

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

In the Matter of:

Electronic Application Of Kentucky Power Company)
For (1) An Order Approving The Terms And)
Conditions Of The Renewable Energy Purchase)
Agreement For Solar Energy Resources Between)
Kentucky Power Company And Bright Mountain)
Solar, LLC; (2) Authorization To Enter Into The)
Agreement; (3) Recovery Of Costs Through Tariff)
P.P.A.; (4) Approval Of Accounting Practices To)
Establish A Regulatory Asset; And (5) All Other)
Required Approvals And Relief)

Case No. 2024-00243

POST-HEARING BRIEF OF KENTUCKY POWER COMPANY

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. BACKGROUND	2
A. Kentucky Power’s Resource Portfolio.	2
B. Kentucky Power’s All-Source RFP	3
C. The Bright Mountain REPA	6
1. The Bright Mountain Project	6
2. The Bright Mountain REPA	7
3. Benefits of the Bright Mountain REPA	8
III. APPLICABLE LAW	11
IV. ARGUMENT	13
A. The Commission should approve the Bright Mountain REPA with Kentucky Power’s proposed terms because it satisfies the requirements set forth in KRS 278.300(3) and benefits customers.	13
1. The financial obligations to be assumed under the Bright Mountain REPA are for a lawful object.	13
2. The financial obligations to be assumed under the Bright Mountain REPA are necessary and appropriate.	14
3. The generation provided under the Bright Mountain REPA is needed.	15
4. The generation provided under the Bright Mountain REPA will not result in wasteful duplication.	17
B. The Commission should approve Kentucky Power’s proposal to recover costs through Tariff PPA.	20
C. The Commission should approve Kentucky Power’s request to create a regulatory asset to accumulate and defer the RFP costs for later recovery.	21
V. CONCLUSION	23

I. INTRODUCTION

Kentucky Power Company (“Kentucky Power” or “Company”) seeks approval under KRS 278.300(3) of the terms and conditions of a renewable energy purchase agreement (the “Bright Mountain REPA”) with Bright Mountain Solar, LLC (“Bright Mountain”). The Bright Mountain REPA represents an important, albeit relatively small, first step in the transformation of Kentucky Power’s generation portfolio. Under the Bright Mountain REPA, Kentucky Power will receive, for 15 years at a fixed price, all of the energy, capacity, and environmental attributes produced by the Bright Mountain Project, a solar photovoltaic electric generating facility with a nameplate capacity of 80 megawatts (“MW”). The Bright Mountain Project will be located on a reclaimed coal mine site in Perry County, within the Company’s service territory.

The Bright Mountain REPA does not preclude the Company’s evaluation of larger thermal resources to meet its remaining capacity obligations moving forward.¹ Instead, consistent with the preferred plan identified during the Company’s most recent integrated resource planning (“IRP”) process, the Bright Mountain REPA provides the Company with a physical hedge against fuel prices,² increases diversity in the Company’s generation portfolio,³ and supports potential economic development efforts within Kentucky Power’s service territory.⁴ While admittedly only addressing a small portion of the capacity need facing Kentucky Power, the Bright Mountain REPA will provide approximately three percent of the Company’s energy needs at an estimated

¹ See Wolfram Confidential Hearing Test. at 50:24-25.

² Wolfram Direct Test. at 8.

³ *Id.* at 9–10.

⁴ *Id.* at 10.

net cost to the average residential customer of just over a quarter per month, or an approximate 0.2% increase.⁵

As described in the record in this case, the Bright Mountain REPA meets the requirements set forth in KRS 278.300(3). First, the Bright Mountain REPA is for a lawful object within Kentucky Power's corporate purpose.⁶ Second, the financial obligations to be assumed under the Bright Mountain REPA are necessary and appropriate.⁷ Finally, the generation provided under the Bright Mountain REPA is needed and will not result in wasteful duplication. The Bright Mountain REPA provides benefits to Kentucky Power's customers at a reasonable cost and should be approved.

II. BACKGROUND

A. Kentucky Power's Resource Portfolio.

Kentucky Power's current generation resource portfolio consists of two thermal power plants with an aggregated nameplate capacity of 1,075 MW. The Company owns and operates the Big Sandy Plant located near Louisa, Kentucky.⁸ The Big Sandy Plant is a 295 MW natural gas-fired unit.⁹ The Company also owns an undivided 50% interest in the coal-fired Mitchell Plant located approximately 12 miles south of Moundsville, West Virginia.¹⁰ The Mitchell Plant consists of two units with a total capacity of 1,560 MW and, accordingly, Kentucky Power's share equals 780 MW.¹¹

⁵ Wolfram Rebuttal Test. at 9.

⁶ Wolfram Direct Test. at 7–8.

⁷ *Id.* at 8–11.

⁸ *Id.* at 4.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Kentucky Power filed its most recent integrated resource planning (“IRP”) report on March 20, 2023.¹² In that IRP report, the Company identified capacity needs of 115 MW in 2026, 66 MW in 2027, and 713 MW beginning in 2028.¹³ The IRP also identified an energy need for Kentucky Power over that same time frame.¹⁴ The preferred plan identified in the IRP included a technologically diverse generation portfolio for Kentucky Power including both renewable and dispatchable thermal resources. The Bright Mountain REPA represents the Company’s first step in implementing the preferred plan in the IRP.

