

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' POST-HEARING BRIEF

Table of Contents

I. INTRODUCTION	1
II. PROCEDURAL HISTORY AND TRANSACTION OVERVIEW.....	4
III. STANDARD OF REVIEW	5
IV. IN ACCORDANCE WITH KRS 278.020(6), LIBERTY HAS THE NECESSARY FINANCIAL, TECHNICAL, AND MANAGERIAL ABILITIES TO PROVIDE REASONABLE SERVICE TO KENTUCKY POWER’S CUSTOMERS.....	6
A. Liberty has the Financial Ability to Provide Reasonable Service Following the Proposed Transaction	6
B. Liberty has the Technical Ability to Provide Reasonable Service Following the Proposed Transaction	7
C. Liberty has the Managerial Ability to Provide Reasonable Service Following the Proposed Transaction	15
V. PURSUANT TO KRS 278.020(7), THE PROPOSED TRANSFER OF OWNERSHIP AND CONTROL IS BEING MADE IN ACCORDANCE WITH LAW, IS FOR A PROPER PURPOSE, AND IS CONSISTENT WITH THE PUBLIC INTEREST.....	17
A. The Proposed Transfer of Ownership and Control is Being Made in Accordance with Law.	17
B. The Proposed Transfer of Ownership and Control is for a Proper Purpose.	18
C. The Proposed Transaction is Consistent with the Public Interest.	18
1. The “Public Interest” Legal Standard	19
2. Joint Applicants Have Demonstrated that the Transaction is in the Public Interest.	20
a. Liberty’s Commitment to Provide Significant Customer Benefits	20
b. Liberty’s Commitment to Addressing Transmission Concerns	22
c. Liberty’s Local Emphasis	23

i.	Local Emphasis Provides Real Local Benefits	23
ii.	Liberty’s Local Focus Is a Success as Shown by Partners in Both Eastern Kentucky and in Other States.	25
d.	Benefits to Kentucky Power for Liberty’s Relative Size	28
e.	Liberty’s Commitment to Seamless Continuity of Service	28
3.	Intervenor Challenges are Without Merit and Do Not Overcome Joint Applicants’ Demonstration that the Public Interest Supports the Transaction.	30
a.	AG and KIUC’s Misguided and Unfounded Arguments on Lost Economies and Other Benefits	30
i.	Cost Associated with Centralized Services	31
ii.	Sale of Receivables	33
iii.	Tax Effects of Net Operating Losses	33
iv.	Shared Inventory and Spare Parts	35
v.	Costs Associated with a Downgrade in Credit	36
b.	The Attorney General and KIUC Fall Short in Carrying their Burden of Proof of Demonstrating that AEP Failed to Invest Adequately in Kentucky Power’s Distribution System.....	37
i.	Mr. Kollen Does Not Have The Technical Knowledge in Electrical Distribution System Design, Construction, Maintenance, Repair, or Storm Restoration to Opine on the Required Level of Distribution Capital Investment as well as his Claimed Increased Distribution Maintenance Expense	38
ii.	Mr. Kollen’s Use of Ratios to Calculate AEP’s Alleged Underinvestment and the Claimed Resulting Excess Distribution Maintenance Expense is Neither Reliable nor Relevant	39
1.	Capital Investment.....	39
2.	Distribution Maintenance Expense	42

3.	Mr. Kollen’s Efforts to Support His Flawed Metrics Should be Accorded No Weight by the Commission.	45
iii.	Mr. Kollen’s Conclusions Regarding the Claimed Harm Resulting from the Alleged Underinvestment in Kentucky Power Ignore at least Ten Years of Regulatory Filings and Proceedings.....	47
c.	AG/KIUC’s Argument That AEP Pay A Portion of its Expected Benefit from the Transaction Condition Of Selling Kentucky Power Is Without Legal Or Factual Basis And Itself Is Not In The Public Interest.	50
i.	The Public Interest as the Term is Used in KRS 278.020(7) is Neither so Broad, nor so Punitive, as to Require AEP to Pay \$578 Million as Damages or as a Penalty to Effectuate the Transfer.	50
ii.	The Commission Lacks Legal Authority To Award To Kentucky Power’s Customers Compensation For The Harm, Otherwise Known as Damages, KIUC And The Attorney General Claim Resulted From AEP’s Alleged Underinvestment In Kentucky Power’s Distribution System.	54
iii.	The Commission Should Reject AG/KIUC’s Request to Relitigate Prior Commission Decisions About Issues Unaffected by the Transaction to Improperly Obtain Financial Benefits at Kentucky Power’s and AEP’s Expense.	56
1.	AG/KIUC’s claimed “transmission cost penalty” was fully litigated in Case No. 2020-00174, has nothing to do with the transfer proposed in this proceeding, and does not exist.	57
2.	The Commission should reject AG/KIUC’s attempt to undermine the Rockport settlement that has provided tremendous benefits to customers for more than 5 years.	59
iv.	AEP’s Expected Financial Benefit from the Transaction is Both Misstated by Intervenors and Irrelevant to the Commission’s Statutory Mandate in this Case.	60
d.	Other PJM Issues Raised by the Attorney General, KIUC, and LS Power	62
VI.	CONCLUSION	65

This transaction represents change. Change brings new opportunities, new vision, and new relationships. Change also represents improvement. Eastern Kentucky is ready for a change in the owner of its electric service provider. Under American Electric Power Company, Inc.'s ("AEP") ownership, Kentucky Power Company ("Kentucky Power") has served the eastern Kentucky community for over 100 years. Liberty Utilities Co. ("Liberty") now steps forward with a strong desire to ensure that Kentucky Power continues to be that provider and a strong member of the community for the next 100 years. By approving this acquisition, the Commission will turn the page to begin a bright next chapter for eastern Kentucky.

I. INTRODUCTION

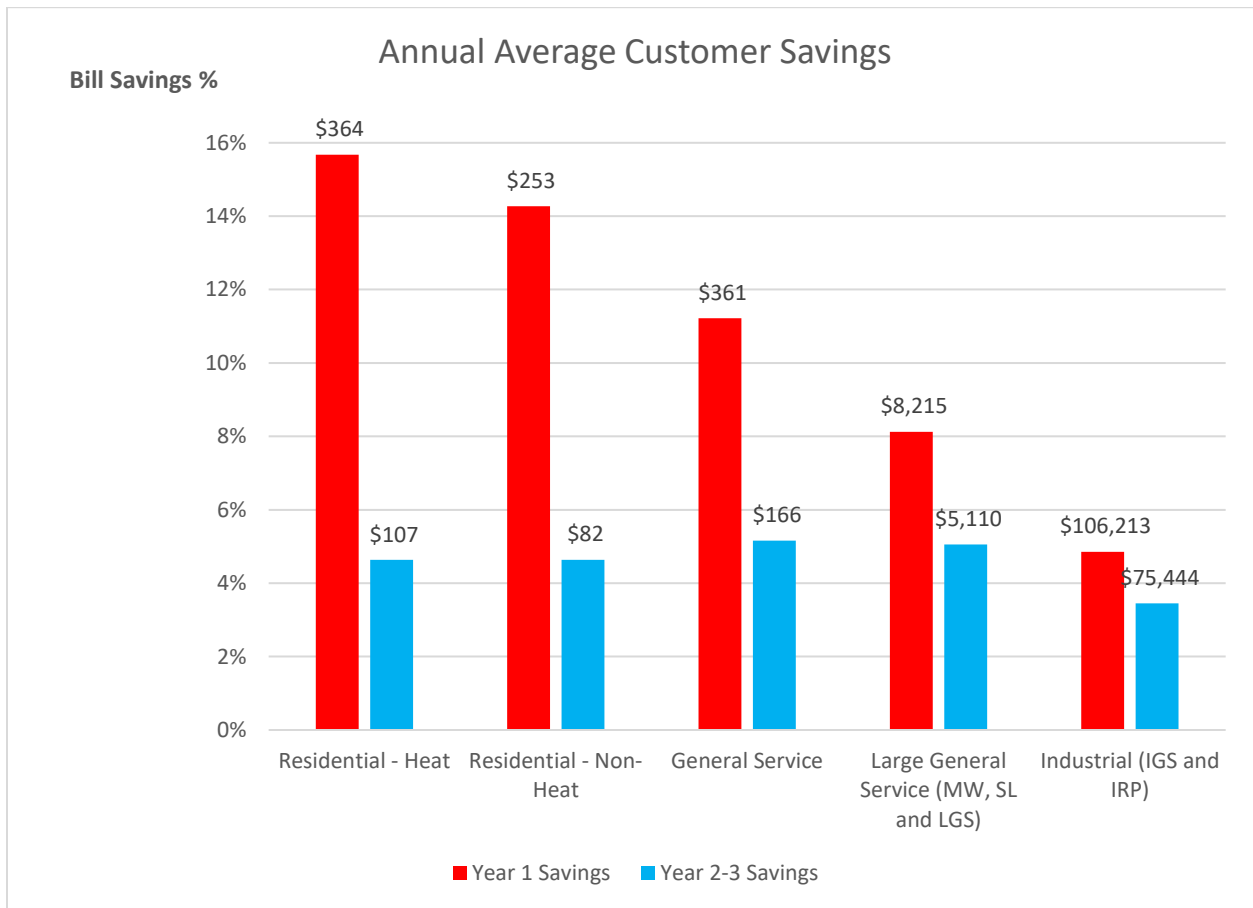
As the record demonstrates, Liberty's acquisition of Kentucky Power will result in significant immediate benefits to Kentucky Power customers when they need it the most. Liberty has committed, among other items, to ensuring reliable electric service, cost-effective utility bills for customers, and economic development in eastern Kentucky. The Joint Applicants¹ are aware of high electricity rates, rising fuel costs, and lack of employment opportunities in the region, and they are certain that this transaction will spark both immediate relief and long-term economic benefits for Kentucky Power's customers.

At the outset, the change in ownership will benefit the public interest by relieving financial distress from high-electricity bills. Liberty will create approximately \$144.1 million in bill reductions for Kentucky Power customers through a \$40 million Eastern Kentucky Fuel Relief Fund and a three-year rate holiday from recovery of the Big Sandy Decommissioning Rider.²

¹ Liberty, Kentucky Power, and AEP collectively are referred to herein as the "Joint Applicants."

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.

Collectively, these savings would result in an immediate reduction of residential customers' bills by 14-16% as compared to average bills from February 2022.



And that immediate bill relief is beyond the benefits associated with the creation of upwards of 100 new jobs in the eastern Kentucky. These significant benefits are only possible with the closing of the transaction. Without approval of the acquisition by Liberty, customers will continue under current rates and under the current AEP service corporation approach, which has been heavily criticized before the Commission.

Under Liberty's ownership, Kentucky Power customers will receive not only the immediate, significant, and long-term benefits stemming from Liberty's commitments in this proceeding, but also the care and attention from a locally-based management team headquartered in eastern Kentucky. Liberty's approach to operating utilities is different than AEP's. Liberty

utilizes a decentralized services operational model, allowing Liberty to directly draw on the knowledge of a local workforce that is driven by a commitment to community relationships. Its management and staff live and work in the communities that it serves, allowing Liberty to focus on customer service of the highest quality. In furtherance of these core ideals, Liberty will maintain Kentucky Power's headquarters in Ashland, Kentucky, and will open customer walk-in centers in the territory so that customers are able to interact with Kentucky Power employees who are members of the customers' community. Under Liberty's ownership, Kentucky Power's president will continue to live in the community (and has already purchased a home in Ashland), the Kentucky Power board will include a local community leader, and 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. A comprehensive list of Liberty's commitments is attached hereto in the Appendix.

Liberty's ownership will also create long-term benefits for Kentucky Power's customers. Liberty is a highly skilled owner of utilities that is ideally suited to manage and improve the operations of Kentucky Power's electric service to customers. Liberty will pursue the development of modernized technology that will provide cost-effective benefits and prepare the electric grid for increased challenges in the future. Liberty will bring the lessons learned operating in other jurisdictions and apply those fresh perspectives to both new and old problems facing eastern Kentucky. Further, Liberty's forward focus will also allow Kentucky Power to meet its customers' long-term energy needs while maintaining costs. Liberty also will take a "fresh look" at Kentucky Power's operations to determine whether there are more beneficial ways to reliably and cost-effectively serve customers. This "fresh look" includes Liberty's commitment to increase

transmission investments in Kentucky while Kentucky Power remains in the AEP East Zone to customers' benefit, thereby addressing long standing concerns of this Commission.

As detailed herein, the record before the Commission establishes that Liberty has the financial, technical, and managerial abilities to continue the provision of reasonable service to Kentucky Power customers, and the acquisition is being made in accordance with law, for a proper purpose, and consistent with the public interest. Intervenors' arguments in opposition to the transfer are without merit, and the "relief" they seek is unsubstantiated and unfounded. The Commission should ignore those unfounded arguments and approve of the transfer of ownership and control of Kentucky Power to Liberty as proposed.

II. PROCEDURAL HISTORY AND TRANSACTION OVERVIEW

On December 21, 2021, the Joint Applicants gave notice to the Public Service Commission of Kentucky (the "Commission") of their intention to file an application for the transfer of ownership of Kentucky Power from AEP to Liberty. On January 4, 2022, the Joint Applicants filed their application for authority to transfer the ownership of all issued and outstanding common stock of Kentucky Power from AEP to Liberty. As a result of the transaction, Kentucky Power will become a wholly owned subsidiary of Liberty. In addition to the acquisition of the common stock of Kentucky Power, Liberty will acquire the outstanding common stock of AEP Kentucky Transmission Company, LLC ("Kentucky Transco").³ The total purchase price is approximately

³ As the Commission has previously held, Kentucky Transco is not a utility subject to the jurisdiction of the Commission; thus, Joint Applicants do not seek Commission authorization to transfer the common stock of Kentucky Transco from AEP to Liberty. *Application of AEP Kentucky Transmission Company, Inc. for a Certificate of Public Convenience and Necessity Pursuant to KRS 278.020 to Provide Wholesale Transmission Service in the Commonwealth*, Case No. 2011-00042 at 8 (Ky. PSC June 10, 2013). Kentucky Transco, for the same reasons, is not a utility furnishing utility service in the Commonwealth. On December 22, 2021, Liberty submitted an application to the Federal Energy Regulatory Commission ("FERC") pursuant to Section 203 of the Federal Power Act seeking authorization to obtain control of Kentucky Transco.

\$2.846 billion including the assumption of approximately \$1.221 billion in debt. The Commission officially accepted the filing by letter dated January 5, 2022.⁴

III. STANDARD OF REVIEW

KRS 278.020(6) and (7) set forth the framework for the Commission’s decision regarding the proposed transfer of ownership and control of Kentucky Power:

(6) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

(7) No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an “acquirer”), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. . . . The commission shall approve any 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 proposed transaction satisfies the statutory requirements for the transfer of control and ownership of a utility. Liberty has the financial, technical, and managerial ability to provide reasonable service to Kentucky Power’s customers. Additionally, Liberty’s acquisition of Kentucky Power is being made in accordance with law, for a proper purpose, and is consistent with the public interest.

⁴ Letter from Linda C. Birdwell to Parties of Record (Jan. 5, 2022).

IV. IN ACCORDANCE WITH KRS 278.020(6), LIBERTY HAS THE NECESSARY FINANCIAL, TECHNICAL, AND MANAGERIAL ABILITIES TO PROVIDE REASONABLE SERVICE TO KENTUCKY POWER’S CUSTOMERS

The record demonstrates that Liberty has the necessary financial, technical, and managerial abilities to provide reasonable service to Kentucky Power’s customers following the consummation of the transaction, in satisfaction of KRS 278.020(6).

A. Liberty has the Financial Ability to Provide Reasonable Service Following the Proposed Transaction

As evidenced by its longstanding history of operations and its current financial standing, Liberty has the financial ability to provide reasonable service to Kentucky Power customers. No party has challenged this fact.

Liberty and its parent company, Algonquin Power & Utilities Corp. (“Algonquin”), have proven capabilities of sourcing financing in debt and equity capital markets.⁵ Liberty and Algonquin have raised \$5.1 billion of debt and equity over the last five years. Liberty intends to preserve its investment grade credit rating of BBB, as rated by both S&P and Fitch Ratings⁶ and has provided a financing plan for this acquisition that is designed to preserve the company’s strong rating.⁷ Kentucky Power’s capital structure will remain at a 43.25% equity ratio after the transaction until its next rate case which will conclude with new rates effective as of January 1, 2024.⁸ Liberty will give Kentucky Power access to its regulated money pool, which will allow Kentucky Power to finance its short-term needs, less than a year in length, at a competitive rate.⁹

⁵ Eichler Direct Testimony at 25, 27.

⁶ Eichler Direct Testimony, Exhibit PE-2.

⁷ Application, Exhibit 5; *see also* Joint Applicants’ Response to KPSC PHDR 1.

⁸ *Id.*

⁹ *Id.*; Eichler Direct Testimony, Exhibit PE-1.

Finally, Liberty's finance and accounting professionals have the requisite experience to ensure a seamless transition of accounting, reporting, and financial record keeping.¹⁰

Liberty's history in successfully closing utility acquisitions, its ability to source financing, and its experienced financial and accounting personnel evidence Liberty's financial ability to provide reasonable service to Kentucky Power customers.

