

**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	)	Case No. 2024-00243
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	)	

**RESPONSE BRIEF OF KENTUCKY POWER COMPANY TO  
AG-KIUC'S POST-HEARING BRIEF**

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## I. INTRODUCTION

Through their Post-Hearing Brief, the Attorney General and Kentucky Industrial Utility Customers, Inc. (collectively, “AG-KIUC”) ask the Commission to ignore decades of precedent relating to generation procurement. AG-KIUC assert that the Commission should deny Kentucky Power’s application because the Bright Mountain Renewable Energy Purchase Agreement (“REPA”) supposedly is “uneconomic.”<sup>1</sup> According to AG-KIUC, “uneconomic” means that a generation resource is a net cost to customers.<sup>2</sup> If the Commission were to accept and implement AG-KIUC’s ‘no net cost’ standard, it is likely that no utility would be able to add any new generation resources. Utility-scale, no-cost energy does not exist.

Instead, the Commission should follow the law and its precedent and approve the terms and conditions of the Bright Mountain REPA as the Company proposes. The evidence before the Commission demonstrates that:

- Kentucky Power has a need for energy and capacity beginning as soon as 2026;<sup>3</sup>
- The Bright Mountain REPA was the result of Kentucky Power’s 2023 All-Source RFP, which was a thorough evaluation of alternatives to meet the Company’s coming energy and capacity needs;<sup>4</sup>
- The Bright Mountain REPA was the least-cost, reasonable alternative for a fuel-independent generation source;<sup>5</sup>
- The Bright Mountain REPA provides a physical hedge against the energy market, reducing the Company’s and its customers’ exposure to volatility in the coal and natural gas markets;<sup>6</sup>

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<sup>1</sup> AG-KIUC Post Hearing Brief at 7–8, 12.

<sup>2</sup> *Id.* at 6; Wellborn Hearing Test. at 170:19-171:6.

<sup>3</sup> Wolfram Direct Test. at 4.

<sup>4</sup> *Id.* at 13.

<sup>5</sup> *Id.*

<sup>6</sup> Wolfram Rebuttal Test. at 7.

- The Bright Mountain REPA allows the Company to avoid market capacity purchases;<sup>7</sup>
- The Bright Mountain REPA provides the Company with renewable energy certificates (“RECs”) that the Company can monetize to offset the cost of the REPA;<sup>8</sup>
- The Bright Mountain REPA increases diversity in the Company’s generation portfolio;<sup>9</sup>
- The Bright Mountain REPA supports potential economic development efforts within Kentucky Power’s service territory;<sup>10</sup> and
- The Bright Mountain REPA will provide approximately three percent of the Company’s energy needs at an estimated net cost to the average residential customer of just over a quarter per month, or an approximate 0.2% increase.<sup>11</sup>

The Bright Mountain REPA meets the requirements set forth in KRS 278.300(3) and should be approved.

**II. The Bright Mountain REPA Meets the Standards for Approval under KRS 278.300(3).**

**A. The AG-KIUC Standard of “No Net Cost” is Not the Standard for Approval under KRS 278.300(3).**

AG-KIUC argue that the Commission should reject the Bright Mountain REPA because they believe the REPA is “uneconomic.”<sup>12</sup> That is not the standard by which the Commission is required by law to review the agreement. The law is clear that for the Commission to approve the Bright Mountain REPA as an “evidence of indebtedness,” the REPA must meet the following three requirements.

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<sup>7</sup> Coon Direct Test. at 4–5.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> Wolfram Direct Test. at 9–10.

<sup>10</sup> *Id.* at 10.

<sup>11</sup> Wolfram Rebuttal Test. at 9.

<sup>12</sup> AG-KIUC Post Hearing Brief at 7–8, 12.

1. The financial obligations assumed under the Bright Mountain REPA must be for a lawful object within the corporate purposes of the utility.<sup>13</sup>
2. 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.<sup>14</sup>
3. The Bright Mountain REPA must be reasonably necessary and appropriate for that purpose.<sup>15</sup>

To determine whether a REPA is reasonably 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.<sup>16</sup> To demonstrate that the Bright Mountain REPA will not result in wasteful duplication, Kentucky Power must show that it conducted a thorough review of all reasonable alternatives.<sup>17</sup>

The review of all reasonable alternatives necessarily includes an evaluation of cost, but does not, as AG-KIUC propose, require that a utility only propose generation resources with no net cost. Indeed, establishing the ‘no net cost’ standard proposed by AG-KIUC would create an almost certain barrier to any future new generation resources in the Commonwealth, including thermal resources. AG-KIUC’s own witness acknowledged that ‘no net cost’ was not the correct standard:

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<sup>13</sup> KRS 278.300(3).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> 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.”).

