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 After December 31, 2028, (2) An Amended Environmental Compliance Plan, (3) Revised Environmental Surcharge Tariff Sheets, and (4) All Other Required Approvals and Relief.	: : : : : : : : : :	**Case No 2025-00175**

POST-HEARING BRIEF OF
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

Kentucky Industrial Utility Customers, Inc. ("KIUC") submits this Brief in support of the Settlement Agreement filed by Kentucky Power Company ("Kentucky Power" or "Company") on November 13, 2025 ("Settlement").

BACKGROUND

On June 30, 2025, Kentucky Power filed an Application for Kentucky Public Service Commission ("Commission") approval of a Certificate of Public Convenience and Necessity ("CPCN") for capital investments necessary to continue taking 50% of the capacity and energy from the Mitchell Generating Station after December 31, 2028. The Company also sought Commission approval of: 1) its 2025 Environmental Compliance Plan ("ECP"); 2) amendments to Tariff Environmental Surcharge ("Tariff E.S.") to reflect the 2025 ECP and to recover approximately $57.8 million in Steam Electric Effluent Limitations Guidelines ("ELG") project costs; 3) deferral authority, including carrying charges, for Kentucky's approximately $20.1 million share of capital costs for the Flue Gas Desulfurization biological treatment system and supporting equipment completed and fully in-service at Mitchell as of August 5, 2024 (the "ELG

Project") and $60.4 million of non-ELG capital costs; 4) approximately $0.665 million annually in operation and maintenance expenses to operate the ELG facilities; and 5) all other required approvals.

On August 7, 2025, KIUC was granted intervention in this case. Parties served Kentucky Power with three rounds of data requests, to which the Company responded on August 25, 2025, September 22, 2025, and October 27, 2025. KIUC filed its Direct Testimony on October 13, 2025 jointly with the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("AG"). The Companies filed Supplemental Testimony on October 10, 2025. On November 13, 2025, the Company filed both its Rebuttal Testimony and the Settlement, which was entered into by Kentucky Power and KIUC (and not opposed by the AG). A hearing in this matter took place on November 18, 2025.

STANDARD OF REVIEW

KRS 278.020(1) provides *"[n]o person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010…until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction*." To obtain a CPCN, a utility must demonstrate a need for such facilities and an absence of wasteful duplication.[1]

"*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*

[1] Order, Case No. 2024-00370 (July 3, 2025) (citing *Kentucky Utilities Co. v. Public Service Comm'n*, 252 S.W.2d 885 (Ky App. 1952)).

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."[2]

"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*."[3] 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.[4] The fundamental principle of a reasonable, least-cost alternative is embedded in such an analysis.[5] Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication. All relevant factors must be balanced.[6]

KRS 278.030(2) requires that *"[e]very utility shall furnish adequate, efficient and reasonable service…"* *"Adequate service"* is defined as *"having sufficient capacity to meet the maximum estimated requirements of the customer to be served…"*[7] Similarly, under KRS 278.262, "*reliability*" is defined as *"having adequate electric generation capacity to safely deliver electric energy in the quantity, with the quality, and at the time that the utility customer demand."*

KRS 164.2807 outlines the energy policy of the Commonwealth. That policy includes an in-state supply of abundant and reliable electric generation to promote the economic health and

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[2] Id. (citing *Kentucky Utilities Co*. at 890).

[3] Id. (citing *Kentucky Utilities Co*. at 890).

[4] Order, Case No. 2024-00263 (December 23, 2024) (citing Order, Case No. 2005-00142 (Sept. 8, 2005)).

[5] Id. (citing *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 390 S.W.2d 168, 175 (Ky. 1965) and Order, Case No. 2005-00089 (Aug. 19, 2005).

[6] Id. (citing Order, Case No. 2005-00089 (Aug. 19, 2005)).

[7] KRS 278.010(14).

well-being of the citizens of the Commonwealth, and to support the current economy and future economic development.

ARGUMENT

I. The Outcome Recommended In The Settlement Is The Least-Cost, Reasonable Option To Address Kentucky Power's Capacity and Energy Needs.

The Settlement sets forth a reasonable resolution of this matter and should be approved without modification. With respect to the requested CPCN and associated costs, the case record demonstrates that: 1) Kentucky Power needs the Mitchell Generating Station capacity and energy to meet its load requirements beyond December 31, 2028; and 2) Mitchell is the least-cost, reasonable alternative to meet the Company's load requirements through at least 2031 and will not result in wasteful duplication.[8]

Mitchell is a coal-fired baseload generating station with a total nameplate capacity of 1,560 MW (Mitchell Unit 1 has a nameplate capacity of 770 MW and Mitchell Unit 2 has a nameplate capacity of 790 MW). Because Kentucky Power has a 50% share of the station, Mitchell is currently providing 780 MW of nameplate capacity to the Company's system.[9] The Settlement recommends that Kentucky Power make the investments necessary to retain this 780 MW of baseload capacity beyond December 31, 2028. In the absence of the requested relief, Kentucky Power claims that its 50% share of Mitchell will terminate on January 1, 2029, leaving the Company with a significant capacity deficit to address in the 2029-31 timeframe.[10] Without

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[8] Direct Testimony and Exhibits of Lane Kollen at 6:11-14; Testimony of Tanner S. Wolfram on behalf of Kentucky Power Company in Support of the Settlement Agreement ("Settlement Testimony") at 7:6-18; Direct Testimony of Alex E. Vaughan ("Vaughan Direct Testimony") at 3:12-19; Supplemental Direct Testimony of Alex E. Vaughan (Vaughan Supplemental Testimony") at 1:12-14.