B. Liberty has the Technical Ability to Provide Reasonable Service Following the Proposed Transaction

Liberty has the requisite technical ability to provide, improve, and enhance service to Kentucky Power's customers. Liberty provides utility services to more than 1,200,000 customers across its 30 electric, gas, water, and wastewater utilities in the United States, Canada, Bermuda, and Chile.¹¹ In the United States, Liberty operates utilities in New Hampshire, Missouri, Kansas, Arkansas, Oklahoma, California, Massachusetts, New York, Georgia, Illinois, Iowa, Arizona, and Texas.¹² Liberty employs approximately 3,000 individuals who are passionate about improving utility safety and generating reliable service for their local communities.¹³

Liberty currently operates four electric utilities: The Empire District Electric Company ("Empire Electric"), Liberty Utilities (Granite State Electric) Corp. ("Granite State Electric"), Liberty Utilities (CalPeco Electric) Corp ("CalPeco"), and Bermuda Electric Company.¹⁴ Liberty's current electric utilities collectively provide electricity to 309,000 residential, commercial, and industrial customers,¹⁵ which amounts to 26% of Liberty's operations by customer count and 55% of its asset base.¹⁶ Liberty's electric subsidiaries and affiliates have significant experience

¹⁰ Eichler Direct Testimony at 28.

¹¹ Application at 10.

¹² Eichler Direct Testimony at 12.

¹³ Application at 10.

¹⁴ Landoll Direct Testimony at 3.

¹⁵ *Id.* at 4.

¹⁶ Eichler Direct Testimony at 15.

operating in different types of terrain, including rugged mountainous areas similar to Eastern Kentucky, the full span of varying generation resources, operate distribution and transmission control rooms, and a range of transmission and distribution voltages and configurations.¹⁷

Because of the similarities between Kentucky Power and Empire Electric, Liberty's acquisition of Empire Electric serves as an excellent example of Liberty's technical abilities to operate Kentucky Power following the acquisition. Empire Electric is a vertically-integrated utility of a comparable size to Kentucky Power.¹⁸ It has fossil fuel generation assets, RTO-controlled transmission assets, a transmission control room, and a large distribution service area with low customer density and a relatively low-income customer base.¹⁹ Liberty's operating philosophy and practices have proven successful for Empire Electric to improve service to its customers, and Liberty will do the same for Kentucky Power.²⁰

Liberty has demonstrated that it is skilled in integrated resource planning ("IRP") and will bring that experience to Kentucky. Liberty has extensive experience developing a forecast for energy demands in changing environments, such as that faced by Kentucky Power.²¹ As Liberty Witness Aaron Doll testified, the Missouri IRP process is complex with significant scenario analysis considered.²² Ultimately, Kentucky Power will have local control and authority in the IRP decision-making process, but the experienced professionals from Liberty will be available to aid Kentucky Power in formulating its IRP.²³

Liberty is well suited to guide Kentucky Power through an evaluation of its future generation needs. In the near future, Liberty stands ready to bring Kentucky Power its rigorous

¹⁷ Landoll Direct Testimony at 5-9.

¹⁸ Eichler Direct Testimony at 19-20.

¹⁹ *Id.*

²⁰ *Id.* at 20.

²¹ Landoll Direct Testimony at 12.

²² VR: 3/28/22; 19:26:18-19:27:30.

²³ Landoll Direct Testimony at 12.

IRP scenario analysis that Mr. Doll described being used by Empire Electric, providing the opportunity to consider the costs to customers of each potential source of energy and capacity based. This new view of resource planning will bring new ideas and options for Kentucky customers.

Liberty has a rich history in bringing a “fresh look.” For example, shortly after acquiring Empire Electric in 2017, Liberty conducted a rigorous analysis of over 50 different scenarios demonstrating that it could deliver approximately \$169 million of savings to customers over 20 years by retiring its 200 MW Asbury generation plant and replacing it with other resources.²⁴ The Missouri Public Service Commission agreed with this analysis, granting Empire Electric the necessary approvals to proceed with the projects, which are now completed. The customers of Kentucky Power are entitled to this same rigorous review.

Granite State Electric has also brought new ideas to customers, including a pilot program to deploy and control utility-owned storage batteries behind the meter on residential customer premises. Using time-of-use rates, this pilot is an exploration in the value of utility-operated storage to customers and the utility in terms of peak shaving via energy arbitrage, optimization of distributed solar generation, resiliency, and transactive energy schemes.²⁵ This track record demonstrates that Liberty has the requisite technical abilities regarding generation planning to assist Kentucky Power in positioning the utility for the future to provide least cost, reliability to customers.

Liberty likewise has the technical experience to address Kentucky Power’s distribution-service territory that presents operating challenges. It has a vast breadth of knowledge operating electric companies in various regions and terrains, including those that operate in rugged terrain.

²⁴ *Id.* at 7-8.

²⁵ Landoll Direct Testimony at 5.

For example, Granite State Electric operates in a densely forested part of New England, an area plagued by winter storms. It has upgraded its overhead assets over time by reconductoring them with heavily covered tree wire to prevent outages, thereby improving its System Average Interruption Duration and Frequency Indices (SAIDI and SAIFI).²⁶ Service reliability presents particular challenges in difficult-topography and low-density areas, such as Kentucky Power’s service territory. In fact, the Commission has previously explained that Kentucky Power’s service area has proven difficult for its service provider and mandated that AEP maintain reasonable quality of service standards.²⁷ Liberty willingly assumes this mandate and commits to bring its knowledge of operating utility systems in difficult topography and low-density areas to the region to serve Kentucky Power customers.

Liberty also has the requisite experience in electric transmission systems. Through Empire Electric, Liberty operates over 1,110 line miles of transmission at voltages of 69, 138, 161, and 345 kV through its NERC compliant control room.²⁸ The system includes 20 autotransformers totaling 2,046 MVA capacity, and over 170 transmission voltage circuit breakers.²⁹ Empire Electric’s system is integrated into the Southwest Power Pool (“SPP”), and as such, serves as a Load Serving Entity regularly interacting with the regional transmission organization (“RTO”) administrators.³⁰

Empire Electric was a founding member of the SPP and remains an active participant in transmission planning, operations, and power marketing.³¹ It is actively participating in SPP working groups to understand and affect policy. Empire Electric’s experience in the RTO

²⁶ *Id.* at 10-11.

²⁷ *Joint Application of Kentucky Power Company, American Electric Power Company, Inc. and Central and South West Corporation Regarding a Proposed Merger*, Case No. 1999-00149 at 15-16 (Ky. PSC June 14, 1999).

²⁸ Landoll Direct Testimony at 12.

²⁹ *Id.*

³⁰ *Id.* at 7.

³¹ Joint Applicants’ Response to KPSC 1-40.

construct, and in particular, an evaluation of the costs and benefits of various RTO functions, will be beneficial to Kentucky Power.³² Liberty understands that an evaluation of continued participation in PJM requires a thorough and robust review and the experience of Empire Electric will be imperative to conducting such a review.

Following the acquisition, Kentucky Power will retain its pre-acquisition transmission operators, ensuring continuity of institutional knowledge.³³ Likewise, Liberty and AEP have entered into a Transition Services Agreement (“TSA”), whereby AEP will continue to provide market-operation services until that function transitions to Liberty and Kentucky Power.³⁴ The TSA will ensure all business functions continue to be operational immediately after closing, and is a further demonstration of the practical approach that Liberty brings to managing technical issues using its experience of both operating a diverse set of utilities and transitioning them to local control. During the TSA period, Liberty will evaluate Kentucky Power’s future needs, ensuring that Liberty integrates Kentucky Power fully into Liberty, utilizing subject-matter experts from across Liberty and third-party consultants, as necessary.³⁵

Liberty’s technical abilities also go beyond operation of generation, distribution, and transmission assets. It has improved each of its utilities’ operations in important ways.³⁶ For example, Liberty has improved the aggregate safety rates for all its electric utilities over the last five years through its emphasis on establishing an organizational safety culture.³⁷ In fact, in its first two years of operating Empire Electric, Liberty’s prioritization of safety resulted in a 50% reduction of motor vehicle accidents, a 67% reduction in lost time incidents, and a 50% reduction

³² *Id.*

³³ Swain Direct Testimony at 7-8.

³⁴ KPSC 2-9.

³⁵ *Id.*

³⁶ Landoll Direct Testimony at 10.

³⁷ *Id.*

in OSHA recordable accidents.³⁸ These metrics further demonstrate Liberty's technical sophistication to own Kentucky Power.

Two intervenors have challenged Liberty's technical ability to operate Kentucky Power because of the company's use of an industry-standard TSA.³⁹ Written testimony offered on behalf of the AG/KIUC,⁴⁰ and consisting of a total of two pages buried near the back of their testimony, claims that the Joint Applicants' use of a TSA is an acknowledgement that Liberty does not have the technical ability to provide reasonable service to Kentucky Power customers.⁴¹ These assertions are simply not true. If that standard were applied, one of the largest utilities in the United States, NextEra, would be found to not have the technical ability to operate a utility because it, too, has used transition service agreements as part of its acquisitions.

The purpose of the TSA is to provide for a seamless transition of services on day one when AEP transfers the ownership and control of Kentucky Power.⁴² Like many other large utility holding companies, Liberty has frequently utilized TSAs in acquisitions when the acquired company is part of a centralized conglomerate.⁴³ In his rebuttal testimony, Mr. Eichler identified a subset of acquiring companies that have utilized TSAs in the acquisition process for time periods ranging from 6 to 30 months.⁴⁴ Liberty itself has twice utilized TSAs in its acquisitions, and each of those acquisitions were found to be in the public interest.⁴⁵ In 2012, Liberty utilized a TSA

³⁸ *Id.*

³⁹ Kollen Direct Testimony at 8.

⁴⁰ The Attorney General and KIUC are collectively referred to herein as "AG/KIUC."

⁴¹ *Id.* at 55.

⁴² Eichler Rebuttal Testimony at 4.

⁴³ *Id.* at 19.

⁴⁴ Eichler Rebuttal Testimony, Exhibit PE-R2.

⁴⁵ *See Joint Petition of American Water Works Company, Inc.; New York American Water Company, Inc.; and Liberty Utilities (Eastern Water Holdings) Corp. for Approval, Pursuant to Section 89-H of the New York Public Service Law, of the Acquisition by Liberty Utilities (Eastern Water Holdings) Corp. of 100% of New York American Water Company, Inc. Issued and Outstanding Capital Stock and for Approval, Pursuant to Section 89-F of the New York Public Service Law*, 20-W-0102, 2021 WL 6000023, at *48 (N.Y. DPS Dec. 16, 2021); *National Grid USA et al. Transfer of Ownership of Granite State Electric Company and EnergyNorth Nat. Gas, Inc. to Liberty Energy NH*, 25,370, 2012 WL 2254207 (N.H. PUC May 30, 2012).

when it acquired EnergyNorth Natural Gas and Granite State Electric from National Grid. Both utilities were small utilities in National Grid's portfolio, and National Grid performed many centralized functions for each entity, including customer service. The TSA in that transfer allowed Liberty to hire local customer service representatives and establish its customer service operations in the local area.⁴⁶ More recently, Liberty acquired New York American Water, and the TSA is currently in place given that American Water performed centralized customer service functions for New York American Water.⁴⁷

The use of a TSA not only will ensure that a smooth transition of services occurs once Liberty acquires Kentucky Power but will enable Kentucky Power to restore customer service and other local functions to the local area.⁴⁸ The acquisition of a utility the size of Kentucky Power and intertwined with a company like AEP cannot occur overnight. Liberty will need time to hire and train local employees and establish customer service operations in eastern Kentucky. Decentralization from AEP's central service network will create an estimated 100 jobs in eastern Kentucky but will take time to hire and train these employees.

Additionally, the acquisition will require time to isolate and separate the functions that AEP provides its subsidiaries from Kentucky Power's distinct operations. Liberty expects to displace some of Kentucky Power's costs of using AEPSC's centralized services through Liberty's decentralized focus.⁴⁹ AEP and Liberty will continue to determine the scope and details of each cost that Liberty will incur as it takes over Kentucky Power's operations.⁵⁰ However, Liberty is

⁴⁶ Eichler Rebuttal Testimony at 20.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Joint Applicants' Response to AG 1-129.

⁵⁰ Joint Applicants' Supplemental Response to KPSC 2-2.

confident that, based on historical cost information, its decentralized approach to providing services will not result in additional consumer costs.

In the real world, use of transition service agreements is a fully appropriate and pragmatic way of transitioning complex utility functions between owners and ensuring that the transition is seamless for customers, one of the most important goals of any transaction in any industry. It is simply nonsensical to suggest that Liberty should be able to transition all employees, replace AEP's shared services, and hire and train new employees prior to the transaction's closing and approval by the Commission. To argue for such a standard, ignores the realities of how sophisticated and complex utilities operate.

AG/KIUC Witness Lane Kollen further attacked Liberty, arguing that because it is not immediately establishing a Kentucky Power control room is somehow evidence of its lack of technical ability to operate the utility.⁵¹ This argument also makes no sense because Liberty has both established distribution and transmission control rooms and is merely taking the necessary time to determine the most cost effective approach to providing this function to Kentucky Power once it is extracted from AEP.

Ultimately, Liberty's philosophy, experience, and technical ability will provide improved and reasonable service for Kentucky Power's customers. Liberty will provide valuable improvements in service, transmission, capitalization, and a community partner for Kentucky Power customers. Liberty has experience as a generation supplier, transmission owner, and a Load Serving Entity that regularly interacts with regional power system administrators through its operation of Empire Electric. Liberty also understands how to analyze and prepare integrated power system schemes that make appropriate plans for long- and near-term scenarios to optimize

⁵¹ VR: 3/29/22; 18:24:49-18:25:07.

capital allocation between generation, transmission, distribution, energy efficiency, and other investments.⁵² The record is clear, Liberty has the technical ability to provide reasonable service to Kentucky Power customers.

C. Liberty has the Managerial Ability to Provide Reasonable Service Following the Proposed Transaction

No party to this proceeding has submitted testimony challenging Liberty's managerial ability to provide reasonable service to Kentucky Power customers. Liberty manages 30 regulated utilities throughout the United States, and each uses a decentralized operational approach. This allows each utility's board of directors, comprised of Liberty executives and local leadership, to manage the utility's operations in a hands-on fashion.⁵³ Liberty uses a decentralized model in its customer service operations, human resources, and regulatory functions. Liberty locates staff for these functions in the utility's geographic area, as it will do for Kentucky Power.⁵⁴

Kentucky Power will occupy its own region within the Liberty family of businesses, with its own local management team and its own board of directors.⁵⁵ Kentucky Power's local management team will continue to oversee the utility's day-to-day operations, and it will have significant latitude to determine best practices to meet its customers' needs.⁵⁶ In addition to local management, all of the approximately 350 existing Kentucky Power jobs (both employees and managers) will become part of the Liberty network.⁵⁷ Kentucky Power's board of directors will consist of three independent directors, one to be appointed from the Kentucky Power service

⁵² Landoll Direct Testimony at 9.

⁵³ Application at 12-13.

⁵⁴ Swain Direct Testimony at 3-4.

⁵⁵ *Id.* at 5.

⁵⁶ Application at 13.

⁵⁷ Swain Direct Testimony at 8.

territory and the other two independent directors from the board of Empire Electric, well versed in the oversight of a vertically integrated utility.

Local officials from Liberty's other utilities recognize Liberty's ability to manage a system after acquisition. In his letter to the Commission, Missouri State Senator Bill White noted that when Liberty acquired Empire Electric, a "minimum of disruption to their workforce [occurred] as the old Empire Electric was integrated into Liberty's structure under their management."⁵⁸ Based on Liberty's history of transfers, Liberty enters this agreement with the utmost confidence that it will, yet again, seamlessly transition services and operational management to its ownership. Further, in Kentucky, Liberty expects to create upwards of 100 positions in the Kentucky Power workforce to fill the staffing void that will occur when Kentucky Power separates from AEP's centralized system.⁵⁹

Liberty's subsidiaries will share services if an opportunity exists to realize economies of scale without detracting away from the local focus. For instance, Liberty centrally provides treasury, information technology, insurance, and risk management services to deliver certain economies of scale from the standardization of these activities. This selective centralization enhances the localized services that Liberty offers.⁶⁰ The key operational strategy Liberty will employ, as it has in all prior transactions, is a commitment to local management with limited use of centralized services to enjoy select economies of scale. This model has been successful for Liberty, and its adherence to this strategy indicates that Liberty has the managerial ability to reasonably serve Kentucky Power customers.

⁵⁸ Letter from Missouri State Senator Bill White to KPSC Chairman Kent Chandler (March 14, 2022) (filed March 21, 2022).

⁵⁹ Swain Direct Testimony at 8.

⁶⁰ Application at 14.

V. PURSUANT TO KRS 278.020(7), THE PROPOSED TRANSFER OF OWNERSHIP AND CONTROL IS BEING MADE IN ACCORDANCE WITH LAW, IS FOR A PROPER PURPOSE, AND IS CONSISTENT WITH THE PUBLIC INTEREST.

The Commission shall approve the change of ownership and control if it finds that the transaction is “in accordance with the law, for a proper purpose and is consistent with the public interest.”⁶¹ The proposed transaction satisfies each of these requirements.

A. The Proposed Transfer of Ownership and Control is Being Made in Accordance with Law.

The transaction will be in accordance with law because it will be consummated once the Joint Applicants receive all requisite regulatory approvals, and no party to this proceeding has submitted testimony challenging this fact. Both AEP and Liberty’s boards of directors have approved the transaction.⁶² As set forth in the application, there are a number of conditions precedent to complete the transaction, including regulatory approval from this Commission and FERC.⁶³ All conditions precedent identified in Article VII of the Stock Purchase Agreement must be satisfied prior to closing. The companies must also receive approval from the Public Service Commission of West Virginia and this Commission to terminate the current Mitchell Operating Agreement and to execute the Mitchell Plant Ownership Agreement and the Mitchell Plant Operations and Maintenance Agreement.⁶⁴ Kentucky Power and Wheeling Power Company have submitted applications and filings with the appropriate regulatory bodies requesting approval of the Mitchell Agreements. As such, the proposed transaction is being made in accordance with law.

