

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

In the Matter of:

Electronic Application Of Kentucky Power Company)	
For Approval Of (1) A Certificate Of Public)	
Convenience And Necessity To Make The Capital)	
Investments Necessary To Continue Taking Capacity)	
And Energy From The Mitchell Generating Station)	Case No. 2025-00175
After December 31, 2028, (2) An Amended)	
Environmental Compliance Plan, (3) Revised)	
Environmental Surcharge Tariff Sheets, And (4) All)	
Other Required Approvals And Relief)	

**Kentucky Power Company's Response to Sierra Club's
Motion to Amend Briefing Schedule**

Kentucky Power Company ("Kentucky Power" or "Company") hereby files its response to and respectfully opposes Sierra Club's Motion to Amend Briefing Schedule. Kentucky Power inadvertently failed to send the confidential information contained in its responses to post-hearing data requests (the "Confidential Information") the same day that its responses to post-hearing data requests were filed. However, they were filed as soon as possible on the morning of the next business day. Sierra Club is not prejudiced by receiving the Confidential Information on the next business day because 1) the information is already in the record of the case or was testified to at the hearing, or is not essential to the approvals requested in this case, 2) Sierra Club has sufficient time to review and discuss the information in its initial brief under the existing schedule, and 3) Sierra Club also has the opportunity to address the information in its response brief under the existing schedule. Moreover, even if some extension is granted for Sierra Club's initial brief, an extension of three business days is unsupported and unnecessary, and Sierra Club does not show any reason that the deadline to file response briefs should be extended. For these reasons, which

Kentucky Power supports in greater detail below, Sierra Club's Motion to Amend Briefing Schedule should be denied.

In support of its response, Kentucky Power states as follows:

I. Sierra Club's Motion to Amend Briefing Schedule Should Be Denied.

Kentucky Power filed its responses to post-hearing data requests on Friday, December 5, 2025. Kentucky Power inadvertently failed to file the confidential portions of its responses on the same day that the responses were filed. It was not the Company's intention to do so, and it does not consider it common practice to do so. Kentucky Power, through the undersigned counsel, filed the Confidential Information by email to the Commission and counsel for each of the intervenors that executed a non-disclosure agreement (including Sierra Club) as soon as possible on the next business day, Monday, December 8, 2025, at 8:50 a.m.

The Commission's August 1, 2025 Procedural Schedule holds that "The Commission does not look favorably upon motions for continuance. Accordingly, motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause."¹ Good cause does not exist here because, as discussed in further detail below, Sierra Club is not prejudiced by receiving the Confidential Information on the morning of the next business day. Nor has Sierra Club identified any specific harm that has been suffered by this one business day inadvertent delay. The Commission should deny its Motion to Amend Briefing Schedule.

A. The Confidential Information is already contained in the record or is not essential to the approvals requested in this case.

Sierra Club is not prejudiced by receiving the Confidential Information on the morning of the next business day because the Confidential Information is already in the written record of this

¹ August 1, 2025 Procedural Schedule at ordering paragraph 10.

case or discussed at the hearing, or is not essential to the approvals requested in this case.

The Confidential Information includes:

Item 1	Attachment 1 to KPSC PHDR 6	Copy of the federal grant application seeking funds to offset the costs of addressing the structural needs of the Mitchell Unit 2 cooling tower and includes estimated costs and construction schedules associated with the selected option
Item 2	Response to SC PHDR 3; Attachment 1 to SC PHDR 3	Non-public information regarding selection of alternatives to address the structural needs of the Mitchell Unit 2 cooling tower
Item 3	Attachments 1 and 2 to KPSC PHDR 10; Response to KPSC PHDR 10; Attachment 1 to KPSC PHDR 12; Response to KPSC PHDR 12; Attachment 1 to AG-KIUC PHDR 1	Information regarding bids submitted in response to the Company's September 22, 2023 All Source Request for Proposals ("RFP")
Item 4	Attachment 1 to KPSC PHDR 7	10-year forecasted capital budget for the Mitchell Plant
Item 5	Attachment 1 to KPSC PHDR 14; Attachment 1 to SC PHDR 4	Information regarding the estimated costs of potential post-2031 environmental compliance options for the Mitchell Plant

Notably, only two out of the five items are in response to information requested by Sierra Club. Nevertheless, Items 1 and 2 contain information that was already discussed in the record of this case, and that was testified to at the hearing by Company Witness Vaughan, concerning the Company's decision about how to address the structural needs of the Mitchell Plant Unit 2 cooling tower. Sierra Club received the public and confidential versions of the hearing transcripts when they were filed on November 25, 2025, and November 26, 2025, respectively. Although Items 1 and 2 may contain some additional detail than what is already contained in the record of the case, that detail does not materially impact or supplement the information already contained in the record. Nor is the information contained in Items 1 and 2 essential to the approvals requested in

this case, *i.e.* the Company's request for a CPCN to continue receiving capacity and energy from the Mitchell Plant after 2028. The details contained in Items 1 and 2 instead pertain more directly to the CPCN that the Company has indicated it will file in 2026 with respect to the Unit 2 cooling tower.