B. Kentucky Power’s All-Source RFP

On September 22, 2023, consistent with the Company’s IRP, Kentucky Power issued three requests for proposal seeking power purchases agreements from (1) new and existing thermal sources, (2) solar and wind energy sources, and (3) battery storage resources (collectively, the “2023 All-Source RFP”).¹⁵ The 2023 All-Source RFP sought bids for power purchase agreements for a total of approximately 875 MW of PJM-accredited summer capacity and approximately 1,300 MW of PJM-accredited winter capacity.¹⁶ Kentucky Power received 71 proposals, representing 36 unique projects, in response to the 2023 All-Source RFP.¹⁷

Kentucky Power engaged in a multi-step evaluation of the proposals received in response to the 2023 All-Source RFP. First, Kentucky Power conducted an eligibility and threshold requirements review where the Company confirmed that the proposals met the requirements

¹² Case No. 2023-00092, *In The Matter Of: Electronic 2022 Integrated Resource Planning Report of Kentucky Power Company*, (Ky. P.S.C. Mar. 20, 2023), Kentucky Power Company’s Integrated Resource Planning Report.

¹³ Wolfram Direct Test. at 4.

¹⁴ *Id.*

¹⁵ Yetzer Direct Test. at 4.

¹⁶ *Id.*

¹⁷ *Id.* at 6.

identified in the 2023 All-Source RFP including target commercial operation date, minimum project size, location of the proposed resources, interconnection status, and minimum contract term.¹⁸ Kentucky Power removed 17 proposals for failure to meet the eligibility requirements identified in the 2023 All-Source RFP.¹⁹

Kentucky Power performed a detailed analysis of the proposals that met the eligibility and threshold requirements. This analysis included a due diligence review of the projects and a scoring evaluation. The due diligence review was an internal review of each project's expected annual energy production, the bidders' proposed changes to Kentucky Power's form agreement included in the RFP, environmental studies, project technology, interconnection status, transmission congestion, and the bidders' experience in operating facilities like the one in their proposal.²⁰

In addition to the due diligence review, Kentucky Power conducted a scoring evaluation of every proposal that met the threshold requirements.²¹ The scoring evaluation was performed by a multidisciplinary team comprised of AEP and Kentucky Power individuals and focused on price and non-price components.²² Company Witness Yetzer described the economic analysis as follows:

The analysis included inputs taken directly from the proposals, such as the bid price and term length. It also included various inputs provided by the interdisciplinary team, such as transmission congestion and line loss estimates, fuel costs, dispatch assumptions, emissions, start-up costs, estimated annual energy production, and other operating company-specific modeling variables such as renewable energy credits ("REC") and financing assumptions.²³

¹⁸ *Id.* at 7.

¹⁹ *Id.*

²⁰ *Id.* at 9–10.

²¹ *Id.* at 8–9.

²² *Id.* at 8.

²³ *Id.*

Kentucky Power also evaluated the following non-price components as part of its scoring evaluation: location and economic benefits; dispatchability and flexibility; resource diversity, cost risk and technology; proposal risk and project quality; and social benefits and risk.²⁴

Kentucky Power completed the scoring evaluation and “short-listed” three projects to begin contract negotiations with: the Bright Mountain Project [REDACTED]

[REDACTED]

[REDACTED]²⁶ During the RFP process, the United States Environmental Protection Agency issued new regulations under Section 111(d) of the Clean Air Act.²⁷ The promulgation of these new regulations forced Kentucky Power to extend its evaluation of thermal power plant proposals to ensure that costs associated with the new regulations were considered.²⁸ The decision to move forward with the Bright Mountain REPA while evaluating the impact of the Section 111(d) regulations on thermal bids allowed the Company to take advantage of favorable terms in the Bright Mountain REPA (including price) that may have changed if delayed and ensure that the price of the thermal bids were fully developed.²⁹

²⁴ *Id.*, Exhibit ZMY-2 at 13.

²⁵ Yetzer Confidential Hearing Test. at 17:18-25.

²⁶ *Id.* at 18:8-17.

²⁷ Wolfram Rebuttal Test. at 4; Kentucky Power Resp. AG-KIUC 2_3.

²⁸ *Id.*

²⁹ Wolfram Rebuttal Test. at 4; Kentucky Power Resp. AG-KIUC 2_4.

C. The Bright Mountain REPA

1. The Bright Mountain Project

The Bright Mountain Project is a solar photovoltaic electric generating facility with a nameplate capacity of 80 MW that will be constructed and owned by Bright Mountain, a wholly-owned subsidiary of Avangrid Renewables, LLC.³⁰ The Bright Mountain Project is located within the Company's service territory on a reclaimed coal mine site in Perry County.³¹ According to Bright Mountain's Application for a Construction Certificate in Case No. 2022-00274 before the Siting Board, the Project is located on 805 acres of leased private land and the Project footprint for solar panels is expected to be 360 acres.³² The Project is expected to be commercially operational by April 15, 2027.³³

In its Application for a Construction Certificate for the Project, Bright Mountain estimated the local benefits, which included approximately 280 full-time equivalent ("FTE") jobs statewide for construction and 12 FTE jobs annually for operation and maintenance of the facility.³⁴ Bright Mountain estimated a total value of \$29.2 million in onsite and offsite industrial production and induced benefits throughout the Commonwealth during facility construction.³⁵ In Perry County, the construction of the Project was estimated to add approximately 36 FTE jobs and 4 annual FTE jobs for operations and maintenance of the facility after construction is complete.³⁶

³⁰ Wolfram Direct Test. at 5.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 10.