⁶¹ KRS 278.020(7).

⁶² Haynes Direct Testimony at 12; Eichler Direct Testimony at 44.

⁶³ Eichler Direct Testimony at 44. Section 4.5(a) of the Stock Purchase Agreement dictates that the following approvals must be given to consummate the transaction: FERC approval under section 203 of the Federal Power Act; Commission approval pursuant to KRS 278.020(6) and (7); expiration of the waiting period, or clearance, or approval under the Hart-Scott-Rodino Antitrust Improvements Act of 1976; Federal Communications Commission approval for the indirect transfer of radio licenses Kentucky Power holds; and clearance by the Committee on Foreign Investment in the United States.

⁶⁴ Eichler Direct Testimony at 46.

B. The Proposed Transfer of Ownership and Control is for a Proper Purpose.

No party to this proceeding has submitted testimony challenging whether the transaction is for a proper purpose, as the transaction is intended to result in the orderly transition of ownership of Kentucky Power and the continued electricity service to Kentucky Power customers in a safe, reliable manner.⁶⁵ The Stock Purchase Agreement contains explicit provisions to address the transition of daily operations of Kentucky Power to ensure continued service to its customers. Additionally, Liberty will create Kentucky jobs, retain Kentucky Power staff, and institute local control of the utility.⁶⁶ These are proper purposes for the acquisition of control of a utility.

C. The Proposed Transaction is Consistent with the Public Interest.

There is significant evidence in the record that Liberty's acquisition of Kentucky Power is consistent with the public interest:

- Liberty has the financial, technical and managerial capability to operate Kentucky Power, the critical threshold that must be met for a transfer of control.
- In total, customers will receive \$144.1 million in savings from the approval of the transaction from a fuel fund and a deferral of the Big Sandy Decommissioning Rider.⁶⁷
- The \$40 million Eastern Kentucky Fuel Relief Fund will provide residential customers an average of a \$242 credit on their electric bills over a period of time.
- Customers will receive an immediate bill reduction through the Big Sandy Decommissioning Rider that provides a three-year rate holiday, saving customers an average of \$100 on their bills for three years.⁶⁸
- 100 jobs will be created in eastern Kentucky, and 350 existing Kentucky Power jobs will remain in the region.
- Liberty is committed to forming a long-term economic partnership that will foster growth and development in the service territory for many years to come.⁶⁹
- With the support of the Commission, Liberty will work to benefit customers by prioritizing transmission investment while it studies whether to remain in the AEP East Zone.

⁶⁵ Application at 14.

⁶⁶ *Id.* at 15.

⁶⁷ Eichler Rebuttal Testimony at 12.

⁶⁸ *Id.* at 11-12.

⁶⁹ Eichler Rebuttal Testimony Exhibit, PE-R4.

1. The “Public Interest” Legal Standard

The Commission has clearly stated the standard of proof required to demonstrate that a transfer is in the public interest, pursuant to KRS 278.020(7):

[A]ny party seeking approval of a transfer of control must show 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. The acquiring party should also demonstrate 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.⁷⁰

In certain cases, applicants may be able to provide the Commission with “immediate or readily quantifiable” public benefits. However, “most transfers of control that are presented to this Commission would be unable to meet this standard.”⁷¹ Consistent with the 2002 *Kentucky-American Water* rehearing order, the Commission should approve an acquisition even if the applicants cannot demonstrate an immediate net benefit to customers.⁷² In the present case, not only does the transaction present improved services for Kentucky Power customers, there are immediate, quantifiable benefits as discussed below.

Using this standard for public interest as the framework for the Commission’s approval, the Joint Applicants have clearly shown that this transaction is in the public interest.

⁷⁰ *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 at 9 (Ky. PSC July 10, 2002)(Rehearing Order) (quoting Initial Order dated May 30, 2002); see also *Application of DLR Enterprises, Inc. And Cow Creek Gas, Inc. for Approval of the Transfer of Certain Assets Formerly Owned and Controlled by Sigma Gas Corporation*, Case No. 2007-00419 at 6 (Ky. PSC Nov. 21, 2007) (“The Commission has previously held that a transfer is in the ‘public interest’ if it does 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.”).

⁷¹ *Kentucky-American Water Co.*, Rehearing Order, Case No. 2002-00018 at 10.

⁷² *Id.*

2. Joint Applicants Have Demonstrated that the Transaction is in the Public Interest.

a. Liberty's Commitment to Provide Significant Customer Benefits

Demonstrating its dedication to providing significant positive impacts from the transaction, Liberty has agreed to dozens of commitments that will provide immediate and long-term customer benefits.⁷³ Most notably, the Joint Applicants recognize that current fuel prices are high, and that customers have been paying increasingly high rates for their electricity bills.⁷⁴ First, the Joint Applicants will create a \$40 million Eastern Kentucky Fuel Relief Fund (“Fuel Fund”) to assist customers with bills. The Fuel Fund would offset high fuel charges and function as a credit for customer bills. The Fuel Fund will be funded exclusively through shareholder funds and will remain in place until the \$40 million is depleted.⁷⁵ To ensure that the funds benefit those who need them most, Liberty allocated amounts of the Fuel Fund into customer classes, with the majority of the fund providing credits to residential heat customers.⁷⁶ Residential-heat customers would average approximately \$256 of credits on their electricity bills, while residential-non-heat customers would average \$171 in credits.⁷⁷

Liberty also committed to providing a three-year holiday from recovery of the Big Sandy Decommissioning Rider (“BSDR”) if the acquisition is approved. Liberty will continue to accrue the carrying charge on the BSDR, but will defer the collection of a customer surcharge for three years after the transaction closes.⁷⁸ For the average residential customer, this will provide a reduction of nearly \$100 annually for three years. This rate holiday is an example of Liberty’s commitment to Kentucky Power’s customers and the long-term success of Kentucky Power.

⁷³ A comprehensive list of commitments is attached hereto in the Appendix.

⁷⁴ Eichler Rebuttal Testimony at 10.

⁷⁵ *Id.* at 13-14.

⁷⁶ *Id.* at 14.

⁷⁷ *Id.* at 15.

⁷⁸ *Id.* at 11.

During the deferral of the BSDR, Liberty will continue to actively pursue securitization legislation in Kentucky in partnership with others.⁷⁹ Liberty has experience using securitization in Missouri when it filed for the securitization of winter storm costs and plans to file securitization of costs related to the retirement of the Asbury plant.⁸⁰ Liberty 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.⁸¹

The BSDR will provide a pathway to securitization while providing immediate bill reductions for eastern Kentucky customers for three years. If securitization legislation is enacted within three years, Liberty will seek Commission approval to issue a securitization bond, resulting in rates that would be lower than otherwise possible in the absence of securitization.⁸²

These two commitments will bring over \$144.1 million of much needed rate relief to customers of Kentucky Power. Future securitization of Kentucky Power's interest in Mitchell, which Liberty has also committed to pursue, would provide additional benefits. And Liberty has agreed to dozens of other commitments following the acquisition, including establishing a new role of Vice President of Customer Advocacy to be part of the Kentucky Power team.⁸³ This management team executive will be the voice for the consumer among Kentucky Power's leadership, and will be accessible to work with customers to address any immediate concerns they have related to Kentucky Power projects or service.⁸⁴ Again, a list of all of those commitments is attached as Exhibit A to this brief.

⁷⁹ VR: 3/28/22; 14:07:55-14:10:28.

⁸⁰ Eichler Rebuttal Testimony at 12.

⁸¹ *Id.* at 12-13.

⁸² *Id.* at 14.

⁸³ *Id.* at 16.

⁸⁴ Eichler Rebuttal Testimony at 16.

b. Liberty's Commitment to Addressing Transmission Concerns

Liberty has listened carefully to the Commission's concerns about Kentucky Power's role in the AEP East Zone in PJM and the associated financial implications for Kentucky Power. While the issues of PJM participation are complex, as Mr. Herling and Mr. Plewes testified, Liberty is committed to working with the Commission to reach an outcome that is in the customer's best interest. Mr. Eichler committed to conduct a study of PJM options and is committing to perform this analysis within 24 months.

To ensure there is some action to address the Commission's concerns as the matter is studied, Liberty is willing to make another commitment to further the public interest in this area. If the acquisition is approved and closed, then Liberty will commit to proffer more transmission projects for approval that will improve reliability for Kentucky Power customers in a manner that utilizes the fact that approximately 95% of those projects would be funded by other companies in the AEP East Zone, while the relationship is under review. Liberty will work to swing the pendulum of transmission-cost allocation in the favor of Kentucky Power customers.⁸⁵ Based on a preliminary analysis of future Kentucky Power transmission projects,⁸⁶ investment by Kentucky Power would take full advantage of the cost allocation rules within the AEP East Zone in Kentucky Power's favor. Mr. Eichler testified that it is Liberty's intention to assume Kentucky Power's capital plan and make any necessary adjustments to the plan post-closing.⁸⁷ This capital plan, provided in response to KIUC 2-8, includes nearly \$340 million of transmission projects through 2024 and \$700 million (inclusive of the \$340 million) of transmission projects over the next five

⁸⁵ VR: 3/28/22; 19:51:16-19:52:40.

⁸⁶ Joint Applicants' Response to KIUC 1-61.

⁸⁷ VR: 2/28/22; 11:28:20-11:28:30.

years.⁸⁸ With this level of transmission investment, Mr. Herling's assertion that the cost-sharing benefit can flip to be in favor of Kentucky customers could be set in motion.

To this end, 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 transmission options (i.e. within 2 years post closing) should the Commission find such an approach desirable. Further, Liberty commits to 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.

c. Liberty's Local Emphasis

i. Local Emphasis Provides Real Local Benefits

Maintaining quality service for customers is central to Liberty's goals for Kentucky Power, with local presence and control being key components to this strategy.⁸⁹ Liberty will maintain Kentucky Power's headquarters in Ashland, Kentucky and will preserve and enhance the roles that Kentucky-based staff play in its operations and management.⁹⁰ This decentralized approach to operations will greatly differ from AEP's approach to operating Kentucky Power. Decentralization of customer services, excluding the services previously mentioned that provide savings via scale economies, will allow Liberty to meet the needs of its customers more efficiently and quickly.⁹¹

⁸⁸ Joint Applicants' Response to KIUC 2-8.

⁸⁹ Eichler Direct Testimony at 5.

⁹⁰ Application at 15.

⁹¹ *Id.* at 16.

As a part of its goal of a strong local presence, Liberty will maintain service centers in Ashland, Hazard, and Pikeville and area offices in Paintsville and Whitesburg.⁹² It will preserve the role of Kentucky Power's local president.⁹³ Kentucky Power will also have its own board of directors, with at least one member being a community leader in the service area.⁹⁴ Having local management and workforce also benefits Kentucky Power's customers through technical acumen informed by knowledge of geographical and community needs.⁹⁵

Liberty's focus on localized operations will not only benefit customers in the quality of service they receive but will additionally serve as a regional economic development driver. Liberty's decentralization model will result in the creation of upwards of 100 jobs that will be local to the Kentucky Power service territory.⁹⁶ These Kentucky-based employees reflect the shift in focus from AEP's centralized model of operational services to Liberty's local model.⁹⁷ Further, Liberty commits to retaining 350 existing Kentucky Power positions.⁹⁸ As future Kentucky Power President David Swain testified, Liberty's ownership will not modify the operations at Big Sandy. The 30 Kentucky Power jobs at Big Sandy, as part of its continued operation, will remain in place to operate the natural gas power plant.⁹⁹

Liberty's decentralization model also meets the goals of the AG and KIUC to bring jobs to eastern Kentucky.¹⁰⁰ The imbalance of in-state to out-of-state investment that Mr. Kollen credits to AEP¹⁰¹ will be addressed by Liberty's ownership through several factors including the

⁹² *Id.* at 15.

⁹³ *Id.*

⁹⁴ *Id.* at 16; Eichler Direct Testimony at 7.

⁹⁵ Eichler Direct Testimony at 13.

⁹⁶ Eichler Direct Testimony at 38.

⁹⁷ Swain Direct Testimony at 8.

⁹⁸ Eichler Direct Testimony at 38.

⁹⁹ VR: 3/29/22; 14:51:31-14:52:16; see also Eichler Direct Testimony at 31.

¹⁰⁰ Kollen Direct Testimony at 12.

¹⁰¹ *Id.*

following: the creation of upwards of 100 new jobs in eastern Kentucky, preservation of 350 existing Kentucky Power jobs, continuation of Big Sandy operations, and termination of out-of-state energy agreements that do not serve the local economy.¹⁰²

Intervenor KIUC previously addressed the specific importance of job creation in its testimony relating to Kentucky Power rates.¹⁰³ KIUC asserts that industrial jobs create spin-off employment opportunities unrelated to the initial industrial positions, thus stimulating the economy. Liberty agrees wholeheartedly with the KIUC's support for projects that create employment opportunities that have long-term economic significance. This transaction will, undoubtedly, benefit the local economy through its direct creation and preservation of employment opportunities and through any future spin-off employment opportunities.

ii. Liberty's Local Focus Is a Success as Shown by Partners in Both Eastern Kentucky and in Other States.

Over the last several months, Liberty has engaged in significant discussions with local officials and community leaders regarding their concerns and interests in this transaction. As shown by the numerous comments filed in support of the transaction, local leaders were impressed by Liberty's commitment to providing high quality service to its customers and its assumed responsibility to participate in economic development and job creation in the area.¹⁰⁴

President/CEO of Pikeville Medical Center Donovan Blackburn commented:

Pikeville Medical Center is a top ten customer of the Kentucky Power Company. I was impressed to learn that Liberty Utilities is a strong company that provides electricity, natural gas, water and wastewater services to more than one million people in the United States and Canada. Their vast experience working with a large

¹⁰² Application at 7; Eichler Direct Testimony at 31; Eichler Rebuttal Testimony at 7-8.

¹⁰³ VR: 3/29/22; 19:22:01-19:22:43; *see also Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates and for Certificates of Public Convenience and Necessity*, Case No. 2016-00370 and *Application of Louisville Gas & Electric Company for an Adjustment of Its Electric and Gas Rates and for Certificates of Public Convenience and Necessity*, Case No. 2016-00371, Post-Hearing Brief of Kentucky Industrial Utility Customers, Inc. at 8 (filed May 31, 2017).

¹⁰⁴ *See* Public Comments filed on March 23 and March 25, 2022, *available at* <https://bit.ly/36UAcSt> and <https://bit.ly/3u6FIKt>.

customer base will provide the stability needed in moving forward. Additionally, I was happy to hear that all current Kentucky Power jobs will be retained with this purpose and that they will be adding 100 to 125 jobs, which indicates that they are committed to supporting the community and economic growth in our region.¹⁰⁵

Mr. Blackburn was not the only local public commenter who supports this transaction. In fact, Mayors of Ashland and Prestonsburg; County Judge/Executives of Pike, Greenup, Knott, Martin and Lawrence counties; the City Manager of Pikeville; and economic development groups and businesses: SOAR, Pikeville Medical Center, One East Kentucky, Ashland Alliance, Southeast Chamber of Commerce, Hazard/Perry County Economic Development, and the Kentucky Association for Economic Development all offered public comment in support of this transaction.¹⁰⁶ Of these 15 local commentors, 12 specifically referenced Liberty's commitment to economic development through job creation. Even public commenters who raised questions about the transaction, such as Representative Angie Hatton, posited that positive economic benefits could emerge from the transaction.¹⁰⁷

Mayor Les Stapleton of Prestonsburg said it well:

Liberty is interested in the region and wants to serve us, they are excited to grow, and have plans to bring approximately 100 new jobs to the region to instill a sense of belonging. More importantly, they want to become a part of the community and plan to keep all Kentucky Power staff who has local knowledge and years of experience in our area.¹⁰⁸

He is right. Liberty is looking forward to having Kentucky Power be a valued member of the eastern Kentucky community under its ownership.

¹⁰⁵ Letter from Donovan Blackburn to Commission Chairman Kent Chandler (Mar. 14, 2022)(filed Mar. 23, 2022).

¹⁰⁶ Public Comments in support of transaction; VR: 3/28/22; 09:09:39-09:12:25; VR: 3/28/22; 09:12:36-09:14:27; VR: 3/28/22; 09:14:34-09:16:13; VR: 3/28/22; 09:16:21-09:19:02; VR: 3/28/22; 09:33:45-09:35:32.

¹⁰⁷ VR: 3/28/22; 9:23:43-9:24:52.

¹⁰⁸ Letter from Prestonsburg Mayor Les Stapleton to KPSC Chairman Kent Chandler (Mar. 17, 2022)(filed Mar. 23, 2022).