<sup>17</sup> 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.

Q. Okay. And when you say “uneconomic,” you meant that it just costs money, right? It -- the --

A. The cost exceeds --

Q. -- the net cost of the project, right?

A. The net cost.

Q. So is no net cost the standard for certificates of public convenience and necessity in the Commonwealth of Kentucky?

A. I don't think it's the standard. I think it's an important consideration.

Q. The standard is lowest reasonable cost?

A. I'm not aware of the specific standard. I'm -- I'm just focused on what the economics were.<sup>18</sup>

The Commission must reject AG-KIUC's unworkable and unlawful standard and instead approve the REPA under the standards required by KRS 278.300(3) and the Commission's own precedent.

**B. The Bright Mountain REPA Meets the Actual Standard for Approval under KRS 278.300(3).**

As demonstrated by the evidence in this proceeding and as described in detail in the Company's Post-Hearing Brief,<sup>19</sup> the Bright Mountain REPA meets the standard required by KRS 278.300(3) and should be approved. The Bright Mountain REPA is a product of the Company's robust 2023 All-Source RFP.<sup>20</sup> It is the least-cost, reasonable alternative for a fuel-independent generation source.<sup>21</sup> While admittedly contributing only a small portion of the Company's need for generation moving forward, the Bright Mountain REPA will provide Kentucky Power and its customers with a physical hedge against volatility in the energy market,<sup>22</sup> the opportunity to avoid

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<sup>18</sup> Wellborn Hearing Test. at 170:19-171:6.

<sup>19</sup> Kentucky Power Post-Hearing Brief at 13-20.

<sup>20</sup> Wolfram Direct Test. at 13.

<sup>21</sup> *Id.*

<sup>22</sup> Wolfram Rebuttal Test. at 7.

market capacity purchases,<sup>23</sup> RECs that will be monetized to offset the price of the REPA,<sup>24</sup> and the opportunity to attract economic development to the Company’s service territory, at a nominal cost to customers.<sup>25</sup> The Bright Mountain REPA is a small, but important, first step in the transformation of the Company’s generation portfolio; a transformation that includes investment in “steel in the ground” in the Company’s service territory and will benefit the Company’s customers. The Bright Mountain REPA provides benefits to Kentucky Power’s customers at a reasonable cost and should be approved.

### **III. The Unsupported and Speculative Claims in AG-KIUC’s Post-Hearing Brief Should be Ignored.**

In addition to asserting the unlawful and unworkable ‘no net cost’ standard, AG-KIUC’s brief is filled with unsupported, speculative, and politically-charged claims regarding the REC sales forecast utilized by the Company, the future of Kentucky Power’s generation portfolio, and the Company’s need for “green” power. AG-KIUC’s claims find no support in, and are often directly contradicted by, the record. The Commission should disregard these claims and conclude, as the record requires, that the Bright Mountain REPA meets the requirements for approval under KRS 278.300(3).

#### **A. Kentucky Power’s REC Sales Forecast is Reasonable.**

AG-KIUC assail the REC sales forecast used by Kentucky Power to evaluate the benefits that the Bright Mountain REPA would provide customers, going so far as to assert that the “Kentucky REC market appears to be as volatile as bitcoin.”<sup>26</sup> AG-KIUC cherry-pick data, fail to comprehend the actual nature of the REC market, and ignore the record before the Commission.

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<sup>23</sup> Coon Direct Test. at 4–5.

<sup>24</sup> *Id.* at 4.

<sup>25</sup> Wolfram Rebuttal Test. at 3.

<sup>26</sup> AG-KIUC Post Hearing Brief at 10.

First, AG-KIUC provide a summary of increases and decreases in the weighted average prices of RECs generated in Kentucky to assert that because prices increase in one year and decrease in the next that the market for RECs sales is volatile and somehow that selling RECs in the market to the benefit of customers is gambling ratepayer money.<sup>27</sup> AG-KIUC, however, based these claims on cherry-picking the data in the record. AG-KIUC reference the change in weighted average REC price from the years 2018-2022.<sup>28</sup> The full record, however, includes data from 2023 and 2024 as well.<sup>29</sup> The full record shows that the weighted average price of RECs generated in Kentucky increased in 2023 and again in 2024 and the price in 2024 is more than twice the price in 2018.<sup>30</sup> Moreover, even if REC prices change year-over-year, the per-MWh Contract Price of \$83.68 is fixed; whatever REC prices end up being, their monetization will still have the effect of offsetting the Contract Price and cannot seriously be equated to gambling with ratepayer money.