[9] Kentucky Power Application at 2-3.

[10] Kentucky Power Application at 3; Vaughan Supplemental Testimony at 1:12-14; *See* Order, Case No. 2021-00004 (May 3, 2022); Order, Case No. 2021-00421 (May 3, 2022). *See* Kentucky Power Integrated Resource Plan, Case No. 2023-00092 (reflecting a need for at least 713 MW of summer capacity beginning in 2028 arising from the currently-required termination of Kentucky Power's 50% share of Mitchell).

Mitchell, Kentucky Power's summer capacity needs increase to approximately 600 MW beginning in 2028 and could rise as high as 880 MW if PJM adopts winter capacity requirements.[11]

Continuing to operate Mitchell benefits customers since the requested Mitchell investments are significantly lower cost than construction or acquisition of new/existing generating capacity.[12] Kentucky Power estimates that a new build generation resource could not be placed in-service until at least 2031.[13] And the Company's alternatives analysis reflects that Mitchell is the lowest-cost option as compared to entering into Power Purchase Agreements ("PPA") for thermal resources or entering into market purchases for the needed capacity and energy.[14] According to the Company's analysis, from 2029-31, the Mitchell costs total approximately $335.4 million as compared to $493.7 million under the PPA approach and $976.3 million under the market purchase approach.[15] Undertaking the proposed environmental investments also opens up several future options for Mitchell as a reliability resource beyond 2031, including converting Mitchell to co-fire with natural gas or to fully operate with natural gas.[16] Moreover, the Mitchell capacity is increasingly valuable in light of generating unit retirements and new load growth, including data center and other infrastructure growth, as well as recent rises in the PJM pricing for firm capacity.[17]

The Settlement also improves upon Kentucky Power's Application in multiple ways. First, the signatory parties agree that the $20.1 million in deferred ELG Project costs will be amortized and recovered through Tariff E.S. through 2024 rather than 2031 as initially proposed by the

[11] Application at 8-9. Based on PJM's new accreditation process, Kentucky Power's 50% share of Mitchell is estimated to be worth approximately 606 MW of annual accredited capacity. Application at 5.

[12] Kollen Testimony at 6:14-15.

[13] Vaughan Direct Testimony at 7:13-20.

[14] Vaughan Direct Testimony at 5:1-8:9.

[15] Kentucky Power Response to AG-KIUC Post-Hearing Data Request 1.

[16] Vaughan Direct Testimony at 8:10-13:8.

[17] Kollen Testimony at 6:15-20.

Company.[18] Second, Kentucky Power agrees to begin recovering the remaining Coal Combustion Residual ("CCR") Rule balance (estimated at $15.5 million as of December 31, 2025) through 2040 rather than 2028 and to depreciate the remaining CCR plant balance through 2040.[19] For the average residential customer, these Settlement provisions reduce the level of the monthly bill increase from $3.68 (or 2.02%) in the as-filed case to $2.33 (or 1.28%) under the Settlement.[20] Third, the signatory parties agree to make good faith efforts to encourage the passage of legislation to allow Kentucky Power to securitize both ELG and non-ELG costs, as well as the remaining net book value of Mitchell,[21] which is in the best interests of Kentucky Power's customers and could lower customer bills.[22] For example, Kentucky Power estimates that with securitization, the $600 million of Mitchell's net book plant value would be approximately $148 million lower cost over the 2029-31 time period.[23]

In light of these significant concessions by Kentucky Power as well as the Company's demonstration that Mitchell is the least-cost, reasonable option to satisfy its capacity and energy needs through at least 2031, the overall Settlement package is reasonable and should be approved.

[18] Settlement at 5; Settlement Testimony at 5:3-9.
[19] Settlement at 5; Settlement Testimony at 5:10-16.
[20] Settlement Testimony at 6:1-11 (citing updated Ex. LMK-4 and Ex. TSW-2).
[21] Settlement at 7; Settlement Testimony at 6:12-23.
[22] Settlement at 7; Settlement Testimony at 6:17-18.
[23] Kentucky Power Response to AG-KIUC Post-Hearing Data Request 2.

CONCLUSION

KIUC recommends that the Settlement be approved without modification.

Respectfully submitted,

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