Liberty appreciates the support of new potential customers in eastern Kentucky, but the record also contains the positive support of current customers who have experienced the Liberty way of doing business and service. Empire Electric customers provided public comments to this Commission in support of the present transaction. Those supportive comments include a Missouri State Senator, Vice President of Institutional Advancement of the Southwest Baptist University, the CEO of Anderson Engineering CEO, the Executive Vice President/Chief Economic Development Officer of the Taney County Partnership Executive, the Director of Institutional Advancement at Crowder College Foundation, and the Neosho Area Chamber of Commerce, all of whom are Empire Electric customers and represent agencies that work with and are served by Empire Electric.¹⁰⁹ These actual customers and partners consistently verified that Liberty's reliable service, job creation, and commitment to economic development has greatly benefited Empire Electric customers and the public interest in the region. Liberty will provide the same benefits to Kentucky Power customers that it has to Empire Electric customers. Further, the support shown by Empire Electric for this transaction is a testament to the high quality customer service delivered by Liberty companies and the managerial abilities that Liberty will bring to Kentucky Power.

Liberty also emphasizes community involvement across all its regulated subsidiaries, which is one more example of how its acquisition will be in the public interest. Recent examples of community involvement support include a \$55,000 donation to the Boys and Girls Club of Lake Tahoe, California for the construction of a new building; support of multiple local food banks; support of local Salvation Army and United Way branches; partnerships with local colleges;

¹⁰⁹ Letter from Missouri State Senator Bill White to KPSC Chairman Kent Chandler (March 14, 2022) (filed March 21, 2022); Public Comments filed on March 23 and March 25, 2022, *available at* <https://bit.ly/36UAcSt> and <https://bit.ly/3u6FIKt>.

donations of IT equipment to local schools; a repurposing of a former substation site into a community park in Baxter Springs, Kansas; participation in United Way Days of Caring, and many others.¹¹⁰ Importantly, Liberty has committed to maintain the current level of community support in Kentucky Power's service territory.¹¹¹

d. Benefits to Kentucky Power for Liberty's Relative Size

In contrast to its status under AEP ownership, Kentucky Power will be one of the largest components of Liberty's portfolio of regulated entities.¹¹² Under Liberty's ownership, Kentucky Power will receive close attention, instead of being the smaller utility in a larger corporate family.¹¹³ Liberty most recently acquired Empire Electric, which, as Joint Applicants have noted, is markedly similar to Kentucky Power in its structure and fuel generation sources.¹¹⁴ Liberty successfully incorporated Empire Electric into its portfolio of utilities, and is now prepared to successfully transition Kentucky Power.¹¹⁵ Kentucky Power will focus its attention locally by decision makers in the Commonwealth to drive its management, operational, and capital decisions, which is a direct benefit of this transaction.¹¹⁶

e. Liberty's Commitment to Seamless Continuity of Service

Liberty is committed to providing value to customers through its reliable, cost-effective service. Joint Applicants' TSA demonstrates Liberty's commitment to customer service as it allows Liberty to assume complete control of Kentucky Power's operations with no disruption of

¹¹⁰ Joint Applicants' Response to KPSC 1-35.

¹¹¹ Eichler Rebuttal Testimony Exhibit, PE-R4.

¹¹² Eichler Direct Testimony at 19.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

electrical service to consumers.¹¹⁷ Under the TSA, AEP¹¹⁸ employees will act under the direction of Liberty in the administration of certain services that AEP has provided Kentucky Power through its centralized model.¹¹⁹ The TSA is a temporary agreement that will terminate when Liberty has identified and isolated all AEPSC functions from which it will separate Kentucky Power and shift those services to the Liberty approach.¹²⁰ This interim period is important in order to provide a seamless transition in order to best serve customers.¹²¹

Liberty's use of the TSA and adoption of a decentralized model with limited shared services such as those proposed to be provided to Kentucky Power has proven in other Liberty's utilities to reduce operating and general expenses and, ultimately, will reduce costs that customers will pay.¹²² Liberty utilizes a shared services and corporate cost allocation model that allows the company to maintain its local focus while benefiting from centralized services such as IT, treasury, and tax departments.¹²³ The sharing of these select services reduces redundancies across Liberty's portfolio of utilities and affords the utilities economies of scale.¹²⁴ These costs are allocated based on Algonquin's Cost Allocation Manual ("CAM"), which details the shared service model and the corresponding allocation of costs.¹²⁵ The CAM is in line with best practices and was recently reviewed by an independent auditor.¹²⁶

¹¹⁷ *Id.* at 30.

¹¹⁸ The Joint Applicants refer to AEP even when referring to American Electric Power Service Company ("AEPSC") for ease of understanding in this proceeding. However, AEP is the parent company for its distinct, service-providing subsidiary, AEPSC.

¹¹⁹ Eichler Direct Testimony at 31.

¹²⁰ *Id.* at 31.

¹²¹ *Id.* at 32.

¹²² Balashov Rebuttal Testimony at 10-11.

¹²³ Application at 14.

¹²⁴ Schwartz Rebuttal Testimony at 5-6.

¹²⁵ Eichler Rebuttal Testimony at 23.

¹²⁶ Eichler Direct Testimony at 37-38; Eichler Direct Testimony, Exhibit PE-4.

Liberty also brings operating experience to Kentucky Power that will improve its reliability and safety over time. At the outset, Liberty will maintain current service levels, and then begin making improvements, as has occurred with each of Liberty's subsidiaries.¹²⁷ Liberty is expanding its adoption of advanced performance measurement frameworks to improve customer service functions across all its utilities. This includes a variety of new performance indicators and deployment technologies that will allow Kentucky Power to expedite its receipt and evaluation of customer feedback.¹²⁸ The localization of Kentucky Power operations combined with Liberty's experience in analyzing and improving system performance technologies will enhance Kentucky Power customers' service experience.

3. Intervenor Challenges are Without Merit and Do Not Overcome Joint Applicants' Demonstration that the Public Interest Supports the Transaction.

a. AG and KIUC's Misguided and Unfounded Arguments on Lost Economies and Other Benefits

The record before the Commission shows that this transaction is in the public interest. Liberty has made significant commitments as part of this proceeding that will benefit the Commonwealth and provide immediate and important benefits for Kentucky Power's customers. These commitments, along with the managerial and technical abilities Liberty will bring to Kentucky Power, will provide both short-term rate relief to customers and long-term economic and operational benefits to the Company. The AG and KIUC continue to claim this transaction is not in the public interest, contrary to the record evidence presented. Many of the arguments offered by the AG and KIUC witnesses are based on assumptions and extrapolations based on faulty premises.

¹²⁷ Eichler Direct Testimony at 35.

¹²⁸ *Id.* at 36.

The Joint Applicants addressed these positions in rebuttal testimony and describe those corrections to the intervenors' concerns more fully below.

i. Cost Associated with Centralized Services

AG/KIUC Witness Lane Kollen contends that Liberty's acquisition of Kentucky Power will increase O&M and administrative expenses by at least 5-10%.¹²⁹ Mr. Kollen asserts that the larger the utility holding company and centralized services provider, the greater the merger savings.¹³⁰ Mr. Kollen's analysis, however, is fundamentally flawed and ignores the realities of Liberty's shared services model. Mr. Kollen relies upon hypothetical comparisons of prior transactions to the transaction at hand. His assessments of other transactions are not based on actual savings but, rather, based on hypothetical predicted savings. Liberty Witness Dmitry Balashov explained why Mr. Kollen's theoretical analysis uses unreliable information, and how Mr. Kollen failed to provide data to confirm his calculated projections.¹³¹

When Mr. Kollen analyzed transactions in other states, he determined that merger savings ranged from 3-40%,¹³² and the conservative estimated savings ratio to apply to this transaction is 5-10%. This is flawed analysis. The high end of that savings range, 40%, results from Mr. Kollen's analysis of two acquisitions of small natural gas distributors by the same acquiring company.¹³³ This savings number has no relation to potential savings in electric acquisitions because the O&M costs of natural gas companies contain expenditures unique to natural gas, and the natural gas and electric reliability standards and complexities of the natural gas and electric value chains are vastly different.¹³⁴ The low end of Mr. Kollen's range, 3%, emerges from his analysis of recent merger

¹²⁹ Kollen Direct Testimony at 22.

¹³⁰ *Id.*

¹³¹ Balashov Rebuttal Testimony at 5-6.

¹³² Kollen Direct Testimony at 25.

¹³³ Balashov Rebuttal Testimony at 7.

¹³⁴ *Id.*

savings based on expected savings in a six- to eight-year period.¹³⁵ Again, this analysis is based on expected data and not reliable, factual, empirical inputs.

Liberty's analysis relies on actual historic data from prior Liberty transactions. Two of Liberty's electric subsidiaries experienced merger savings using Liberty's decentralized model that retained limited shared services.¹³⁶ Evaluating O&M on a per customer basis while removing non-controllable expenses like property taxes, Liberty compared its Kentucky Power model with its cost structures present in Granite State Electric and Empire Electric. Granite State Electric customers experienced a 4.6% reduction of controllable O&M costs, a decrease from \$501 per customer to \$383 per customer; and Empire Electric customers experienced a 5.4% reduction from \$948 per customer to \$892 per customer.¹³⁷ These real-life experiences of the Liberty family of operations are better evidence for the Commission to rely upon and directly contravene Mr. Kollen's flawed and imprecise opinion based upon hypothetical notions.

Thus, the evidence of record demonstrates that Liberty's decentralization model has proven to be successful in achieving merger savings in other jurisdictions and that same management structure will be implemented at Kentucky Power if the transaction is approved. After using careful, thoughtful analysis to evaluate this transaction, Kentucky Power customers will benefit from the anticipated merger savings.¹³⁸

¹³⁵ *Id.*

¹³⁶ *Id.* at 8.

¹³⁷ *Id.*

¹³⁸ In addition, Liberty understands that the inclusion of O&M and administrative costs in customer rates is subject to the Commission's approval in subsequent Kentucky Power rate cases. Thus, the Commission ultimately retains jurisdiction over the merger savings that Kentucky Power customers will receive. The Commission's involvement in this process provides yet another safeguard of customers' resources in addition to Liberty's commitment to focusing on customer service and benefit.

ii. Sale of Receivables

Mr. Kollen also claims there will be increased financing costs due to terminating the sale of receivables to AEP.¹³⁹ This assertion is unfounded. The sale of receivables increases Kentucky Power's costs because financing for receivables currently incurs a 2.8% interest rate.¹⁴⁰ Liberty does not sell receivables and thus does not accrue interest on those accounts.¹⁴¹ Liberty's money pool will service any cash working capital needs, and Liberty does not use that pool for borrowing the full amount of its receivables.¹⁴² This financing structure requires a short-term debt rate of approximately 0.27%.¹⁴³ Ultimately, this will reduce costs for Kentucky Power customers because Liberty's ownership will terminate the charge for sale of receivables, and Liberty will handle cash working capital needs through the money pool at a much lower interest rate than that of the sale of receivables.¹⁴⁴ Nevertheless, Liberty also has committed it would establish a factoring program if it is beneficial to the customers and desirable to the Commission.

iii. Tax Effects of Net Operating Losses

Mr. Kollen asserts that there will be increased financing costs due to the loss of AEP's reimbursement of the tax effects of Net Operating Losses ("NOL").¹⁴⁵ Currently, if Kentucky Power has an NOL, it records an increment to the prior year asset NOL ADIT for tax purposes of the current year NOL. Kentucky Power then records AEP reimbursements as reductions to the asset NOL ADIT, so Kentucky Power neither finances NOL nor includes it in its rate base.¹⁴⁶

¹³⁹ *Id.* at 28-29.

¹⁴⁰ Mosindy Rebuttal Testimony at 4.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.* at 5.

¹⁴⁴ *Id.* Should Liberty's analysis of factoring receivables change, and should it prove more cost-effective for customers to sell accounts receivables, Liberty would commit to making that change and begin factoring its receivables. *Id.* at 6.

¹⁴⁵ Kollen Direct Testimony at 30.

¹⁴⁶ *Id.*

Mr. Kollen’s analysis again ignores the facts in favor of hypothetical assumptions. First, if Kentucky Power generates taxable income, it will not benefit from AEP’s current tax sharing arrangement.¹⁴⁷ The benefit of the reimbursement from AEP is dependent on Kentucky Power generating a taxable loss and then on the AEP consolidated group being able to offset that loss with income from other AEP affiliates. Financial forecasts currently estimate that Kentucky Power will generate taxable income starting in 2024.¹⁴⁸ Therefore, there is no benefit available from the tax sharing agreement.

Second, AEP has identified an issue with the IRS’ normalization rules and the reimbursement method utilized by AEP. As a result, AEP has filed applications in other jurisdictions to change its regulatory reporting of its NOL-ADIT due to these normalization issues.¹⁴⁹ AEP, if it were to continue ownership, would take a stand-alone net operating loss carryforward (“NOLC”) in future Kentucky Power rate cases.¹⁵⁰

FERC has established a precedent of using a stand-alone method for income tax allowance within a utility’s cost of service, and that is the method Liberty intends to use with Kentucky Power.¹⁵¹ It would be unwise for Liberty to adopt AEP’s current NOL recording method because it is a method that may cause normalization violations and AEP is actively moving away from its usage in other jurisdictions.¹⁵² A normalization violation would prevent Kentucky Power from using accelerated depreciation for income tax purposes that would result in an increase to base rates for consumers.¹⁵³ Liberty’s approach to using a stand-alone method is consistent with the rate

¹⁴⁷ Llende Rebuttal Testimony at 8. AEP is forecasted to generate taxable income in 2024. *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ McCuen Rebuttal Testimony at 5.

¹⁵⁰ Llende Rebuttal Testimony at 9.

¹⁵¹ McCuen Rebuttal Testimony at 5.

¹⁵² *Id.*

¹⁵³ *Id.* at 6.

making process, eliminates the risk of a normalization violation, and ultimately will safeguard the customer from an increase of base rates.¹⁵⁴ As such, Mr. Kollen's position should be rejected.

iv. Shared Inventory and Spare Parts

Mr. Kollen also vastly overstates the increased costs from the termination of Kentucky Power and AEP's shared inventory and spare parts agreements. Mr. Kollen projects an increase of shared inventory and spare parts costs to be exactly \$25 million multiplied by Kentucky Power's gross rate of return.¹⁵⁵ This estimate ignores shared inventory relating to generation plants.¹⁵⁶ Mr. Kollen also overlooks the Mitchell Ownership Agreement and the Mitchell O&M Agreement. These agreements will cause Wheeling Power Company to operate the plant, and Wheeling Power will continue to have access to the shared parts agreement.¹⁵⁷ Further, Big Sandy does not share spare parts with other AEP generating units.¹⁵⁸ Thus, Kentucky Power's access to generation spares will be unchanged, so those spare parts should be excluded, which would significantly reduce any calculated impact of the termination of shared inventory agreements.¹⁵⁹

In addition, nothing precludes Kentucky Power under Liberty from reaching sharing agreements with other Liberty subsidiaries or third-party utilities. Liberty operates 30 utilities within the United States, so Liberty's supply chain management function will be available to Kentucky Power to secure the best, cost effective parts for its customers. Kentucky Power will have opportunities to explore supply chain efficiencies after Liberty's acquisition.¹⁶⁰

Further, based on actual data, Kentucky Power's financing benefit from its shared inventory agreement amounts to \$58,000, an immaterial amount, and Liberty's inventory

¹⁵⁴ *Id.* at 7-8.

¹⁵⁵ Kollen Direct Testimony at 34.

¹⁵⁶ Haynes Rebuttal Testimony at 8.

¹⁵⁷ *Id.* at 9.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Balashov Rebuttal Testimony at 22.

management negates this potential harm.¹⁶¹ Thus, Liberty has the existing networks to support any negligible cost increase that termination of AEP's shared inventory and spare parts agreements could cause Kentucky Power.

v. **Costs Associated with a Downgrade in Credit**

Mr. Kollen asserts that the proposed transaction will subject Kentucky Power to increased costs from a credit rating downgrade by S&P. He posits that Liberty will issue \$100 million in new long-term debt each year for 10 years, and that such debt will be subject to a higher interest rate than what would be available to AEP.¹⁶² Mr. Kollen contends that the credit rating downgrade will result in an increase of 20 basis points on average.¹⁶³ Mr. Kollen's opinions in this area are simply unfounded.

Credit rating is only one factor that investors consider in financing considerations. Investors also consider the size of the long-term debt issuers, whether the issuer is an established borrower, the form of issuance, liquidity, and current market conditions.¹⁶⁴ Liberty finances its affiliates itself, without seeking third-party financing, which results in more attractive debt pricing.¹⁶⁵ Further, Liberty will issue debt in the U.S. 144a market, which is more liquid and better priced than markets from which Kentucky Power previously borrowed.¹⁶⁶ This market consists of qualified institutional buyers who have at least \$100 million in assets.¹⁶⁷ Moreover, Mr. Kollen has articulated no basis for his assumption that Liberty will issue roughly \$1 billion in long-term

¹⁶¹ Haynes Rebuttal Testimony at 9-10.

¹⁶² Kollen Direct Testimony at 34.

¹⁶³ *Id.* at 35.

¹⁶⁴ Mosindy Rebuttal Testimony at 6.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

debt over the next 10 years¹⁶⁸ or for concluding that the costs of long-term debt will increase by 20 basis points without factoring in other considerations related to the cost of debt.¹⁶⁹

b. The Attorney General and KIUC Fall Short in Carrying their Burden of Proof of Demonstrating that AEP Failed to Invest Adequately in Kentucky Power's Distribution System

The AG/KIUC bear the burden of proof on their proposal to require AEP to pay Kentucky Power \$354.6 million as compensation for harm Mr. Kollen claims AEP caused, or that will result from the proposed transfer.¹⁷⁰ This is an argument beyond the public interest standard as defined in the *Kentucky-American Water Company* transfer-of-control case¹⁷¹ and a burden the AG/KIUC have not and cannot meet on their claim that AEP should pay compensation for its alleged failure to invest in Kentucky Power's distribution system.