³⁵ *Id.*

³⁶ *Id.* at 11.

2. The Bright Mountain REPA

Kentucky Power and Bright Mountain executed the Bright Mountain REPA on July 19, 2024.³⁷ Under the REPA, Kentucky Power will purchase all of the Renewable Energy Products (defined in the agreement to include the energy, capacity, and renewable energy certificates (“RECs”)) generated by the Bright Mountain Project for a term of 15 years at a non-escalating (fixed) price of \$83.68 per MWh.³⁸ Bright Mountain will transfer the capacity and RECs directly to Kentucky Power and will bid the energy from the Project into the PJM market based on offer curves developed by AEPSC and Kentucky Power.³⁹ Kentucky Power will receive the net revenue from sale of energy from the Project into the PJM market.⁴⁰

While there is the potential that Bright Mountain, and the energy industry as a whole, may experience development challenges due to future raw material, labor, supply chain, interconnection, and equipment availability and uncertainty, Kentucky Power mitigated those risks to the best of its ability in the Bright Mountain REPA.⁴¹ Kentucky Power’s costs under the REPA are limited to the Contract Rate which is fixed for the full term of the agreement.⁴² While there is always the possibility that Bright Mountain could request renegotiations, the Company negotiated for several protections in the Bright Mountain REPA.⁴³ These protections can be found in Article 3.4 (Changes to Facility), Article 4 (Commercial Operation), Article 6 (Conditions Precedent),

³⁷ Yetzer Direct Test., Exhibit ZMY-4.

³⁸ Yetzer Direct Test. at 11.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Kentucky Power Resp. AG-KIUC 1_3(a).

⁴³ *Id.*

Article 8.2 (No Payment Obligation), Article 11 (Security for Performance), Article 12 (Default and Remedies), and Article 20.4 (Rate Changes).⁴⁴

Of note, the REPA includes protections that prevent Bright Mountain from increasing the price Kentucky Power pays under the agreement [REDACTED]

Company Witness Yetzer described these price protections at the hearing:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Bright Mountain REPA requires that Kentucky Power obtain a final, non-appealable order from the Commission no later than May 1, 2025.⁴⁶

3. Benefits of the Bright Mountain REPA

The Bright Mountain REPA provides numerous benefits to Kentucky Power's customers. The Bright Mountain REPA provides a fuel-independent, physical hedge against the energy

⁴⁴ *Id.*; Yetzer Direct Test., Exhibit YMZ-4.

⁴⁵ Yetzer Confidential Hearing Test. at 36:17-37:16.

⁴⁶ Yetzer Direct Test. at 12.

market, reducing the Company's and its customers' exposure to volatility in the coal and natural gas markets.⁴⁷ While the Bright Mountain Project's accredited capacity is small, the Bright Mountain REPA allows the Company to avoid making potentially expensive capacity purchases in the market for the accredited capacity. Under the Bright Mountain REPA, the Company will acquire all of the environmental attributes (including RECs) produced by the Project. These environmental attributes will then be monetized for the benefit of the Company's customers and essentially will operate as a way to "buy down" the per-MW contract price.

In addition to the direct economic benefits that Company will receive, the Bright Mountain REPA provides other important benefits to the Company and its customers. First, the Bright Mountain REPA provides the Company with the benefit of a diverse generation portfolio.⁴⁸ The Bright Mountain REPA also provides potential economic development benefits to the Company and its service territory.⁴⁹ There has been an increase in economic development projects where potential customers sought to have their electrical energy sourced from a renewable resource.⁵⁰ Approval of the Bright Mountain REPA would allow Kentucky Power the opportunity to leverage the Project for economic development by providing potential customers with sustainability goals

⁴⁷ Wolfram Rebuttal Test. at 7.

⁴⁸ Wolfram Direct Test. at 9–10; *see also* Case No. 2014-00002, *Joint Application of Louisville Gas & Electric Company and Kentucky Utilities Company for Certificates of Public Convenience and Necessity for the Construction of a Combined Cycle Combustion Turbine at the Green River Generating Station and a Solar Photovoltaic Facility at the E.W. Brown Generating Station* (Ky. P.S.C. Dec. 19, 2014), Order at 10–13.

⁴⁹ Wolfram Rebuttal Test. at 3; *see also* Case No. 2020-00016, *Electronic Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of a Solar Power Contract and Two Renewable Power Agreements to Satisfy Customer Requests for a Renewable Energy Source Under Green Tariff Option #3*, (Ky. P.S.C. May 8, 2020), Order at 17 ("... the Commission agreed that renewable energy resources should be available for corporations with sustainability goals as one of the economic development tools that convey Kentucky is open for business").

