and
American Electric Power Company, Inc.**



James W. Gardner
M. Todd Osterloh
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
Phone: (859) 255-8581
E-mail: jgardner@sturgillturner.com
E-mail: tosterloh@sturgillturner.com

Sarah Knowlton (admitted pro hac vice)
116 North Main Street
Concord, NH 03301
P: 603-724-2123
E-mail: Sarah.Knowlton@libertyutilities.com

Kenneth Tillotson (admitted pro hac vice)
602 S Joplin Ave
Joplin, MO 64801
C: 417-768-9140
E-mail: Kenneth.Tillotson@libertyutilities.com

Counsel for Liberty Utilities Co.