The AG/KIUC seek compensation totaling the precise sum of \$354,581,562¹⁷² from AEP for the harm Mr. Kollen alleges AEP caused, or will cause, as a result of the claimed underinvestment by AEP during the years 2011 through 2020 in Kentucky Power's distribution system. Mr. Kollen's claimed harm consists of two pieces: (a) the \$203,626,562 Mr. Kollen claims AEP failed to invest;¹⁷³ and (b) the \$150,955,000 in increased distribution maintenance expense Mr. Kollen argues will result from the claimed underinvestment during the ten years following the transfer.¹⁷⁴ Mr. Kollen's conjecture regarding the claimed underinvestment, and his more

¹⁶⁸ *Id.* at 7.

¹⁶⁹ *Id.*

¹⁷⁰ *Adjustment Of Rates Of Kentucky-American Water Co.*, Case No. 2004-00103 at 2 (Ky. PSC Oct. 28, 2004) (“Except in those instances that he advances proposals in areas or on issues that Kentucky-American has not addressed in its application, the AG has no burden of proof to meet.”); see *Electronic Application Of Kentucky-American Water Co. For Adjustment Of Rates*, Case No. 2018-00358 at 17-18 (Ky. PSC August 8, 2019) (noting that the Attorney General recognized an intervenor's burden of proof with respect to issues not raised in application, and holding that the intervenor bore burden of proof on a particular issue.)

¹⁷¹ See *Kentucky-American Water Co.*, Rehearing Order, Case No. 2002-00018 at 9.

¹⁷² VR: 3/29/22; 19:02:03-19:02:12

¹⁷³ Kollen Direct Testimony at 19.

¹⁷⁴ *Id.*

speculative increased distribution system maintenance expense, should be disregarded by the Commission as mere unfounded speculation without any factual basis.

i. Mr. Kollen Does Not Have The Technical Knowledge in Electrical Distribution System Design, Construction, Maintenance, Repair, or Storm Restoration to Opine on the Required Level of Distribution Capital Investment as well as his Claimed Increased Distribution Maintenance Expense

Mr. Kollen lacks “the knowledge, skill, experience, training, or education”¹⁷⁵ required to testify concerning the adequacy of AEP’s capital investment in Kentucky Power’s distribution system. Mr. Kollen’s qualifications are related to ratemaking matters. However, he is providing testimony on: (a) Kentucky Power’s distribution system capital needs during the period 2011-2020; and (b) the Company’s reasonable level of distribution maintenance expense. Mr. Kollen does not have the necessary qualifications to provide testimony in these areas.

Measured against these non-controversial standards, the record is undisputed that Mr. Kollen is not an electrical, civil, or mechanical engineer,¹⁷⁶ has never been employed by a utility, engineering firm, or contractor where his duties involved the planning, construction, operation, maintenance, repair, or storm restoration of a planned or existing electrical distribution system,¹⁷⁷ he did not inspect Kentucky Power’s distribution system and was unfamiliar with the system’s basic characteristics including its length.¹⁷⁸ Simply put, it would be legal error for the Commission

¹⁷⁵ KRE 702. The Joint Applicants acknowledge that Commission is not bound by the Kentucky Rules of Evidence; the Commission nevertheless has recognized and applied the rules of evidence where doing so furthers its inquiry. *See Application Of Louisville Gas And Electric Co. For An Adjustment of Electric And Gas Base Rates*, Case No. 2009-00549 at 9-10 (Ky. PSC July 30, 2010). Certainly, Mr. Kollen’s lack of qualifications under KRE 702 to offer opinions regarding the adequacy of investment in Kentucky Power’s distribution system speaks to the weight to be given to his testimony.

¹⁷⁶ *Id.* at 18:39:28-18:39:46.

¹⁷⁷ *Id.* at 18:42:30-18:43:20.

¹⁷⁸ *Id.* at 18:39:50-18:39:59.

to rely on Mr. Kollen’s testimony that insufficient investment has been made in Kentucky Power’s distribution system.

ii. **Mr. Kollen’s Use of Ratios to Calculate AEP’s Alleged Underinvestment and the Claimed Resulting Excess Distribution Maintenance Expense is Neither Reliable nor Relevant**

1. **Capital Investment**

Mr. Kollen’s uses a comparison of Kentucky Power’s ratio of distribution system capital investment and depreciation expense, to the average of the same metric for Kentucky’s other three investor-owned utilities. This basic use of ratios lacks the required relevance and reliability to estimate the capital investment required by Kentucky Power’s distribution system. Reliability requires consideration of whether the proposed method can be and has been tested; whether the method has been peer-reviewed in published articles; whether there is a high potential for error; and whether the method enjoys “general acceptance” within the relevant specialized community.¹⁷⁹

Mr. Kollen’s use of a comparison of Kentucky Power’s ratio of distribution system capital investment and depreciation expense, to the average of the same metric for Kentucky’s other three investor-owned utilities, demonstrates only that Kentucky Power’s distribution capital investment represents a smaller multiplier of its depreciation expense than the average of the other investor-owned utilities. Mr. Kollen’s simple ratios tell this Commission nothing about the adequacy of the capital investment in the Company’s distribution system. Nor could they without controlling for differences in:

- Relative ages of the distribution systems (depreciation expense typically is less with older systems);

¹⁷⁹ See *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); see also *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 578-579 (Ky. 2000); *id.* at 583 (“The principles established in *Daubert* and *Mitchell* concerning the admissibility of expert testimony apply not only to expert testimony based on scientific knowledge, but are equally applicable to expert testimony based on technical or other specialized knowledge.”).

- The relative stage in the life cycle of each distribution system's assets (newer systems require less replacement);¹⁸⁰
- Whether the distribution systems are physically expanding or contracting as the utilities' customer bases grow or decline (new commercial and residential developments require the extension of distribution systems and additional capital spending);¹⁸¹
- Whether the comparison adequately represents the capital investment of utility distribution systems in the Commonwealth (Mr. Kollen without explanation limited his comparison to only three of the other 23 electric distribution systems regulated by the Commission and the Tennessee Valley Authority, and ignored entirely the 30 municipal systems in the Commonwealth).

Mr. Kollen's comparison of the ratios of distribution capital investment as a multiplier of depreciation expense among Kentucky's investor-owned utilities is irrelevant. His calculation is premised upon an unsupported assumption that distribution utilities make capital-investment decisions based upon the mathematical ratio of capital investment to depreciation expense of other distribution utilities in the Commonwealth, and not the capital needs of the individual utility's distribution system.¹⁸² It further is premised on the unsupported assumption that the relevant period for comparison is ten years, and not the much longer life cycle of the distribution assets.

¹⁸⁰ VR: 3/29/22; 15:40:20-15:40:35. The cyclical nature of these investments also is illustrated by Mr. Kollen's own testimony. Kentucky Power's actual distribution plant investment increased by nearly two-thirds to an average of \$66.1 million in 2019 and 2020 over the eight preceding years average distribution investment of \$41.1 million. Kollen Direct Testimony at 52. Indeed, Kentucky Power's annual forecasted distribution investment level for the period 2022-2030 is 95 percent higher than the level for the ten-year period of 2011-2020 chosen by Mr. Kollen to calculate his ratios. *Id.*

¹⁸¹ West Rebuttal at R4-R7. Kentucky Power's customer base *declined* 5.1 percent over the period 2010 to 2020. The other three investor-owned utilities' customer base by comparison *increased* from a low 6.4 percent (Louisville Gas and Electric) to a high of 7.9 percent for Duke Energy Kentucky over the same period. *Id.* at 5.

¹⁸² Mr. Kollen's own calculations undercut this assumption. Kentucky Utilities' ten-year capital investment to depreciation expense ratio, like Kentucky Power's, is less than Mr. Kollen's calculation of the metric for the three non-Kentucky Power investor-owned utilities (2.39 vs. 2.51). [https://psc.ky.gov/psccef/2021-00481/rateintervention%40ky.gov/03142022043320/Response_to_JA_Items_13,14,15,16,17\(a\),21\(c\),24,29,30.xlsx](https://psc.ky.gov/psccef/2021-00481/rateintervention%40ky.gov/03142022043320/Response_to_JA_Items_13,14,15,16,17(a),21(c),24,29,30.xlsx) – Tab Distrib Plant – KY Util. Stated otherwise, one-half of the investor-owned utilities in the Commonwealth have ratios less than the standard offered by Mr. Kollen. Indeed, it is the nature of averages that, except in the unusual happenstance of where the values are tightly clustered, one or more individual values will be less than the average. The fact that Kentucky Utilities' showing improves if Kentucky Power is substituted for Kentucky Utilities only underscores the arbitrary and hence irrelevant nature of Mr. Kollen's chosen metric.

Mr. Kollen’s use of ratios is also flawed because of his decision to limit the comparison to the other three investor-owned utilities (all of whom have experienced customer growth rather than decline such as Kentucky Power), and not the other 50 distribution systems in the Commonwealth, or those with service territories most like Kentucky Power’s.

Mr. Kollen’s calculation of the claimed underinvestment likewise is unreliable. Nowhere do the AG/KIUC offer any evidence that Mr. Kollen’s chosen metric can be tested and shown to be a reasonable calculation of a single utility’s distribution plant investment needs.¹⁸³ Such testing would require at a minimum that a statistically significant sample of distribution utilities use only Mr. Kollen’s metric to fund their distribution capital investment needs and then determine after the fact whether the funding was adequate. The AG/KIUC offer no evidence that such a test is even possible, much less desirable, in the real-world operation of distribution utilities. They likewise offer no peer-reviewed published engineering or utility management studies corroborating his simple ratio as a measure of underinvestment.¹⁸⁴ The risk of error in Mr. Kollen’s metric – of reaching an incorrect value for the claimed underinvestment – arises not only from his small sample size (three out of the more than 50 distribution utilities in the Commonwealth) and his use of dissimilar utilities, but also the almost 20 percent spread in the ratios between the lowest (Kentucky Utilities) and the highest (Duke Kentucky) in Mr. Kollen’s comparison sample.¹⁸⁵

Although Liberty indicated in its response to KIUC 1-76 that “the 2.0 multiple is seen in the industry as a minimal measure of capital replenishment for a power utility,” the evidence that Mr. Kollen’s simple ratio enjoys general acceptance in the relevant specialized community of distribution utility owners and operators in planning and funding their distribution systems is

¹⁸³ *Goodyear Tire*, 11 S.W.3d at 578.

¹⁸⁴ *Id.* at 583.

¹⁸⁵ *Id.*

lacking. Instead, as the response indicated, and as Liberty Witness Balashov elaborated, the single metric was a “working assumption”¹⁸⁶ based on “limited time, data, and preliminary contextual understanding of Kentucky Power’s operating and ratemaking circumstances.”¹⁸⁷ Real world distribution system capital investment plans require consideration of the “multiple technical factors and managerial considerations underlying utility planning and operation.”¹⁸⁸ These include the need “to balance distribution investments with other investment drivers” in the Company’s generation, transmission, and intangible assets;¹⁸⁹ the need to keep rates affordable;¹⁹⁰ the advantages of “defer[ring] capital work in favor of preventative maintenance that may prolong the existing (and often fully depreciated) assets’ lifecycle by additional years;”¹⁹¹ as well as other asset management strategies.¹⁹² Mr. Kollen’s simple metric ignores all of these considerations.

There is no testimony in this record that even one utility uses the ratio of plant additions to depreciation expense of other investor-owned utilities in its jurisdiction to plan and fund its distribution system capital additions, much less that that the calculation enjoys general acceptance with distribution utility planners and engineers.

2. Distribution Maintenance Expense

Equally unsupported is Mr. Kollen’s calculation of the net present value of the additional distribution expense he claims Kentucky Power will experience, as a result of his claim of underinvestment, in the ten years following the transfer.¹⁹³ Again, Mr. Kollen relies upon a comparison of a single ratio – Kentucky Power’s per customer distribution expense to the average

¹⁸⁶ Joint Applicants’ Response to KIUC 1-76(1)(a)(ii) *see also* Joint Applicants’ Response to KIUC 2-29(c) (“working hypothesis”).

¹⁸⁷ Balashov Rebuttal Testimony at 18.

¹⁸⁸ *Id.* at 20.

¹⁸⁹ *Id.* at 19.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Kollen Direct Testimony at 54.

per customer distribution maintenance expense of the other three investor-owned utilities – to calculate the alleged harm. But nowhere is there record evidence that Mr. Kollen’s preferred metric is either relevant or reliable.

“It is axiomatic in logic and science that correlation is not causation.”¹⁹⁴ Here, Mr. Kollen does not even contend there is a statistically significant correlation between distribution system capital investment (as a multiple of depreciation expense) and distribution maintenance expense. Instead, he jumps to the second step of his logical fallacy to conclude that if Kentucky Power had invested an additional \$203.6 million in distribution system between 2011 and 2020 the Company’s distribution maintenance expense in the ten years following the proposed transfer, on a net present value basis, would be \$150,955,000 less. Mr. Kollen offers nothing to support his contention that the unadjusted ten-year average per customer distribution cost for the other three Kentucky investor-owned utilities is the ceiling for the reasonable level for such costs for Kentucky Power.

Mr. Kollen’s calculation suffers even more fundamental problems. At bottom, it rests on his unsupported, and in fact unaddressed, assumption that per customer distribution maintenance expense standing alone is a valid measure of the reasonableness of distribution maintenance spending. His metric is at best a single data point that tells far less than a complete story:

customer count is only one of the drivers of distribution system costs, with others being peak demand, system line miles, service area size (and by extension, customer density, and others). If an additional customer chooses to connect to a system in a dense urban area, the resulting maintenance costs will be negligible. Whereas if the same customer decides to connect in a location that is several miles away and requires the system to be expanded (and patrolled, trimmed, etc. over its lifecycle), [per customer] maintenance costs will increase. That is why cost per customer alone does not tell an accurate story. Other, equally viable, and statistically verified cost drivers exist¹⁹⁵

¹⁹⁴ *Kernstock v. United States*, 559 Fed. Appx 428, 433 (6th Cir. 2014)(quoting *Craig ex rel. Craig v. Oakwood Hosp.*, 684 N.W.2d 296 (Mich. 2004)).

¹⁹⁵ Balashov Rebuttal Testimony at 13.

Among these other measures are costs per line mile and costs per square mile of service territory as described by Mr. Balashov.¹⁹⁶ Both of these metrics on their face are more directly related to, and illustrative of, reasonable levels of distribution maintenance spending.¹⁹⁷

Similarly, his single ratio ignores differences in the terrain and topography, as well as the amount of forestation, among the four distribution systems being compared.¹⁹⁸ Yet, each of these factors drive the higher distribution maintenance expense for Kentucky Power as compared to the other three investor-owned utilities located in large part in the “Golden Triangle.”¹⁹⁹ Indeed, Mr. Kollen was careful to exclude from his comparison group distribution utilities such as Big Sandy R.E.C.C. and Grayson R.E.C.C. that share similar service territory characteristics.²⁰⁰ Distribution maintenance expense in eastern Kentucky also includes high levels vegetation management. Mr. Kollen’s comparison also fails to account for the fact that 50 percent of Kentucky Power’s distribution O&M expense was required by the Kentucky Power’s transition during the period July 2010 to 2018 to a cycle-based vegetation management program.²⁰¹

Next, because it is a simple ratio comparing two factors – distribution maintenance expense and customer count – Mr. Kollen’s metric is subject to arbitrary distortion. For example, as Mr. Kollen conceded on cross-examination, if Kentucky Power had spent the same amount on distribution maintenance expense in the ten years he examined (2011-2020) but the Company’s customer count had been rising and not declining, Kentucky Power’s per customer maintenance expense would have been lower.²⁰² Conversely, if the Company had less total distribution

¹⁹⁶ *Id.* at 13-17.

¹⁹⁷ *Id.*

¹⁹⁸ VR: 3/29/22 18:57:10-18:57:50.

¹⁹⁹ West Rebuttal Testimony at R13-15.

²⁰⁰ VR: 3/29/22 18:58:00-18:58:58.

²⁰¹ West Rebuttal Testimony at R13-15.

²⁰² VR: 3/29/22 18:56:10-18:56:30.

maintenance expense during the ten-year period because it spent less or no money on planned maintenance, then the per customer amount, again by definition, also would have been lower.²⁰³

Finally, because the effect of Mr. Kollen’s calculation is to recapture and pay to customers the portion of Kentucky Power’s Commission-approved and filed rates during the period 2011-2020, albeit adjusted, that Mr. Kollen challenges for the first time as excessive, the proposal constitutes retroactive ratemaking in violation of KRS 278.160(2).²⁰⁴ The Commission previously advised the Attorney General that the rule against retroactive ratemaking “prohibits regulatory commissions from ‘setting rates to allow a utility to recoup past losses *or to refund to consumers excess utility profits.*’”²⁰⁵

3. Mr. Kollen’s Efforts to Support His Flawed Metrics Should be Accorded No Weight by the Commission.

Mr. Kollen attempts to buttress his simple mathematical ratios by comparing Kentucky Power’s reliability statistics to other utilities in the Commonwealth,²⁰⁶ as well as singling out the storm damage regulatory asset approved by the Commission in connection with the three February 2021 storms that struck the Company’s service territory.²⁰⁷

Kentucky Power provides electrical service under some of the most challenging and unique conditions in the Commonwealth.²⁰⁸ Its service territory is mountainous and is the most heavily forested in Kentucky.²⁰⁹ Compounding these conditions are the low customer density and the long distribution lines, many of which traverse dense forests and mountains, required to serve isolated

²⁰³ *Id.* at 18:55:08-18:55:32.