⁵⁰ Wolfram Rebuttal Test. at 3.

access to RECs, or by dedicating a portion of the project to serve their load with the renewable energy.⁵¹

The Company conducted an economic analysis in order to evaluate the economic impact of the Bright Mountain REPA. This analysis compared the price to be paid by Kentucky Power under the Bright Mountain REPA to the (1) revenue from sales of energy from the project at the applicable PJM locational marginal pricing (“LMP”) node; (2) the avoided market capacity purchases; and (3) the revenue from the sale of RECs received from the project.⁵² The Company evaluated these components utilizing the Company’s most-recent fundamentals forecast and a REC forecast that accounted for real-world trends in the REC markets. The Company’s economic analysis indicated that for the base case, the net present value of the cost of the Bright Mountain REPA would be \$5 million. The Company conducted a sensitivity analysis over a variety of energy and REC pricing values and demonstrated that for four of the nine scenarios, the net present value of the Bright Mountain REPA would be positive for customers:⁵³

**Sensitivity Analysis - 2024 Fundamentals
(Cost) / Benefit NPV**

		REC		
		Low	Base	High
Energy	<i>\$ millions</i>			
	Low	\$ (40)	\$ (32)	\$ (15)
	Base	\$ (13)	\$ (5)	\$ 12
	High	\$ 19	\$ 28	\$ 44

It is important to note that there are other benefits (discussed above) to the REPA that were not quantified as part of the NPV analysis. Kentucky Power also is acutely aware that any increase

⁵¹ *Id.*

⁵² Coon Direct Test. at 4.

⁵³ Coon Rebuttal Test. at 8.

in its cost of service must be warranted and necessary to provide safe, adequate and reliable service to its customers. The Company's economic analysis of the Bright Mountain REPA shows that, for the average residential customer, the rate impact would be \$0.29 per month or less than \$3.50 per year.⁵⁴ For less than \$3.50 per year, Kentucky Power's customers will receive access to a fuel-independent, physical hedge against the volatility of the energy market, avoid market capacity purchases, and realize revenue from REC sales that will offset the cost to Kentucky Power customers. The Bright Mountain REPA will diversify the Company's generation portfolio and support the Company's economic development efforts. The Bright Mountain REPA is a small, but important first step in the transformation of the Company's generation portfolio; a transformation that will result in investment in "steel in the ground" in the Company's service territory and will benefit the Company's customers.

III. Applicable Law

KRS 278.300(3) sets forth three elements an applicant must demonstrate for the Commission to authorize the Company to enter into the Bright Mountain REPA as an "evidence of indebtedness." First, the financial obligations assumed under the Bright Mountain REPA must be for a lawful object within the corporate purposes of the utility.⁵⁵ Second, the financial obligations assumed under the Bright Mountain REPA must be necessary or appropriate for, or consistent with the proper performance by the utility of its service to the public, and must not impair its ability to perform that service.⁵⁶ Finally, the Bright Mountain REPA must be reasonably necessary and appropriate for that purpose.⁵⁷ To determine whether a REPA is reasonably

⁵⁴ Wolfram Rebuttal Test. at 9.

⁵⁵ KRS 278.300(3).

⁵⁶ *Id.*

⁵⁷ *Id.*

necessary and appropriate, the Commission analyzes whether the generation to be provided under the Bright Mountain REPA is needed and will not result in wasteful duplication.⁵⁸ “Need” requires:

[A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.

[T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management, or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.⁵⁹

“Wasteful duplication” is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”⁶⁰ To demonstrate that a proposed facility does not result in wasteful duplication, the Commission has held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.⁶¹ Although cost is a factor, selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication, but rather all relevant factors must be balanced.⁶² A utility is not required to demonstrate, however, that the financial obligations assumed under the REPA are a net-benefit to customers, or conversely, not a net-cost.

⁵⁸ See Case No. 2020-00183, *Electronic Application Of Big Rivers Electric Corporation For Approval Of Solar Power Contracts*, (Ky. P.S.C. Sept. 28, 2020), Order at 8–9 (“[B]ecause long-term PPAs are generally intended to provide needed generation capacity in lieu of constructing new generation facilities, the Commission has also applied the elements of KRS 278.020(1) when seeking to determine whether a PPA is reasonably necessary and appropriate for the proper performance by the utility of its service to the public pursuant to KRS 278.300.”).

⁵⁹ *Ky. Utils. Co. v. Pub. Serv. Comm’n*, 252 S.W.2d 885, 890 (Ky. 1952).

⁶⁰ *Id.*

⁶¹ Case No. 2005-00142, *Joint Application Of Louisville Gas And Electric Company And Kentucky Utilities Company For The Construction Of Transmission Facilities In Jefferson, Bullit, Meade, And Hardin Counties, Kentucky*, (Ky. P.S.C. Sept. 8, 2005), Order at 11.

⁶² *Ky. Utils. Co. v. Pub. Serv. Comm’n*, 390 S.W.2d 168, 175 (Ky. 1965).

IV. Argument

A. The Commission should approve the Bright Mountain REPA with Kentucky Power’s proposed terms because it satisfies the requirements set forth in KRS 278.300(3) and benefits customers.

1. The financial obligations to be assumed under the Bright Mountain REPA are for a lawful object.

Kentucky Power is a corporation organized under the laws of the Commonwealth of Kentucky. It is regulated by the Commission and, pursuant to Kentucky’s Certified Territory statutes,⁶³ possesses the exclusive right and obligation to provide electric retail service within its certified territory in parts of twenty counties in Kentucky.