Item 3 supplements the information already included in the record of this case, *i.e.* the responses to the Company's 2023 All Source RFP.² The supplemental information does not change or materially impact the analysis or information already in the record.

Item 4 is comprised of the 10-year capital budget for the Mitchell Plant, and supplements the information already contained in the record of this case for a shorter time period. This additional detail does not materially impact or supplement the analysis or information already contained in the record. Moreover, the 10-year capital budget is not essential to the approvals requested in this case, as the request and analysis is limited to the time period 2029 through 2031.

Item 5 merely provides a more detailed breakdown of information that was already included in the record of this case in Company Witness Vaughan's workpapers. That breakdown does not materially impact or supplement the analysis or information already contained in the record.

B. Sierra Club has sufficient time to review and discuss the Confidential Information in its initial brief under the existing schedule.

Especially given the fact that the majority of the Confidential Information is already in, or nominally supplements, the written record of this case or was discussed at the hearing, or is not essential to the approvals requested in this case, Sierra Club still has sufficient time to review the Confidential Information and discuss it in its initial brief, if necessary. Additionally, the Confidential Information is limited, and the great majority does not contain information that is

² See Company's response to KPSC 1-16.

different than or in excess of information already in the possession of Sierra Club, and it has the entirety of two business days to supplement its initial brief with the Confidential Information.

C. Sierra Club can still address the information in its response brief under the existing schedule.

The existing Procedural Schedule allows the parties to file responses to initial post-hearing briefs by December 15, 2025. While Sierra Club still has sufficient time to review the Confidential Information and address it in its initial brief, Sierra Club also has the opportunity to address the Confidential Information in its response brief, if it chooses to file one. The Procedural Schedule affords the parties six days to prepare response briefs, which Sierra Club agreed at the hearing in this case was sufficient time to respond to initial briefs. Sierra Club should therefore have sufficient time to address the Confidential Information in its response brief, to the extent it feels unable to do so in its initial brief.

Moreover, even if some extension is granted for Sierra Club's initial brief, Sierra Club does not show any reason that the deadline to file response briefs should be extended. Kentucky Power has not untimely filed its initial brief, and therefore no cause exists that warrants an extension of the deadline to file a response brief.

D. Post hearing briefs are permissive, not mandatory.

Sierra Club also is not prejudiced because post-hearing briefs are permissive, and not mandatory. Neither the statutes nor the Commission's regulations require post-hearing briefs. The post-hearing procedural schedule also makes clear that "All parties *that choose to do so may file a memorandum brief* in support of their respective post-hearing positions."³ The Confidential Information was promptly filed into the record of the case as soon as possible, and the evidentiary record is therefore complete. The Commission should not alter the procedural schedule of the case

³ November 21, 2025 Post-Hearing Procedural Schedule at ordering paragraph 3 (emphasis supplied).

to accommodate the filing of a permissive post-hearing brief in this instance because Sierra Club has failed to show how it is prejudiced by receiving the Confidential Information on the morning of the next business day, nor has it demonstrated good cause for such an extension.

II. Conclusion.

Kentucky Power understands and reaffirms the importance of the adherence to the Commission's orders and regulations. It did not intentionally cause the one business day delay in filing the confidential portions of its responses to data requests. The Company also filed the Confidential Information as soon as possible, on the morning of the next business day, at 8:50 a.m. Sierra Club is not prejudiced by receiving the Confidential Information the next business day, and it failed to show good cause to amend the briefing schedule. Sierra Club's Motion to Amend Briefing Schedule should therefore be denied.

Respectfully submitted,



Katie M. Glass
STITES & HARBISON PLLC
400 West Market Street
Suite 1800
Louisville, Kentucky 40202-3352
Telephone: (502) 587-6391
kglass@stites.com

Kenneth J. Gish, Jr.
Juan M. Dawson II (*pro hac vice*)
STITES & HARBISON PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507-1758
Telephone: (859) 226-2300
kgish@stites.com
jdawson@stites.com

COUNSEL FOR KENTUCKY POWER
COMPANY