²⁰⁴ *See Cincinnati Bell Tel. Co. v. Ky. Pub. Serv. Comm’n*, 223 S.W.3d 829, 837-838 (Ky. App. 2007).

²⁰⁵ *Office Of The Attorney General v. Atmos Energy Corp.*, 2005-00057 at 3 (Ky. PSC Mar. 30, 2007) (emphasis supplied).

²⁰⁶ Kollen Direct Testimony at 48-50.

²⁰⁷ *Id.* at 53-54.

²⁰⁸ West Rebuttal Testimony at R15.

²⁰⁹ *Id.*

customers.²¹⁰ As a result, “[a]ccess to the distribution line rights-of-way[] can be challenging, especially in inclement weather.²¹¹ The above average rainfall received in the Company’s service territory over the past five years has further affected the Company’s distribution system reliability as landslides and dead or diseased trees from outside the Company’s rights-of-way fall from higher elevations onto the Company’s distribution facilities.²¹²

Providing distribution service to customers located in Dongola or Oscaloosa in Letcher County Kentucky, or Three Forks or Davella in Martin County, Kentucky, is a far cry from providing the same service to suburban communities in Kenton, Jefferson, or Fayette counties. It is the challenging conditions facing the Company, which are largely unique to Kentucky Power, and not an underinvestment in the Company’s distribution system, that account for the Company’s reliability metrics.²¹³ Further, distribution system reliability is not, as Mr. Kollen assumes, simply a matter of throwing more capital dollars at the issue: “[p]lenty of outages that Mr. Kollen’s analysis includes would not be preventable through capital investment unless the lines were buried (usually at 6-8 times of capital cost of overhead infrastructure).”²¹⁴

Despite these challenges, the Company’s more than \$425 million in capital investments in its distribution system during the period 2011-2020, and its additional more than \$234 million in capital investments and O&M expenditures in connection with its Commission-approved distribution vegetation management program during the same period, have allowed Kentucky Power “to improve and maintain its distribution system reliability.”²¹⁵ In particular, customer minutes of interruption as a result of trees located within the Company’s rights-of-way declined

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.* at Exhibit BKW-R1 at 7.

²¹³ *Id.* at R16, R15.

²¹⁴ Balashov Rebuttal Testimony at 17.

²¹⁵ *Id.* at R2.

89 percent between 2011 and 2020.²¹⁶ Similarly, customers affected by trees and vines within the rights-of-way declined 87 percent from 2011 to 2022.²¹⁷ Moreover, having established its five-year distribution vegetation management cycle, thereby limiting outages resulting from causes located in the Company's rights-of-way, Kentucky Power beginning in 2018 initiated a \$6 million per year capital investment program to widen its rights-of-way and thereby address one of the most common remaining causes of distribution outages.²¹⁸

The \$42 million regulatory asset authorized by the Commission in connection with the three February 2021 winter storms likewise is probative of little, if anything, regarding the adequacy of the capital investment in Kentucky Power's distribution system. The three storms, which occurred almost back-to-back over a seven day period, comprised a 100-year event.²¹⁹ The first two storms, which occurred within two days of each other, deposited up to one inch of ice on the Company's distribution system.²²⁰ That was followed by four to six inches of snow several days later which delayed efforts to restore service,²²¹ particularly in the Company's mountainous service territory. Mr. Kollen ignores the fact that no system, unless one placed entirely underground, could withstand such storms whatever the level of capital investment.²²²

iii. **Mr. Kollen's Conclusions Regarding the Claimed Harm Resulting from the Alleged Underinvestment in Kentucky Power Ignore at least Ten Years of Regulatory Filings and Proceedings.**

Since 2010, Kentucky Power annually served on the Attorney General (2015 in the case of KIUC) two reports (recently combined into a single annual report) detailing its distribution

²¹⁶ West Rebuttal Testimony at R17.

²¹⁷ *Id.*

²¹⁸ *Id.* Exhibit BKW-R1 at 6; *see also id.* Exhibit BKW-R3 at 4 (“The 2020 reduction in Tree Out of ROW customer minutes of interruption indicates that the Company's capital project trees outside of the rights-of-way is effective in improving reliability for customers.”).

²¹⁹ VR 3/29/22; 15:29:50-15:30:20; *see also id.* 15:35:10-15:35:15 (“catastrophic event”).

²²⁰ *Id.* at 15:30:10-15:30:20.

²²¹ *Id.* at 15:30:30-15:30:45.

²²² *See* Balashov Rebuttal Testimony at 17.

vegetation management plans.²²³ The reports describe, on a circuit-by-circuit basis, Kentucky Power's distribution vegetation management capital investment and expenses.²²⁴ Kentucky Power, along with other electric distribution utilities, similarly files with the Commission annually its Electric Distribution Utility Annual Reliability Report.²²⁵

Despite the ready availability of this information, neither the Attorney General nor the KIUC have questioned prior to this case that the Company's level of distribution system capital investment was inadequate; nor did they previously raise concerns about Kentucky Power's distribution system reliability. This stands in stark contrast to Mr. Kollen's claim in this proceeding that Kentucky Power's distribution system was undercapitalized by more than \$203.6 million.

The reason for Mr. Kollen and his clients' silence is easy to discern. Capital invested in the Company's distribution system is not free. Instead, to the extent the capital is prudently invested, and included in the Company's test year period, increased rates would have been required to support the return on and of the \$203.6 million dollars of capital that Mr. Kollen now contends should have been invested in the Company's distribution system.²²⁶ Far from championing the increased rates required to support the one-fifth of a billion dollars he now contends should have been invested in 2011-2020,²²⁷ Mr. Kollen on behalf of KIUC testified in 2017 that the Company's

²²³ West Rebuttal Testimony at R7.

²²⁴ *See id.* Exhibit BKW-R1 at 1.

²²⁵ *See id.* Exhibit BKW-R3 at 1. That report, which provides the Company's reliability indices, shows that for the year ended December 31, 2019 Kentucky Power's SAIDI and SAIFI (excluding MED) declined over the five-year average. *Id.*

²²⁶ VR: 3/29/22; 18:44:30-18:45:20. The \$203.6 million represents 48 percent of the total capital invested in Kentucky Power's distribution system during the period 2011-2020. West Rebuttal Testimony at R2.

²²⁷ Kollen Direct Testimony at 19.

then existing rates—which the Commission previously determined to be fair, just, and reasonable—were too high.²²⁸

The prior failure by Mr. Kollen and his clients to raise the claimed underinvestment in the Company’s distribution system, their active opposition to rate increases that might have supported the increased distribution system investment, and in the case of KIUC and Mr. Kollen in 2017, their testimony that existing rates were too high and harming all of the Company’s customers, is far removed from being a “litigation gotcha.” Instead, each goes to the fundamental unreasonableness of Mr. Kollen’s contention that AEP harmed, and will continue to harm, Kentucky Power’s customers in an amount equal to at least \$354 million by failing to make an additional \$203.6 million in distribution system capital investments during the period 2011-2020.

The Attorney General, KIUC, and the Commission most recently were afforded the opportunity in 2009, 2014 (a partially-litigated rate case), 2017 (a partially-litigated rate case), and 2020 (a fully-litigated rate case) to examine in detail all aspects of Kentucky Power’s operations. This included the level of the Company’s investment in its distribution system, its level of distribution system maintenance expense, and the reliability of its distribution system. In each case, the Commission balanced multiple factors, including affordability, and to establish rates that not only were fair, just, and reasonable, but that were adequate to permit the Company to provide adequate, efficient, and reasonable service. The Commission’s determinations (except to the extent any were appealed by a party) carry both meaning and consequence. The Company is required to operate all aspects of its system using the funding provided by the Commission-approved rates. Customers, including those represented by KIUC and the Attorney General,

²²⁸ Joint Intervenors Hearing Exhibit 2. In fact, Mr. Kollen contended “the magnitude of the cumulative rate increases harmed residential, business, and government customers, and contributed to the continuing loss of load experienced by the Company.” *Id.*

likewise are entitled to receive the level of service that can be funded by the awarded rates.²²⁹ Against this background, the AG/KIUC cannot now credibly claim that the capital investment in Kentucky Power’s distribution system over the past ten years, and that was required to be funded by the approved rates, should have been 50 percent greater.

c. **AG/KIUC’s Argument That AEP Pay A Portion of its Expected Benefit from the Transaction Condition Of Selling Kentucky Power Is Without Legal Or Factual Basis And Itself Is Not In The Public Interest.**

The AG/KIUC’s argument that AEP be required to pay a portion of the financial benefit it realizes from the sale of Kentucky Power to compensate customers for alleged and unsubstantiated past damages or future risks²³⁰ has no legal basis, contravenes the public interest, improperly seeks to relitigate prior Commission decisions, and misstates the financial benefit AEP expects to realize from the transaction while also ignoring Commission precedent rejecting AG/KIUC’s argument.

i. **The Public Interest as the Term is Used in KRS 278.020(7) is Neither so Broad, nor so Punitive, as to Require AEP to Pay \$578 Million as Damages or as a Penalty²³¹ to Effectuate the Transfer.**

Mr. Kollen alleges that AEP will receive a \$585 million “acquisition premium” as a result of the transaction.²³² Mr. Kollen also alleges that AEP’s alleged failure to adequately invest in

²²⁹ The KIUCAG/KIUC also could have filed a complaint against the Company if they believe the service provided by Kentucky Power was “unreasonable, unsafe, insufficient, unjustly discriminatory, or that . . . [it] is inadequate” KRS 278.260(1).

²³⁰ Kollen Testimony at 9, 13, 60.

²³¹ The AG/KIUC now characterize the \$354.6 of the payment as compensation for the alleged harm caused, or to be caused, by AEP’s claimed underinvestment in Kentucky Power’s distribution system. See JA 1-29(a). But Mr. Baron boldly characterized 22 times in his testimony his demand for at least \$75 million as a “penalty.” The imposition of such a penalty would be neither appropriate nor legal; the penalty statute, KRS 278.990, is not implicated here. There is no allegation or evidence of record that AEP willfully violated any provision of KRS Chapter 278, any Commission regulation, or failed to obey any order of the Commission. See *South Central Bell Telephone Co. v. Utility Regulatory Comm’n*, 637 S.W.2d 649, 653 (Ky. 1982) (“We have held that the Commission’s powers are purely statutory. When a statute prescribes a precise procedure, an administrative agency may not add to such provision. 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.”) (internal citations omitted)). Moreover, the amount Mr. Baron seeks to extract as a penalty far exceeds the amounts payable under the penalty statute even if it were implicated. Finally, because the penalty is intended as an incentive for future action, and not an extraction for past violations, it is beyond the scope of KRS 278.990.

²³² Kollen Direct Testimony at 60.

Kentucky Power’s distribution system, coupled with harm allegedly flowing from the transfer, totals \$578 million.²³³ The harm alleged by the AG/KIUC is an attempt to capture the entire “premium” – albeit incorrectly calculated and grossly overstated – that the AG/KIUC allege AEP will receive as a result of its sale of Kentucky Power.²³⁴

Regardless of how the AG/KIUC characterize their demand for \$578 million, the public interest requirement of KRS 278.020 is not without bounds. Most fundamental is Section 2 of the Kentucky Constitution prohibiting arbitrary action by the General Assembly and regulatory bodies²³⁵ alike. Among the requirements of Section 2 is that any exercise of legislatively granted discretion must be grounded in articulated and readily determined standards: “[b]ecause there are no standards, much less meaningful standards, contained in the regulation to govern the exercise of this discretionary power, it is arbitrary and violative of Section 2 of the Kentucky Constitution.”²³⁶

The AG/KIUC’s definition of the public interest as the term is used in KRS 278.020(7) knows no bounds. At bottom, any extraction that would benefit customers easily falls under the rubric of “public interest.” The Commission should decline their invitation to construe the term in such a standardless fashion that would render KRS 278.020(7) unconstitutional.²³⁷

The AG/KIUC also invite the Commission to rewrite KRS 278.020(7) to read “customer interest” in lieu of the General Assembly’s chosen “public interest.” The public, whose interest is at stake under KRS 278.020(7), is not limited to just utility customers as the AG/KIUC would have

²³³ *Id.*

²³⁴ Eichler Rebuttal Testimony at 5, 6.

²³⁵ *See Motor Vehicle Comm’n v. Hertz Corp.*, 767 S.W.2d 1, 2 (Ky. App. 1989).

²³⁶ *Id.* at 3.

²³⁷ *See Schneider v. Wink*, 350 S.W.2d 504, 505 (Ky. 1960) (holding that legislation (city ordinance) that “did not prescribe sufficiently definite standards with which applicants must comply and by which the discretion of the board of commissioners would be controlled, with the result that the ordinance constituted an effort to vest absolute and arbitrary power in the board in violation of Section 2 of the Kentucky Constitution.”)

it. Public includes “an entire community, state, or country”²³⁸ and not just a single segment of it. “Even a public utility has some rights . . .”²³⁹ and at a minimum they include not being excluded from the public. Because the law of the Commonwealth is established only by the General Assembly, and not the AG/KIUC, the term “public interest” as used in KRS 278.020(7) is required by Sections 27 and 28 of the Kentucky Constitution to be applied as written, and not through “amend[ment], alter[ation], enlarge[ment] or limit[ation] of the legislative enactment.”²⁴⁰

The AG/KIUC’s proposal also is contrary to the precedent of this Commission.²⁴¹ Rejecting a similar effort to extract from the parent of the regulated utility a portion of the proceeds of the sale of stock, the Commission in no uncertain terms explained that the public interest standard of KRS 278.020(7) is not as expansive as AG/KIUC would stretch it:

LFUCG asserts that a determination of the public interest also requires a comparison of benefits that the proposed transaction produces for AWWC’s shareholders with those produced for KAWC’s ratepayers. It further suggests that the public interest requires AWWC’s shareholders to share ‘the enormous cash benefits’ created by the proposed transaction with KAWC shareholders. LFUCG Brief at 8.

We find no legal support for this proposition. Courts have long recognized that ratepayers are not entitled to a share of a proportion of the proceeds of the sale of capital stock ‘simply because they are the users of the service furnished by the utility.’ *Democratic Central Committee of D.C. v. Washington Metropolitan Area Transit Comm’n*, 485 F.2d 786, 805 (D.C. Cir. 1973). To the extent that KAWC’s ratepayers bore no risk as to fluctuations in the price of AWWC’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 merger. Any sharing of benefits must be based upon reductions in costs or savings resulting from the proposed merger transaction.²⁴²

²³⁸ BLACK’S LAW DICTIONARY at 1422 (10th ed. 2009); MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 941 (10th ed. 2002).

²³⁹ *Ky. Power Co. v. Energy Reg. Comm’n*, 623 S.W.2d 904, 908 (Ky. 1981).

²⁴⁰ *Camera Center, Inc. v. Revenue Cabinet*, 889 S.W.2d 788, 792 (Ky. 1988).

²⁴¹ *Kentucky-American Water Co.*, Rehearing Order, Case No. 2002-00018 at 9 (reaffirming that the Commission’s imposition of reasonable conditions in approval of a transfer of control should be “on the acquiring party”).

²⁴² *Kentucky-American Water Co.*, Initial Order, Case No. 2002-00018 at 8-9 (Ky. PSC May 30, 2002).

This unambiguous precedent precludes an order that requires any portion of the benefit accruing to AEP from the sale by AEP to Liberty of AEP's holdings in Kentucky Power, whether the payment is to be funded by means of the erroneously claimed "\$585 million acquisition premium,"²⁴³ the \$462.9 million in cash proceeds conjured at the eleventh hour by the AG/KIUC,²⁴⁴ or AEP's after-tax accounting gain of \$40 million.²⁴⁵ The gain received from the sale by AEP to Liberty of the shares of Kentucky Power is the property of the shareholders of Kentucky Power, and is not subject to expropriation by regulatory action under the public interest standard.²⁴⁶

In addition to lacking legal or factual support, and being contrary to Commission precedent, the AG/KIUC's "attempt to penalize the selling company on the way out"²⁴⁷ is "punitive and unfair."²⁴⁸ It is bad public policy for the Commonwealth to extract such an exit fee—doing so would deter other companies from investing in any regulated enterprise domiciled in Kentucky.²⁴⁹

As Liberty Witness Eichler testified

It is also unreasonable to assume that any seller would agree to sell a company on this basis; it effectively becomes a "poison pill" that would kill any transaction. Each of these items [Mr. Kollen's proposed conditions] individually create a standard far different than the one contemplated by Kentucky statute or rational merger and acquisition practices, and collectively, the combination of these assertions and recommendations make a standard that is untenable and unable to be met by any utility company.²⁵⁰

Liberty has offered customers multiple benefits, including a three-year rate holiday from the Big Sandy Retirement Rider, a fund to offset volatile fuel costs, and a commitment to seek

²⁴³ Kollen Direct Testimony at 9.

²⁴⁴ KIUC Cross Exhibit 11.

²⁴⁵ Llende Rebuttal Testimony at R6; *id.* Exhibit JXL-R1.

²⁴⁶ Haynes Rebuttal Testimony at R8.

²⁴⁷ *Id.* at R7.

²⁴⁸ Eichler Rebuttal Testimony at 4.

²⁴⁹ Haynes Rebuttal Testimony at R7.