The Company’s 2022 IRP identifies a need for capacity beginning in 2026, and the Bright Mountain REPA represents the Company’s first step in a process to fill the capacity and energy needs identified in its IRP.⁶⁴ Specifically, the Bright Mountain Project is expected to account for approximately 4.8 MW of accredited capacity to be included in the Company’s Fixed Resource Requirement (“FRR”) Plan starting in PJM Planning year 2027/2028.⁶⁵ Additionally, the Bright Mountain Project will provide approximately 3% of the Company’s energy needs while providing a physical, fixed-cost hedge against volatile fuel prices.⁶⁶

The financial obligations assumed by Kentucky Power under the Bright Mountain REPA are in connection with a long-term contract for the purchase of capacity and energy to meet Kentucky Power’s obligation as an electric utility providing service within its certified territory. Through the Bright Mountain REPA, Kentucky Power will provide adequate, efficient, and

⁶³ KRS 278.016–278.018.

⁶⁴ Case No. 2023-00092, *In The Matter Of: Electronic 2022 Integrated Resource Planning Report of Kentucky Power Company*, (Ky. P.S.C. Mar. 20, 2023), Kentucky Power Company’s Integrated Resource Planning Report.

⁶⁵ Wolfram Direct Test. at 7–8.

⁶⁶ *Id.* at 8.

reasonable service to its customers. As such, the Bright Mountain REPA, and Kentucky Power's financial obligations under the Bright Mountain REPA, are for a lawful object within the Company's corporate purpose.

2. The financial obligations to be assumed under the Bright Mountain REPA are necessary and appropriate.

The Bright Mountain REPA is expected to result in several customer benefits that are necessary and appropriate, in addition to the energy and capacity achievable from the Bright Mountain Project. Such benefits include the creation and monetization of RECs to offset the cost of the Bright Mountain REPA, diversity in the Company's portfolio of generation sources to protect against volatility in fuel costs, as well as localized economic development opportunities.

First, the Bright Mountain Project will create RECs that will be transferred to the Company and can be utilized to the benefit of all customers, because the value of the monetized RECs will be passed back to customers to partially offset the cost of the Bright Mountain REPA. Specifically, the REC value is approximately \$44.8 million over the life of the Bright Mountain REPA on a net present value basis.⁶⁷

Second, Kentucky Power is at a point of transition in its mix of generating assets. The Bright Mountain REPA will benefit customers by reducing risks associated with future fuel prices and environmental or regulatory policies that can impact specific types of generation resources. The Bright Mountain Project provides a physical hedge against volatile fuel prices, as the solar facility is a fuel-free resource with a fixed cost. Additionally, the Company will receive energy revenue from the Bright Mountain Project being bid into the PJM spot market, which will further offset the cost of the REPA. This benefit will flow back to customers through the fuel adjustment

⁶⁷ Coon Rebuttal Test., Confidential WP-NMC-4 (Summary Sheet).

clause (“FAC”). A diverse portfolio also provides operational flexibility as different resources have different operating characteristics.

Third, the Bright Mountain Project also will benefit the local community by generating incremental investment in Perry County that will benefit local families, businesses, and industries in that community. Bright Mountain has estimated these local benefits, which included approximately 280 FTE jobs statewide for construction and 12 FTE jobs annually for operation and maintenance of the facility.⁶⁸ Further, Bright Mountain estimated a total value of \$29.2 million in onsite and offsite industrial production and induced benefits throughout the Commonwealth during facility construction.⁶⁹

3. The generation provided under the Bright Mountain REPA is needed.

The proposed Bright Mountain REPA is integral to Kentucky Power’s larger generation strategy to address the energy and capacity needs identified in its IRP beginning in 2026. The purpose of the Bright Mountain REPA, however, is not *solely* to meet the energy and capacity needs identified in the IRP. In addition to fulfilling a portion of those needs, the addition of the Bright Mountain Project to the generation portfolio also adds diversity to the Company’s fuel mix, which can be used as a physical hedge to variable fuel costs. It also has the aforementioned economic development opportunities, along with being a “steel in the ground” resource in the Commonwealth on a reclaimed coal mine. With the Company’s continued evaluation of thermal resources to be pursued in addition to this Bright Mountain REPA, the Company is seeking

⁶⁸ Case No. 2022-00274, *Electric Application Of Bright Mountain Solar, LLC For A Certificate Of Construction For An Up To 80 Megawatt Merchant Electric Solar Generating Facility And Related Nonregulated Transmission Line Of Approximately 4 Miles In Perry County, Kentucky Pursuant to KRS 278.700 And 807 KAR 5:110*, (Ky. P.S.C. Mar. 13, 2024), Order at 18–19.

⁶⁹ Wolfram Direct Test. at 10.

approval now in an effort to address its energy and capacity needs in part, while also creating other benefits that customers cannot capture with the Company’s current portfolio.