Second, AG-KIUC assert that because the Commonwealth of Virginia's renewable portfolio standard was amended to require utilities there to acquire 75% of the RECs necessary to meet the standard from in-state resources, it will decrease demand for RECs produced in Kentucky and lower prices.<sup>31</sup> AG-KIUC's claims are unfounded for two reasons. First, while Kentucky Power has indicated a current intention to sell RECs from the Bright Mountain REPA into the Pennsylvania and Virginia compliance markets, the Company is not prohibited from selling the RECs into any other market in which they qualify. In fact, the ability to register the RECs for sale throughout PJM is included in the REPA.<sup>32</sup> More importantly, AG-KIUC's implication that a

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Kentucky Power Supp. Resp. AG-KIUC 1-15.

<sup>30</sup> *Id.*

<sup>31</sup> AG-KIUC Post Hearing Brief at 9.

<sup>32</sup> *See* Exh. ZMY-4, Section 10.9.

change in the Virginia renewable portfolio standard impacts the Company’s REC sales forecast ignores the record evidence that the Company’s REC sales forecast accounted for the change in Virginia law.<sup>33</sup>

Kentucky Power’s REC sales forecast is based on known, real-world circumstances and is a reasonable forecast to use in evaluating the potential benefits to customers from the sales of RECs from the Bright Mountain REPA.

**B. Kentucky Power is Not Currently Seeking Approval to Sell its Share of the Mitchell Generating Station.**

On numerous occasions in their post-hearing brief, AG-KIUC make reference to the Commission’s approval of a sale of Kentucky Power’s undivided 50% interest in the Mitchell Generating Station.<sup>34</sup> Kentucky Power has not filed an application with the Commission seeking approval to sell its share of the Mitchell Plant. In fact, on February 17, 2025, Kentucky Power filed a motion with the Commission seeking to reopen Case No. 2021-00004 and convene an informal conference “for the purpose of discussing Kentucky Power’s decision to seek the necessary regulatory approvals to make the capital investments required to continue taking capacity and energy from the Mitchell Plant after December 31, 2028.”<sup>35</sup> Regardless of the disposition of the Mitchell Plant, Kentucky Power has a need for energy and capacity in the future. The Bright Mountain REPA provides a portion of that need and serves as physical hedge to protect Kentucky Power’s customers against volatility in the energy market. The disposition of the

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<sup>33</sup> Kentucky Power Resp. AG-KIUC 2-6(e) and Attach. 1 thereto.

<sup>34</sup> AG-KIUC Post Hearing Brief at 2 n.4, 9–10.

<sup>35</sup> Case No. 2021-00004, *In the Matter of: Electronic Application Of Kentucky Power Company For Approval of A Certificate of Public Convenience And Necessity For Environmental Project Construction At The Mitchell Generating Station, An Amended Environmental Compliance Plan, And Revised Environmental Surcharge Tariff Sheets*, (Ky. P.S.C. Feb. 17, 2025) Kentucky Power Company’s Motion to Reopen Case and Request for Informal Conference at 1.

Mitchell Plant has no bearing on the fact that Kentucky Power needs the Bright Mountain REPA, the Bright Mountain REPA provides benefits to customers, and that the Bright Mountain REPA meets the requirements of KRS 278.300(3).

**C. Kentucky Power Has Never Claimed that it Needs “Green” Power from the Bright Mountain REPA.**

In their brief, AG-KIUC assert repeatedly that if Kentucky Power sells or transfers the RECs from the Bright Mountain REPA, the Company cannot consider the energy from the REPA to be “green” energy.<sup>36</sup> Kentucky Power agrees that this is how the regulations regulating claims about renewable energy use work.<sup>37</sup> The Company notes, however, that it has never claimed to be entering into the Bright Mountain REPA to make claims about renewable energy use. Instead, Kentucky Power entered into the Bright Mountain REPA because its robust 2023 All-Source RFP demonstrated that the Bright Mountain REPA is the least-cost, reasonable alternative for a fuel-independent generation source and because it would provide a physical hedge to protect the Company’s customers against volatility in the energy market.<sup>38</sup> Kentucky Power will monetize the RECs received from the Bright Mountain REPA to reduce and offset the cost of the physical hedge it provides, to the benefit of customers.<sup>39</sup> The Company has no intention of claiming “green” power from the Bright Mountain REPA because there is no need for it to do so.

**IV. CONCLUSION**

Nothing in the AG-KIUC brief changes the fact that the Bright Mountain REPA meets the standards in KRS 278.300(3), and, accordingly, the Commission should issue an Order:

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

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<sup>36</sup> AG-KIUC Post-Hearing Brief at 2, 10.

<sup>37</sup> 16 C.F.R. § 260.15.

<sup>38</sup> Wolfram Rebuttal Test. at 7–8.

<sup>39</sup> Coon Direct Test. at 4.

- (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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