²⁵⁰ Eichler Rebuttal Testimony at 4-5.

securitization of generating assets that could decrease customer bills.²⁵¹ Commitments such as these from Liberty – as the acquirer – that advance the public interest are the only proper focus of this proceeding.²⁵² Importantly, without the consummation of the transaction, customers will receive none of these unparalleled benefits.²⁵³

For these reasons alone, the Commission should reject the AG/KIUC’s proposal to force AEP to pay \$578 million of the claimed “\$585 million acquisition premium” as compensation to customers.

ii. **The Commission Lacks Legal Authority To Award To Kentucky Power’s Customers Compensation For The Harm, Otherwise Known as Damages, KIUC And The Attorney General Claim Resulted From AEP’s Alleged Underinvestment In Kentucky Power’s Distribution System.**

Further, the AG/KIUC argue that the money should be paid as compensation from AEP for the claimed harm from AEP’s alleged failure to invest \$203.6 million in Kentucky Power’s distribution system during the period 2011-2020.²⁵⁴ Money paid as compensation for harm caused constitutes damages as a matter of law.²⁵⁵

The Commission lacks jurisdiction to award damages for harm allegedly caused by, or that will arise, as a result of a utility’s past actions or inactions.²⁵⁶ The absence of any grant under Chapter 278 of the Kentucky Revised Statutes authorizing the Commission to award monetary

²⁵¹ *See id.* at 9-12.

²⁵² Haynes Rebuttal Testimony at R8.

²⁵³ *Id.*

²⁵⁴ VR 3/29/22 18:31:15-18:31:20; Kollen Direct Testimony at 19, 45.

²⁵⁵ *Kentucky Central Life Ins. Co. v. Schneider*, 15 S.W.3d 373, 374-375 (Ky. 2000) (“The object of compensatory damages is to make the injured party whole to the extent it is possible to measure his injury in terms of money”); Black’s Law Dictionary at 471 (10th ed. 2009) (defining damages as “money claimed by, or ordered to be paid to, a person as compensation for loss or injury”).

²⁵⁶ *Carr v. Cincinnati Bell, Inc.*, 651 S.W.2d 126, 128 (Ky. App. 1983); *In the Matter of: Stuart I. Gross, Sr. v. Green River Valley Water Dist.*, Case No. 2019-00258 at 2 (Ky. PSC Dec. 16, 2021) (“No provision of KRS Chapter 278 confers on the Commission the authority to award damages, and the Kentucky courts have refused to extend the Commission’s jurisdiction to include monetary damages claims.”).

damages to be paid by AEP means that the demand by the AG/KIUC would require the Commission in granting their claimed compensation to act in contravention of “double-barreled, positive-negative”²⁵⁷ limitations of Section 27 and 28 of Kentucky Constitution. Conversely, it also violates Section 14 of the Constitution²⁵⁸ by divesting the courts of the judicial power reserved to the Judicial Branch.²⁵⁹

Any Order conditioning approval of the proposed transfer on AEP’s payment of \$354.582 million to Kentucky Power for the benefit of its customers also would constitute a taking²⁶⁰ in violation of the Fourteenth Amendment to the Constitution of the United States, as well as Sections 13²⁶¹ and 242²⁶² of the Kentucky Constitution. “Corporate assets are the property of the corporation”²⁶³ AEP’s assets, including any gain on the sale of its stock, do not belong to customers of a wholly-owned subsidiary of AEP even if that subsidiary is a public utility. Rather, as the United States Supreme Court instructed almost one hundred years ago, the relationship between a utility and its customers “is not that of partners, agent and principal, or trustee and beneficiary.”²⁶⁴ Instead, “[c]ustomers pay for service, not the property used to render it By

²⁵⁷ *Legislative Research Comm’n v. Brown*, 664 S.W. 907, 912 (Ky. 1984).

²⁵⁸ “All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.” Any attempt by the Commission to exercise the Judicial power by awarding compensation for claimed past harm (damages) also would violate Sections 27 and 28 of the Kentucky Constitution. *Legislative Research Comm’n*, 664 S.W. at 912.

²⁵⁹ *Carr*, 651 S.W.2d at 128.

²⁶⁰ *Hager v. Louisville & Jefferson Cnty. Planning & Zoning Comm’n*, 261 S.W.2d 619, 620 (Ky. 1953) (“Not only is the commission attempting to zone in a manner that is wholly illegal but its action amounts to a taking of property without due process of law in violation of Section of the Fourteenth Amendment of the Constitution of the United States and the result also is an appropriation of private property for public use without just compensation in contravention of Sections 13 and 242 of the Constitution of Kentucky. It follows the resolution is void.”) (resolution designating plaintiff’s property as a ponding area as part of a flood control project).

²⁶¹ “. . . [N]or shall any man’s property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him.”

²⁶² “Municipal and other corporations, and individuals invested with the privilege of taking private property for public use, shall make just compensation for property taken, injured or destroyed by them; which compensation shall be paid before such taking, or paid or secured, at the election of such corporation or individual, before such injury or destruction.”

²⁶³ *Gross v. Adcomm, Inc.*, 478 S.W.3d 396, 400 (Ky. App. 2015).

²⁶⁴ *Bd. of Pub. Util. Comm’rs v. New York Tel. Co.*, 271 U.S. 23, 31 (1926).

paying bills for service they do not acquire any interest, legal or equitable, in the property used for their convenience or in the funds of the company.”²⁶⁵ As a result, “the law does not require the company to give up for the benefit of future subscribers any part of its accumulations from past operations”²⁶⁶ however they are measured.

The Kentucky Court of Appeals (now Kentucky Supreme Court) rejected a similar attempt to confiscate property of a corporation (a utility) for the benefit of its customers:

“the ratepayers assumed no risk of its disposition whether it be profit or loss. The statement in the majority opinion of the Commission that future ratepayers could be compelled to reimburse the company if such property had been sold at a loss borders on the ridiculous. *Having assumed no risk in the loss on the sale of the property of the company, conversely the ratepayers acquired no claim to the profits therefrom.*”²⁶⁷

This fundamental principle applies with even greater force when the property to be expropriated is that of the parent and not the utility which is the case here.

iii. The Commission Should Reject AG/KIUC’s Request to Relitigate Prior Commission Decisions About Issues Unaffected by the Transaction to Improperly Obtain Financial Benefits at Kentucky Power’s and AEP’s Expense.

AG/KIUC’s demand for compensation from AEP is also inappropriate inasmuch as AG/KIUC opportunistically seek \$134 million of payment from AEP for transmission costs and to “pay off the Rockport regulatory asset” that this Commission reviewed and approved in prior proceedings.²⁶⁸ The Commission should ignore AG/ KIUC’s collateral attack on and attempt to re-litigate legacy ratemaking issues that have been previously decided by this Commission and in fact were, in some instances, actually supported by KIUC, and by Mr. Kollen.²⁶⁹

²⁶⁵ *Id.* at 31.

²⁶⁶ *Id.*

²⁶⁷ *City of Lexington v. Lexington Water Co.*, 458 S.W.2d 778, 779 (Ky. 1970) (emphasis supplied).

²⁶⁸ Kollen Direct Testimony at 19; Baron Direct Testimony at 27, 34-35.

²⁶⁹ Vaughan Rebuttal Testimony at R4.

1. AG/KIUC’s claimed “transmission cost penalty” was fully litigated in Case No. 2020-00174, has nothing to do with the transfer proposed in this proceeding, and does not exist.

AG/KIUC placed AEP’s and Kentucky Power’s transmission investment policies at issue in Case No. 2020-00174, and the issue – including AG/KIUC’s now-repeated (and incorrect) NITS subsidy claim – was fully litigated in that proceeding.²⁷⁰ After litigation, and based upon a robust record developed on transmission cost issues, the Commission approved Kentucky Power’s current rates as fair, just, and reasonable and authorized Kentucky Power to increase recovery of its incremental PJM load serving entity Open Access Transmission Tariff expense from 80 percent to 100 percent.²⁷¹ AG/KIUC did not seek rehearing or appeal of the Commission’s January 13, 2021 Order in Case No. 2020-00174.²⁷² This proceeding, which concerns the proposed transfer of Kentucky Power, does not affect or implicate the rates the Commission approved in Kentucky Power’s last rate case.²⁷³ AG/KIUC’s attack on Kentucky Power’s Commission-approved transmission costs more than 14 months later is unsustainable.

Moreover, and contrary to AG/KIUC Witness Stephen Baron’s repeated mischaracterization otherwise, no “transmission cost penalty”²⁷⁴ exists in Kentucky Power’s rates.²⁷⁵ As AEP/KPCo Witness Vaughan explained:

Kentucky Power pays just and reasonable rates for wholesale transmission service in the AEP Zone and the PJM RTO that are approved by the FERC. One cannot classify any portion of wholesale transmission expense as a “subsidy,” and seek to collect “damages” or a “penalty” from [Kentucky Power’s] parent, simply because [Kentucky Power’s] annual expense is greater than its Kentucky transmission cost of service. It is undisputable that the Company utilizes more than just its in-state

²⁷⁰ *Id.* at R4-R5; *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 58-64 (Ky. PSC Jan. 13, 2021).

²⁷¹ *Id.*

²⁷² Vaughan Rebuttal Testimony at R5.

²⁷³ See Eichler Rebuttal Testimony at 16.

²⁷⁴ See generally Baron Direct Testimony.

²⁷⁵ Vaughan Rebuttal Testimony at R5-R6.

Kentucky transmission system to supply reliable service to its customers.²⁷⁶

The proposed transfer of Kentucky Power to Liberty did not create the alleged damage for which the AG/KIUC now seek a “penalty” since they claim the alleged harm began in 2020, long before this transaction existed. Liberty Witness Herling explained at hearing why AG/KIUC’s backward-looking view of Kentucky Power’s transmission costs is not a sound basis upon which to make future cost projections.²⁷⁷ Mr. Herling, who spent more than 30 years in operations and planning leadership at PJM,²⁷⁸ explained:

[T]he different utilities within AEP have different investment cycles based on the needs within each of those companies. Aging infrastructure, for example, you may find . . . a series of assets in one company needing to be replaced and a couple years later . . . the pendulum will swing back and forth. . . . Kentucky Power may face . . . a significant investment requirement in the coming years just based on the evolution of their assets and the aging of their assets. So it's very difficult to look at . . . even a few years of . . . [Kentucky Power’s allocated transmission expense versus its cost of transmission investment] and make any kind of projection about what the next few years or the next 10 years or whatever time frame might result in.²⁷⁹

Thus, relative transmission investment among the AEP East Zone transmission owners “flows back and forth over time,” and the “pendulum” could “swing[] back” toward “significant investment in Kentucky Power” in the future.²⁸⁰ Liberty has committed to making reliability based transmission investment such that the pendulum *does* swing back the other way, provided the Commission is supportive of such an approach. Under AEP’s ownership, Kentucky Power has moved all transmission investment that previously was planned for AEP Kentucky Transmission Company, Inc. to be “100-percent Kentucky Power funded”²⁸¹ in order to address the

²⁷⁶ *Id.* (quoting Baron Direct Testimony at 18).

²⁷⁷ VR: 3/28/22; 19:49:00-19:52:18.

²⁷⁸ Herling Rebuttal Testimony at 2.

²⁷⁹ VR: 3/28/22; 19:49:00-19:50:25.

²⁸⁰ *Id.* at 19:51:05-19:52:18.

²⁸¹ VR: 3/29/22; 15:46:36-15:47:30, 15:50:45-15:52:00.

Commission's concerns. For all of these reasons, the Commission should disregard AG/KIUC's claimed "transmission cost penalty" argument.

2. The Commission should reject AG/KIUC's attempt to undermine the Rockport settlement that has provided tremendous benefits to customers for more than 5 years.

In Case No. 2017-00179, the Commission approved the settling parties' proposal to defer for the benefit of Kentucky customers \$50 million in non-fuel and non-environmental Rockport lease expenses from Rockport Unit 2 over five years.²⁸² The deferred amounts, along with a carrying charge equal to the Company's weighted average cost of capital, are to be recovered on a levelized basis over five years starting in December 2022 through Tariff PPA.²⁸³ Under the Commission-approved settlement agreement in Case No. 2017-00179, the future amortization of the Rockport regulatory asset would be offset by the reduction in Kentucky Power's fixed expenses following the expiration and non-renewal of the Rockport UPA.²⁸⁴ KIUC was a settling party in Case 2017-00179, and AG/KIUC Witness Kollen (testifying for KIUC in that proceeding) lauded the Rockport deferral and amortization proposal as "extremely beneficial to customers" and a "tremendous result."²⁸⁵

After having enjoyed the benefits of the proposal for almost five years, and the time has arrived to begin paying for the benefit customers received, AG/KIUC proposes that the customers

²⁸² *Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs And Riders; (4) An Order Approving Accounting Practices To Establish Regulatory Assets Or Liabilities; And (5) An Order Granting All Other Required Approvals And Relief*, Case No. 2017-00179 at 75 (Ky. PSC Jan. 18, 2018 (approving Section 3(c) of the Settlement Agreement)).

²⁸³ *Id.*

²⁸⁴ *Id.* Kentucky Power notified the Commission, as part of its application filed February 8, 2021 in Case No. 2021-00004, of its decision not to renew the Rockport Unit Power Agreement, and confirmed that its decision not to renew was final on March 26, 2021. Vaughan Rebuttal Testimony at R6-R7.

²⁸⁵ See Vaughan Rebuttal Testimony at R7. Mr. Kollen, for KIUC, in fact created the concept of the Rockport UPA deferral in his initial testimony in Case No. 2017-00179. A modified version of Mr. Kollen's proposal became a part of the final settlement.

not only keep the “tremendous result” approved by the Commission, but that AEP now pay \$59 million for it as well. AG/KIUC offer no justification for such a payment, but rather just revisit the same historical facts surrounding the UPA that existed when the Commission-approved settlement agreement that established the Rockport UPA purchased power expense deferral was reached in Case No. 2017-00179.²⁸⁶ The Commission should reject AG/KIUC’s attempt to change the extremely beneficial Rockport compromise to which KIUC agreed, and which this Commission approved, in Case No. 2017-00179.

iv. **AEP’s Expected Financial Benefit from the Transaction is Both Misstated by Intervenors and Irrelevant to the Commission’s Statutory Mandate in this Case.**

While acquisition cases typically focus on the acquiring company and their future operations in the region, much of certain intervenors’ focus in this case has been preoccupied on the financial benefit they claim AEP will realize if the transaction is approved. The focus on the selling entity and an apparent concern with any potential gain is misplaced and beyond the Commission’s statutory focus.

AG/KIUC Witnesses Kollen and Baron initially mischaracterized the financial benefit to AEP as being the \$585 million acquisition premium, or goodwill, that Liberty will record as a result of the transaction.²⁸⁷ AG/KIUC later acknowledged, however, that Liberty’s acquisition premium “is not the gain or loss that will be reported by AEP for financial reporting purposes if the transaction closes.”²⁸⁸ AEP/KPCo Witness Llende, Senior Vice President of Tax for AEPSC, confirmed that the acquisition premium represents an amount that will be recorded on Liberty’s

²⁸⁶ Kollen Direct Testimony at 42-44.

²⁸⁷ Kollen at 6 (referring to the “benefit of the \$585 million premium . . . that AEP will receive in excess of the per books common equity for [Kentucky Power] Company”); Baron at 4 (“AEP will receive an acquisition premium . . . of \$585 million . . .”).

²⁸⁸ AG/KIUC Response to Joint Applicants DR 1-31.

accounting books and excluded from Kentucky Power customer rates, and that it “has no relationship to AEP’s expected benefit” from the transaction.²⁸⁹

AEP/KPCo Witness Llende explained that AEP’s after-tax accounting gain is the appropriate measure of the benefit AEP expects to realize as a result of the proposed transaction because it properly considers both the book and tax consequence of the sale of Kentucky Power for AEP.²⁹⁰ AEP’s expected after-tax accounting gain is less than \$40 million.²⁹¹ That expected accounting gain is “irrelevant to the issues in this proceeding,” as AG/KIUC have conceded.²⁹²

At the evidentiary hearing, AG/KIUC’s focus then shifted to AEP’s cash proceeds from the sale of Kentucky Power. AG/KIUC’s cash proceeds argument is a red herring. AG/KIUC’s claim that AEP will net approximately \$462.9 million to “invest in regulated renewables and transmission”²⁹³ is incorrect. As AEP/KPCo Witness Llende explained, KIUC Cross Exhibit 11, which presented the \$462.9 million number at hearing and for the first time in this proceeding, ignores both the \$180 million intercompany debt receivable Kentucky Power owes to AEP and AEP’s tax obligation on the transaction.²⁹⁴

AG/KIUC offer only a strained reading of KRS 278.020(6)’s “public interest” standard to support their position that the Commission can consider AEP’s gain or cash proceeds in evaluating

²⁸⁹ Llende Rebuttal Testimony at R3-R5.

²⁹⁰ *Id.* at R6, Ex. JXL-R1.

²⁹¹ Mr. Llende confirmed at hearing that AEP’s voluntary contributions, totaling approximately \$23.5 million, to the Eastern Kentucky Fuel Relief Fund and to support the Decommissioning Rider rate holiday offered in this case, would reduce AEP’s net proceeds from the sale of Kentucky Power and pre-tax gain by that amount. VR: 3/29/22; 14:59:50-15:00:44. Thus, the \$53 million pre-tax gain associated with the sale of Kentucky Power reflected in Exhibit JXL-R1 to Mr. Llende’s Rebuttal Testimony would be reduced to \$29.5 (\$53 million - \$23.5 million = \$29.5 million). Applying a 25% tax rate, which Mr. Llende testified was a reasonable estimate of federal and state taxes, results in an approximately \$22.1 million AEP gain on the sale of Kentucky Power ($\$29.5 \text{ million} * (1 - 0.25) = \22.125 million). VR: 3/29/22; 15:00:45-15:01:10.