The Commission has previously explained that “proposed solar facilities and PPAs may be justified, at least in part, if necessary to attract or retain customers in a utility’s service territory, and to diversify a utility’s portfolio to hedge against regulatory risk and energy price risks.”⁷⁰ The same is true even where the proposed project may result in a slightly higher cost.⁷¹ The Commission has consistently maintained this position. In 2014, for example, the Commission determined that a portfolio including a “combination of solar and natural gas facilities were practical” in the existing regulatory environment was reasonable, and approved the utility’s application to construct a solar photovoltaic facility, noting that it was “appropriate for Joint Applicants to diversify their generation portfolio in light of a likely future carbon-constrained world.”^{72, 73} The Commission has more recently acknowledged the value of utilities diversifying their generation portfolios, reducing substantial reliance on coal-fired generation, and contributing to economic development.⁷⁴ As a result, the generation provided for under the Bright Mountain REPA is needed.

⁷⁰ Case No. 2024-00129, *Electronic Application of East Kentucky Power Cooperative, Inc. for a Certificates of Public Convenience and Necessity and Site Compatibility Certificates for the Construction of a 96 MW (Nominal) Solar Facility in Marion County, Kentucky, and a 40 MW (Nominal) Solar Facility in Fayette County, Kentucky and Approval of Certain Assumptions and Evidences of Indebtedness Related to the Solar Facilities and Other Relief*, (Ky. P.S.C. Dec. 26, 2024), Order at 23–24.

⁷¹ See Case No. 2014-00002, *Joint Application of Louisville Gas & Electric Company and Kentucky Utilities Company for Certificates of Public Necessity for the Construction of a Combined Cycle Combustion Turbine at the Green River Generating Station and a Solar Photovoltaic Facility at the E.W. Brown Generating Station*, (Ky. P.S.C. Dec. 19, 2014), Order at 10–13 .

⁷² *Id.* at 10–12.

⁷³ In this case, the utility also sought to construct a natural gas combined-cycle combustion facility, but later rescinded that request due to a change in the utility’s service needs. See *id.* at 11.

⁷⁴ See, e.g., Case No. 2020-00183, *Electronic Application Of Big Rivers Electric Corporation For Approval Of Solar Power Contracts*, (Ky. P.S.C. Sept. 28, 2020), Order at 13; Case No. 2022-00402, *Electronic Joint Application Of Kentucky Utilities Company And Louisville Gas And Electric Company For Certificates of Public*

4. The generation provided under the Bright Mountain REPA will not result in wasteful duplication.

The generation provided under the Bright Mountain REPA will not result in wasteful duplication because the Bright Mountain Project was the least-cost, reasonable alternative for solar or wind resources to result from the 2023 All-Source RFP and part of the least-cost, reasonable generation portfolio overall. Moreover, the rate impacts resulting from the Bright Mountain REPA are minimal, as the Company has negotiated an agreement that offers opportunities to offset the contract price, as well as protect customers from unanticipated increases in construction costs. Finally, the Project is not wastefully duplicative because the Bright Mountain REPA is just one piece of a portfolio that the Company intends to round-out after continued consideration of the thermal bids resulting from the RFP.

The Project is not wastefully duplicative because the Company performed a thorough review of all reasonable alternatives during the 2023 All-Source RFP process. The Commission has indicated that the use of a “competitive process to identify the most reasonable, least-cost option for a solar facility” demonstrates a lack of wasteful duplication.⁷⁵ After the Company thoroughly reviewed and analyzed the bids submitted in response to the RFP process, it determined that the Bright Mountain REPA represents the least-cost, reasonable alternative for a physical renewable resource to address a portion of the capacity and energy needs identified in the Company’s IRP. As demonstrated by Company Witness Wolffram during the hearing of this matter, the Bright Mountain REPA is the first step in a larger process to satisfy the Company’s

Convenience And Necessity And Site Compatibility Certificates And Approval Of A Demand Side Management Plan And Approval Of Fossil Fuel-Fired Generating Unit Retirements, (Ky. P.S.C. Nov. 6, 2023), Order at 78.

⁷⁵ Case No. 2024-00129, *Electronic Application of East Kentucky Power Cooperative, Inc. for a Certificates of Public Convenience and Necessity and Site Compatibility Certificates for the Construction of a 96 MW (Nominal) Solar Facility in Marion County, Kentucky, and a 40 MW (Nominal) Solar Facility in Fayette County, Kentucky and Approval of Certain Assumptions and Evidences of Indebtedness Related to the Solar Facilities and Other Relief*, (Ky. P.S.C. Dec. 26, 2024), Order at 28.

entire capacity and energy needs going forward.⁷⁶ The Company is still evaluating potential additional resources, including thermal resources, based on a variety of factors, including when those resources can be brought online to serve Kentucky Power customers.

Indeed, the Bright Mountain REPA is the first step of this broader generation strategy that the Company has brought before the Commission for approval. The Company has taken this gradual approach to putting together a fine-tuned, diverse portfolio because circumstances required such approach to ensure the best and cheapest outcome for customers. Due to changing federal regulations with respect to Section 111(d) of the Clean Air Act, many of the thermal bids submitted to the RFP had to change their pricing or withdraw.⁷⁷ This created delays in the evaluation of such resources. Bright Mountain, however, was unaffected by the change in law, and if the Company likewise delayed moving forward with the proposal in an effort to submit all requests for new generation concurrently, it would have likely faced an increased contract price or would have lost the opportunity to contract.⁷⁸ As a result, the Company believes that the best approach to ensuring a well-rounded portfolio is to begin with securing this renewable generation resource while it works to assess the thermal resources submitted in the RFP post-Section 111(d). With this in mind, the Bright Mountain Project represents a piece of a larger generation strategy, and is part of the overall least-cost, reasonable generation portfolio to serve customers, and is not wastefully duplicative.