²⁹² Llende Rebuttal Testimony at R4; AG/KIUC Response to Joint Applicants 1-31.

²⁹³ *See* KIUC Cross Exhibit 11.

²⁹⁴ *See* AEP/KPCo Exhibit 1, Section 2; VR: 3/29/22; 15:14:50-16:41.

the proposed transaction.²⁹⁵ As set forth in Section V.C.3.c.i., *supra*, the Commission has rejected that notion.²⁹⁶ Indeed, in the 2002 *Kentucky-American Water* transfer-of-control case, the Commission confirmed that there is “no legal support” for the proposition that the parent company-seller’s shareholders be required to share cash benefits created by the proposed transaction with the utility’s customers.²⁹⁷

For these reasons, the financial benefit that AEP expects to realize if the transaction closes – whether measured on a book basis or a cash basis – is not relevant to the Commission’s statutory inquiry under KRS 278.020. The Commission should disregard AG/KIUC’s arguments to the contrary.

d. Other PJM Issues Raised by the Attorney General, KIUC, and LS Power

Witnesses for the AG/KIUC, and LS Power raise issues related to Kentucky Power’s participation in PJM. Within PJM, Kentucky Power is part of the AEP Fixed Resource Requirement (“FRR”) where AEP supplies its own generation or procures resources to meet its subsidiaries’ capacity obligations instead of obtaining resources through the PJM competitive capacity auctions (“RPM”). Kentucky Power will continue to be considered an FRR entity immediately after closing without necessitating any action on its part.

On behalf of LS Power, Mr. Hoatson suggests that Kentucky Power would be better served by shifting away from the FRR alternative.²⁹⁸ This suggestion, however, is biased from the perspective of LS Power, a generation competitor of Kentucky Power. Not surprisingly, LS Power

²⁹⁵ See AG/KIUC Response to Joint Applicants DR 1-31. The cases the AG/KIUC cite in their response to DR 1-31 for general statements about the Commission’s goals and role as utility regulator did not concern applications for the transfer of ownership of a utility under KRS 278.020. See *Ky. Indus. Util. Customers, Inc. v. Kentucky Pub. Serv. Comm’n*, 504 S.W.3d 695, 706 (Ky. App. 2016); *National-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 513 (Ky. App. 1990).

²⁹⁶ *Kentucky-American Water Co.*, Initial Order, Case No. 2002-00018 at 8-9 (Ky. PSC May 30, 2002).

²⁹⁷ *Id.*

²⁹⁸ Hoatson Direct Testimony at 3-4.

has opposed several FRR elections across PJM.²⁹⁹ Because LS Power participates in the capacity markets of PJM, it stands to directly benefit from higher capacity prices that would result from the increased demand for power if Kentucky Power participates in that market.

Contrary to Mr. Hoatson's suggestion, Liberty's capacity market expert Jeff Plewes explains that the analysis of departing from PJM or being an FRR entity is not simple. Many factors impact the determination of whether the FRR alternative is optimal from the Kentucky Power customers' perspective.³⁰⁰ These factors include options for obtaining capacity including projections on capacity-cost levels, as well as informed analysis and forecasts of future market and regulatory developments.³⁰¹ This analysis is further complicated by the requirement that an entity such as Kentucky Power would be prohibited from returning to its FRR status for a five-year period if it elects to discontinue its FRR status after becoming an RPM member.³⁰² Accordingly, Kentucky Power's best course of action is to study its options, as Mr. Plewes recommends and as Liberty has agreed to do.

Relatedly, AG/KIUC Witness Baron suggests that following the expiration of the AEP Bridge PCA and the AEP Joint FRR Plan arising from the ownership change of Kentucky Power, as a standalone entity, Kentucky Power will be exposed to increased risk and potential increased costs and therefore should exit the PJM Zone and form a stand-alone one. Any such risk is highly dependent on the expected performance of individual resources in a capacity portfolio, as well as resource diversification.³⁰³ If appropriate, Kentucky Power can develop a portfolio that has a greater likelihood of over-performance, thereby creating bonus payments that could benefit

²⁹⁹ Plewes Rebuttal Testimony at 9.

³⁰⁰ *Id.* at 10.

³⁰¹ *Id.* at 10-12.

³⁰² *Id.* at 18.

³⁰³ *Id.* at 14.

ratepayers and mitigate capacity performance risk.³⁰⁴ But perhaps more important is that Liberty has committed to studying this and other issues related to participation in PJM in order to develop an approach that is the most beneficial to customers.

Mr. Baron also suggests that there may be additional costs that result from that risk, but any potential costs may not be higher than those that already exist from participating in the AEP Zone. Kentucky Power already includes capacity performance insurance premiums in the retail cost of service.³⁰⁵ These insurance premiums have actually decreased over the last two PJM delivery years.³⁰⁶ As such, there is no way to know whether Kentucky Power's costs would actually increase.³⁰⁷

Mr. Baron further asserts that it would be easy for AEP and Kentucky Power to obtain an amendment to the PJM Tariff to permit Kentucky Power to form its own transmission zone. Kentucky Power and Kentucky TransCo are currently in the AEP East transmission zone, pursuant to the PJM Consolidated Transmission Owners Agreement ("CTOA"). As Mr. Herling explained, Kentucky Power cannot unilaterally form its own transmission zone absent a FPA Section 206 filing ("206 filing"), which has a higher standard of review.³⁰⁸

Outside of a 206 filing, any change in Kentucky Power's participation in the AEP East transmission zone would, at a minimum, require the agreement of a supermajority of the CTOA parties to a modification of the CTOA and/or future filings with FERC.³⁰⁹ If approved by the CTOA Administrative Committee and FERC through a FPA Section 205 filing ("205 filing"),

³⁰⁴ *Id.* at 14.

³⁰⁵ Vaughn Rebuttal Testimony at R8.

³⁰⁶ *Id.* at R8.

³⁰⁷ *Id.* at R9.

³⁰⁸ Herling Direct Testimony at 4.

³⁰⁹ *Id.* at 4-5.

implementation procedures would need to be developed through the PJM stakeholder process related to planning, operations, and market impacts of that change.³¹⁰

Kentucky Power could submit a 206 filing requesting its own transmission zone, but such an approach is fraught with risks. The timing of a 206 filing is more uncertain with FERC.³¹¹ Moreover, under a 206 filing, Kentucky Power would have to demonstrate that the CTOA was unjust and unreasonable, a much higher burden of proof than that for a 205 filing.³¹² As discussed by Mr. Herling, a 30 year employee of PJM and 16 year Director of Planning at the RTO, an independent Kentucky Power zone would be the smallest of the utility load serving zones in PJM.³¹³ The planning process would require a detailed analysis of whether Kentucky Power load could be served, consistent with reliability criteria, relying on a balance of internal and external generation and ties to the rest of the PJM system.³¹⁴ Analysis in planning could also identify violations of criteria that require upgrades to the transmission system.³¹⁵ Accordingly, this issue should be thoroughly analyzed to reach the best approach for customers, instead of fast forwarding to a conclusion without sufficient data to support the most appropriate decision. As Herling warns, “Should KPCo be prematurely separated from the AEP transmission zone, these impacts could be difficult to reverse.”³¹⁶

VI. CONCLUSION

The Joint Applicants have shown that Liberty’s proposed acquisition of Kentucky Power satisfies the requirements of KRS 278.020(6) and (7). Liberty is a large, publicly traded company that successfully operates a portfolio of 30 utilities throughout the United States, serving

³¹⁰ *Id.* at 5.

³¹¹ *Id.* at 7.

³¹² *Id.* at 7.

³¹³ *Id.* at 7.

³¹⁴ *Id.* at 8.

³¹⁵ *Id.* at 8.

³¹⁶ *Id.* at 11.

approximately 1,200,000 customers. The record demonstrates that Liberty has the requisite financial, technical, and managerial abilities necessary to own and operate Kentucky Power, thereby satisfying KRS 278.020(6). There is no evidence in the record to even suggest that Kentucky Power customers will be harmed by Liberty's acquisition.

Additionally, as the Joint Applicants have shown, this transaction is in accordance with law, for a proper purpose, and is in the public interest. The Joint Applicants have identified immediate quantifiable benefits for Kentucky Power's customers at the close of the acquisition, which further evidence that the proposed transfer will serve the public interest. Notably, Liberty has proposed significant immediate benefits to customers through the \$40 million fuel fund and the deferral of the Big Sandy Decommissioning Rider, all told providing benefits to the customers of approximately \$144.1 million. Moreover, Liberty's commitment to emphasizing the importance of local impact—which will be immediately seen through the creation of upwards of 100 jobs and focus on localized decision making—provide benefits that will last for decades to come. These are significant benefits that will only be available to customers should the transaction be approved.

By approving this acquisition as proposed, the Commission signals its support of Kentucky Power, its customers, and the entire eastern Kentucky region. Accordingly, and for the foregoing reasons, the Joint Applicants respectfully request the Commission effectuate this proposed change and approve the proposed acquisition of Kentucky Power by Liberty.

RESPECTFULLY SUBMITTED,



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APPENDIX

The Joint Applicants have agreed to dozens of commitments if Liberty acquires Kentucky Power, including the following:

Commitments made in response to testimony

- Eastern Kentucky Fuel Relief Fund: Provide a rate offset benefit to customers with a value of \$40 million available to assist customers with their bills should the acquisition be approved. For clarity, these amounts would be utilized to offset high fuel charges and would effectively act as a credit to customer bills.
- Big Sandy Decommissioning Rider (“BSDR”): In order to provide near term relief to customers, while we work on appropriate securitization legislation, we are proposing to defer the collection of the Big Sandy Decommissioning Rider for three years. Liberty would continue to accrue the carrying charge but defer collection of the surcharge from customers of the BSDR costs until three years after the transaction closes. At the end of the three-year period, assuming the enactment of securitization legislation, with reasonable parameters such as an interest rate of 3.5% and a 20-year term, the annual collections from customers would reduce from the current levelized charge of \$26.9M to approximately \$19.6M, thereby allowing further savings of \$7.2 million per year to inure to the benefit of customers from year four forward. If securitization legislation is not feasible within 3 years, the current levelized charge of \$26.9M will be reinstated until the balance of the regulatory asset is extinguished.
- Liberty’s common equity ratio for rates effective in 2024 will be 45% and will only change for ratemaking purposes upon approval of the Commission in future rate cases.
- For any FERC filed affiliate agreements that will affect rates, Liberty will provide a copy to the Kentucky Public Service Commission 30 days prior to filing of all such affiliate agreements before they are filed at FERC and before they are executed.
- Liberty will file with the Kentucky Public Service Commission any agreements with AEP relating to services provided to Kentucky Power Company within 30 days of execution of any such agreements.
- Within sixty days of the close of the transaction, Kentucky Power Company will convene a stakeholder process for the development of one or more new renewable energy offerings to be proposed for Commission approval within one year of the close of the transaction.
- Liberty will enter into an arrangement to factor accounts receivable if doing so will bring savings to customers.
- Liberty will not seek to recover any transaction or one time transition costs (as defined

by Liberty in testimony) from customers.

- Liberty will pursue securitization legislation focused on the facts and circumstances of Kentucky Power to lower the cost impact of the Big Sandy Decommissioning Rider and Mitchell Power Plant.
- Liberty will hire a Vice President of Customer Advocacy who will be on the local Kentucky Power management team.

Commitments made in Application and Testimony of Peter Eichler

- Maintain Kentucky Power's head office in the service territory.
- Localize upwards of 100 utility operations jobs back to Kentucky Power.
- Within 2 years of the close of the transaction, Kentucky Power will evaluate the benefits and costs of its participation in the PJM, and to the extent appropriate, explore alternatives.
- Reopen a customer walk-in center in Ashland and at least one other community.
- Establish and maintain a Kentucky Power Company board of directors comprised of a majority of independent non-management members with at least one seat reserved for a business and/or community leader from Kentucky Power's service territory.
- Assume all regulatory commitments currently in force from prior Commission Orders for Kentucky Power.
- Not seek recovery of the transaction premium or transaction costs in Kentucky Power's rates.
- Continue to work with local and state governmental entities.
- Continue to promote economic development in Kentucky.
- The transaction will not impact or affect contractual relationships with municipal or wholesale customers of Kentucky Power.
- Obtain Commission approval before transferring Kentucky Power property, plant and equipment, consistent with KRS requirements.
- There will be no cross subsidization between Liberty's regulated businesses and Algonquin's non-regulated businesses.

- Kentucky Power will not transfer stock without Commission approval.

Commitments made in Stock Purchase Agreement³¹⁷

- Indemnify, defend and hold harmless past and present directors, officers, and employees of the Kentucky Power and Kentucky Transco for a period of 6 years, as set forth in more detail in Section 4.12 of the Stock Purchase Agreement.
- Assume all obligations under the NSR Consent Decree relating to the Mitchell Interest and Big Sandy, as set forth in more detail in Section 4.13.
- For a period of no less than five years from the Closing Date, cause Kentucky Power to maintain its existing corporate headquarters in Kentucky and, other than in the ordinary course of its business, maintain its existing offices and service centers in Kentucky, as set forth in Section 4.21.
- Kentucky Power and Kentucky Transco employees, whether members of a collective bargaining agreement or not, who are employed by such company immediately prior to the closing will continue to be employed upon closing and will remain employed for a period of two years following the closing, as set forth in more detail in Section 5.3 or otherwise provide such employees severance as set forth in more detail in Section 5.6.
- Employees of Kentucky Power and Kentucky Transco will receive substantially similar, in the aggregate (provided base salary must be at least equal to the current base salary/wage rate), base salary or hourly wages, incentive compensation opportunities, retirement benefits, welfare benefits, and severance benefits as the same exist immediately prior to closing, as set forth in more detail in Section 5.4.
- Provide employees benefits regarding welfare plans, severance, continuing health care coverage, service credit, defined contribution plans, incentive awards, seller benefit plans, and workers compensation benefits, as set forth in more detail in Sections 5.5 through 5.13.
- Kentucky Power must maintain itself as a “Load Serving Entity” under the PJM Market Rules and remain included in the “AEP Zone” until the completion of all remaining “Planning Periods” for which Kentucky Power has committed to jointly participate in a “Fixed Resource Requirement Alternative” as set forth in more detail in Section 4.8(c).

³¹⁷ For purposes of this Appendix, the term “Commitment” as used in relationship to the Stock Purchase Agreement, is intended to mean commitments and assurances agreed to by Liberty Utilities Co. related to the post-acquisition operation of Kentucky Power. Nothing herein is intended to supersede or contradict the contractual obligations of the parties to the Stock Purchase Agreement.

- Kentucky Power and Kentucky Transco must within three business days cease using, and within 120 days remove, all trademarks and service marks of AEP within 120 days of closing as set forth in more detail in Section 4.10.

Commitments made in response to KPSC 1-03

- All costs associated with the proposed transaction will not have the effect of increasing Kentucky Power's rates for electric service.
- Kentucky Power's ratepayers will not incur any additional costs, liability, or obligations, directly or indirectly, in conjunction with the proposed transaction. Provided however that Kentucky Power will enter into affiliate service agreements with Algonquin Power & Utilities Corp., Liberty Utilities (Canada) Corp., Liberty Utilities Co. and Liberty Service Corp. for the provision of certain services, and in that respect, will incur new liabilities. The costs of these services, however, will not result in any increase in costs to Kentucky Power customers.
- Kentucky Power will not incur any additional indebtedness or pledge any assets to finance any part of the purchase price paid by Liberty to acquire control of Kentucky Power.
- Kentucky Power's current level of community involvement, charitable contributions, low-income funding, and economic development in Kentucky Power's service territory will be maintained for two years following the close of the transaction so that the Company can best evaluate how to continue to support the community.
- Kentucky Power's customers will not be asked to contribute to costs associated with operating any Liberty subsidiary or affiliates.
- Kentucky Power will not guarantee the credit of any affiliate if the proposed transaction is approved.
- Kentucky Power will not be required to pledge any of its assets to finance the debt or any purchases of any affiliates if the proposed transaction is approved.
- Kentucky Power will not be required to grant liens or encumbrances, or otherwise pledge any of its assets, to finance any or all of the costs of the proposed transaction.
- Liberty will not utilize push-down accounting in any manner arising from the proposed transaction.
- Kentucky Power will give clear and conspicuous notice to Kentucky Power's customers prior to any change in service resulting from the proposed transaction.
- Liberty will commit to ring-fencing of Kentucky Power such that Kentucky Power would be insulated from Liberty's non-utility lines of business. To define "ring-fencing":

Liberty will commit that Kentucky Power: (i) will not assume liability for the debts issued by Algonquin Power & Utilities Corp., Liberty Utilities Co., or any of their subsidiaries or affiliates; (ii) will maintain corporate officers who have a fiduciary duty to Kentucky Power, and; (iii) will maintain separate books and records of Kentucky Power, all to provide sufficient ring fencing to Kentucky Power to insulate it from potential liability of from other affiliates.³¹⁸

Commitments made in Section V.C.2.b. of the Post-Hearing Brief

- Liberty commits to 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.
- 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 transmission options (i.e. within 2 years post closing) should the Commission find such an approach desirable.³¹⁹

³¹⁸ The foregoing commitments are contained in Eichler Rebuttal Testimony Exhibit, PE-R4.

³¹⁹ See *supra* Section V.C.2.b.