The Bright Mountain REPA does not duplicate any existing facilities and does not result in an excess of capacity over need, or excess investment in relation to the productivity and

⁷⁶ Wolfram Hearing Test. at 13:22-14:2.

⁷⁷ Kentucky Power Resp. AG-KIUC 2_4 (explaining the Company's decision to move forward with the REPA while still in the process of evaluating thermal resources).

⁷⁸ *Id.*

efficiency to be gained. There is a clear need to add generation resources to serve the Company's service territory in the near term both in terms of energy and capacity. The Project's accredited capacity will be included in the Company's FRR Plan beginning in PJM planning year 2027/2028. As demonstrated in Company Witness Coon's testimony, the Bright Mountain REPA would displace the need for capacity purchases the Company would otherwise make to cover the accredited amount associated with the facility, resulting in an estimated \$2.06 million net present value to customers.⁷⁹ Also, the Company will still have a need to add additional generation resources beyond this Bright Mountain REPA in the future to fully meet the capacity and energy needs identified in the 2022 IRP; this alone demonstrates the Bright Mountain REPA is not in excess of the Company's needs.

The Bright Mountain Project also brings with it benefits to the Commonwealth as a whole and, more specifically, the Company's service territory in the form of new construction and ongoing operations and maintenance jobs. The Bright Mountain Project represents a significant investment in the Company's service territory, specifically a "steel in the ground" asset in the Commonwealth.⁸⁰ These factors, in addition to the benefit of addressing a portion of the Company's energy need, demonstrate the project is necessary, reasonable, and will not result in wasteful duplication. This will continue to be true even when the Company secures the additional resources needed to meet its capacity and energy needs in the future.

⁷⁹ Coon Direct Test. at 4.

⁸⁰ Case No. 2022-00402, *Electronic Joint Application Of Kentucky Utilities Company And Louisville Gas And Electric Company For Certificates of Public Convenience And Necessity And Site Compatibility Certificates And Approval Of A Demand Side Management Plan And Approval Of Fossil Fuel-Fired Generating Unit Retirements*, (Ky. P.S.C. Nov. 6, 2023), Order at 95 ("The Commission expects our vertically integrated utilities, in furtherance of their service, and not reliability, obligations to replace generation capacity with 'steel in the ground' or a Purchase Power Agreement.").

The proposed accounting treatment of the Project will not result in excessive and unreasonable rates to customers. The first-year monthly bill impact for an average residential customer using 1,128-kwh is estimated to be \$0.29.⁸¹ Although the Company understands that any increase in rates can be challenging for its customers, the benefits associated with the Project, particularly its ability to meet the utility's energy and capacity needs to adequately serve its customers, provide customers with significant benefits. One of these benefits is that the Bright Mountain Project will provide approximately 3% of Kentucky Power's annual energy need at modest rate increase for residential customers of only 0.2%.⁸² This clearly demonstrates that although the REPA comes with a price increase for customers, it has a high value return with respect to the service that the Company is able to provide. Additionally, the Company negotiated a variety of protections to ensure customers will not bear additional costs associated with any increases in the developer's costs.⁸³

B. The Commission should approve Kentucky Power's proposal to recover costs through Tariff PPA.

Tariff PPA provides for recovery of "the annual cost of power purchase by the Company through new Purchase Power Agreements and purchased power expense from avoided costs payments to net metering customers" through element "N" of its rate calculation.⁸⁴ As such, the costs of the Bright Mountain REPA and the revenues received through the sale of RECs from the Project, are appropriately included in the calculation of, and recovered from customers through Tariff PPA, and no revisions to Tariff PPA would be necessary. The energy benefits described in Company Witness Coon's Direct Testimony will flow to customers through the FAC in the form

⁸¹ Wolfram Rebuttal Test. at 9.

⁸² Wolfram Hearing Test. at 74:1-11.

⁸³ See Yetzer Direct Test., Exhibit ZMY-4, Exhibit ZMY-5; Kentucky Power Resp. AG-KIUC 2_1.

⁸⁴ P.S.C. KY. No. 13 Original Sheet No. 31.1, "Rate" Section 1.a.

of energy revenues from the PJM spot energy market.⁸⁵ The Company believes that this is the most suitable approach to recover its costs under its existing recovery mechanisms.

The Company also has indicated that it would be willing to develop a new, separate rider to recover the costs of the REPA in the event that the Commission found such approach to be preferable.⁸⁶

C. The Commission should approve Kentucky Power’s request to create a regulatory asset to accumulate and defer the RFP costs for later recovery.

The Company incurred reasonable and necessary costs related to the development of the Bright Mountain REPA. Specifically, Kentucky Power incurred development costs associated with the implementation and execution of the 2023 All-Source RFP, development of a shortlist of projects, and negotiation and execution of the REPA. These costs include expenses the Company incurred related to internal resource support and outside services that are reasonable and necessary to develop and finalize the REPA and obtain approval of the resources.⁸⁷

KRS 278.220 empowers the Commission to establish a system of accounts to be kept by utilities subject to its jurisdiction and grants the Commission the discretion to prescribe the manner in which such accounts shall be kept. Traditionally, the Commission has exercised its discretion to approve a regulatory asset upon demonstration that the expenses to be deferred fall into one of four categories:

- (1) an extraordinary nonrecurring expenses which could not have reasonably been anticipated or included in the utility’s planning;
- (2) an expense resulting from a statutory or administrative directive;
- (3) an expense in relation to an industry

⁸⁵ *Id.* at 6.

⁸⁶ Wolfram Hearing Test. at 75:12-15.

⁸⁷ See Kentucky Power’s response to AG-KIUC 1_23 for an itemization by FERC account of the costs to be deferred (filed Sept. 25, 2024) and Attachment 1 to the Company’s response to AG-KIUC 2_11 for an itemization of all costs proposed to be deferred (filed Oct. 23, 2024).

sponsored initiative; or (4) an extraordinary nonrecurring expense that over time will result in a savings that fully offsets the costs.⁸⁸

The Commission also has indicated recently that other types of costs may be eligible to be deferred in a regulatory asset.⁸⁹

Financial Accounting Standards Board Accounting Standards Codification (“FASB Codification” or “ASC”) 980-340-25-1 requires utility management to defer and capitalize a current cost (as a regulatory asset) when in management’s judgment the cost is probable of recovery. The FASB ASC Master Glossary defines “probable” as “the future event or events are likely to occur.” Evidence of probable recovery includes orders from the regulator specifically authorizing deferral of the current cost for later review and recovery through rates.

The development costs are eligible for inclusion in a regulatory asset. First, the Company incurred these costs in connection with the Company’s efforts to implement both the Company’s 2022 IRP⁹⁰ and, in the larger context, to meet the Company’s statutory obligations to provide adequate, efficient, and reasonable service under KRS 278.030. Accordingly, the development costs should be considered an expense resulting from a statutory or administrative directive eligible for inclusion in a regulatory asset. Additionally, the development costs are eligible for inclusion because they were extraordinary and non-recurring. The Company would not have otherwise

⁸⁸ Case No. 2008-00436, *In The Matter Of: The Application of East Kentucky Power Cooperative, Inc. For An Order Approving Accounting Practices To Establish A Regulatory Asset Related To Certain Replacement Power Costs Resulting From Generation Forced Outages*, (Ky. P.S.C. Dec. 23, 2012), Order at 4.

⁸⁹ See Case No. 2024-00329, *In The Matter Of: Electronic Application Of Kentucky Utilities Company And Louisville Gas And Electric Company For An Order Approving The Establishment Of Regulatory Assets*, (Ky. P.S.C. Dec. 4, 2024), Order at 3 (“While not determinative, it is illustrative to recognize that previously the Commission has approved regulatory assets when a utility has incurred: (1) an extraordinary, nonrecurring expense which could not have reasonably been anticipated or included in the utility’s planning; (2) an expense resulting from a statutory or administrative directive; (3) an expense in relation to an industry sponsored initiative; or (4) an extraordinary or nonrecurring expense that over time will result in a saving that fully offsets the cost.” (emphasis added)).

⁹⁰ See Case No. 2023-00092, *In The Matter Of: Electronic 2022 Integrated Resource Planning Report of Kentucky Power Company*, (Ky. P.S.C. Mar. 20, 2023), Kentucky Power Company’s Integrated Resource Planning Report.

incurred these costs had it not issued the RFP as part of its statutory directives and regulatory obligations to provide adequate, efficient, and reasonable service. Further, these costs, incurred through June 2024 and totaling approximately \$0.9 million,⁹¹ are not ongoing in nature, and are not otherwise captured by the ratemaking process or included in the Company's base rates. The internal costs associated with the development of the RFP and bid analysis are incremental because they are costs directly assigned to Kentucky Power by AEP Service Corporation that would not otherwise be allocated to Kentucky Power in the normal course and captured through traditional ratemaking, as such a process for generation resources occurs on a non-recurring and extremely limited basis.⁹²

In accordance with FASB ASC 980-340-25-1 and Commission precedent, Kentucky Power requests that the Commission exercise its authority under KRS 278.220 to prescribe the manner in which the Company keeps its accounts by entering an order permitting Kentucky Power to accumulate and defer for review and recovery in its next base rate proceeding its extraordinary and nonrecurring expenses incurred by the Company to meet its statutory and regulatory obligations in the amount of \$0.9 million, and a return on the unamortized balance at the Company's approved weighted average cost of capital.

V. CONCLUSION

WHEREFORE, Kentucky Power Company respectfully requests that the Commission issue an Order:

- (1) approving the terms and conditions of the Bright Mountain REPA;

⁹¹ Kentucky Power Resp. AG-KIUC 1_23.

⁹² Kentucky Power Resp. AG-KIUC 2_11.

- (2) approving and authorizing Kentucky Power to enter into the Bright Mountain REPA;
- (3) approving and authorizing the recovery of costs of the Bright Mountain REPA through Tariff P.P.A.;
- (4) approving accounting practices to establish a regulatory asset; and
- (5) granting all other required approvals and relief.

Respectfully submitted,



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