

**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	)	

**POST-HEARING RESPONSE BRIEF OF KENTUCKY POWER COMPANY**

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

COUNSEL FOR KENTUCKY POWER  
COMPANY

## Table of Contents

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>3</b>
<b>II.</b>	<b>RESPONSE .....</b>	<b>3</b>
<b>A.</b>	<b>Sierra Club Relies on an Outdated Standard to Support its Argument.....</b>	<b>3</b>
<b>B.</b>	<b>Nothing in the Sierra Club’s Post-Hearing Brief Changes the Conclusion that the Commission Should Grant Kentucky Power’s Requested CPCN. ....</b>	<b>5</b>
	<b>1. Sierra Club’s Proposed Three-Year PPA Alternative is Unreasonable.</b>	<b>5</b>
	<b>2. Kentucky Power Thoroughly Reviewed All Reasonable Alternatives.</b>	<b>9</b>
<b>III.</b>	<b>CONCLUSION .....</b>	<b>11</b>

## **I. INTRODUCTION**

Kentucky Power Company (“Kentucky Power” or the “Company”) provides this response to the Post-Hearing Brief filed by Sierra Club.<sup>1</sup> In its Post-Hearing Brief, Sierra Club asks the Commission to rely on an outdated and unsupported interpretation of KRS 278.020 to argue that the CPCN should be denied because Kentucky Power did not evaluate Sierra Club’s fantastical alternative that ignores both economics and the law. Sierra Club’s proffered alternative is unreasonable. It would provide no additional economic benefit as compared to the reasonable alternatives evaluated by the Company. Even Sierra Club’s witness agreed that the alternative she proposed was not realistic. Additionally, Sierra Club’s proposed alternative would effectively shut the door on Kentucky Power’s participation in determining what future environmental compliance alternative would be implemented at the Mitchell Plant, including the alternative proposed by Sierra Club.

Kentucky Power conducted a thorough evaluation of all reasonable alternatives, as is required by KRS 278.020, to meet the Company’s load requirements. This evaluation shows that making the investments necessary for Kentucky Power to continue to receive capacity and energy from the Mitchell Plant is the lowest cost, reasonable option available to the Company to serve its customers after December 31, 2028, and it is not even close.

## **II. RESPONSE**

### **A. Sierra Club Relies on an Outdated Standard to Support its Argument.**

Sierra Club asserts that the Company must, to demonstrate that its proposal does not result in wasteful duplication, “show that it has undertaken a ‘*thorough review of all alternatives.*’”<sup>2</sup>

---

<sup>1</sup> The Attorney General and KIUC also filed Post-Hearing Briefs in support of the Company’s Application, as modified by the Settlement Agreement.

<sup>2</sup> Sierra Club Post-Hearing Brief at 6.

Sierra Club cites a thirteen-year-old Commission case, Case No. 2012-00063, to support this assertion.<sup>3</sup> Case No. 2012-00063, in turn, cites a 2005 Commission case, Case No. 2005-00142 to support the asserted requirement that a thorough review of *all* alternatives is required to demonstrate a lack of wasteful duplication.<sup>4</sup> Case No. 2005-00142 does not support this requirement, and the Commission has since confirmed in many orders that a utility is required instead to perform a thorough review of all *reasonable* alternatives.

Case No. 2005-00142 involved an application by Louisville Gas and Electric Company and Kentucky Utilities Company (“LG&E/KU”) for a CPCN to construct a transmission line. The Commission denied LG&E/KU’s application because it failed to “adequately consider the use of existing rights-of-way, transmission lines, and corridors.”<sup>5</sup> The Commission continued, “The Commission invites LG&E/KU to reapply for a CPCN to construct the needed transmission facilities after the Company has conducted a more thorough *review of all reasonable alternatives*, including locating the line partially or fully along existing transmission corridors.”<sup>6</sup> Case No. 2005-00142, therefore, does not mandate a review of “all alternatives” to show a lack of wasteful duplication. Instead, it requires that utilities review all *reasonable* alternatives.

The Commission’s most recent CPCN decisions confirm that in order to demonstrate a lack of wasteful duplication, a utility must “demonstrate that a thorough review of all *reasonable*

---

<sup>3</sup> *Id.*, fn 21.

<sup>4</sup> Order at 15, *In the Matter of: Application of Big Rivers Electric Corporation for Approval of its 2012 Environmental Compliance Plan, for Approval of its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of Public Convenience and Necessity, and for Authority to Establish a Regulatory Account*, Case No. 2012-00063 (Ky. P.S.C. Oct. 1, 2012).

<sup>5</sup> Order at 10, *In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky*, Case No. 2005-00142 (Ky. P.S.C. Sept. 9, 2005).

<sup>6</sup> *Id.* at 11 (emphasis added).

alternatives has been performed.”<sup>7</sup> The distinction between the current standard, used by the Commission and cited by the Company in its application, and the outdated standard cited by Sierra Club is important. The current standard requires that utilities evaluate all reasonable alternatives, whereas the outdated (and unsupported) standard cited by Sierra Club would require utilities to evaluate all alternatives, including unrealistic alternatives such as the one proposed by Sierra Club.

**B. Nothing in the Sierra Club’s Post-Hearing Brief Changes the Conclusion that the Commission Should Grant Kentucky Power’s Requested CPCN.**

**1. Sierra Club’s Proposed Three-Year PPA Alternative is Unreasonable.**

In its Post-Hearing Brief, Sierra Club’s entire position is rooted in its continued assertion that the Company’s application was deficient because it failed to evaluate Sierra Club’s proffered alternative:

---

<sup>7</sup> See, Order at 2, *In the Matter of: Electronic Application of Cannonsburg Water District for a Certificate of Public Convenience and Necessity and Financing of the Shopes Creek Road Area Water System Improvements Project*, Case No. 2025-00020 (Ky. P.S.C. June 18, 2025) (emphasis added); Order at 3, *In the Matter of: Electronic Application of McKinney Water District for the Issuance of a Certificate of Public Convenience and Necessity to Construct a Water System Improvements Project and an Order Authoring the Issuance of Securities Pursuant to the Provisions of KRS 278.020, KRS 278.300 AND 807 KAR 5:001*, Case No. 2025-00022 (Ky. P.S.C. May 14, 2025) (emphasis added); Order at 7, *In the Matter of: Electronic Application of Northern Kentucky Water District for a Certificate of Public Convenience and Necessity and Approval of Financing for the Construction of Newport Water Main Replacement Phase 1 and Phase 2*, Case No. 2025-00007 (Ky. P.S.C. Apr. 3, 2025) (emphasis added); Order at 13, *In the Matter of: Electronic Application of Kentucky Power Company for a Certificate of Public Convenience and Necessity to Replace and Upgrade Portions of the Bellefonte Station in Boyd County, Kentucky (Bellefonte Station Upgrade Project)*, Case No. 2024-00343 (Ky. P.S.C. March 7, 2025) (emphasis added); Order at 10, *In the Matter of: Electronic Application of Warren County Water District for a Certificate of Public Convenience and Necessity*, Case No. 2024-00286 (Ky. P.S.C. Feb 18, 2025) (emphasis added); Order at 2, *In the Matter of: Electronic Application of Duke Energy Kentucky, Inc. for a Certificate of Public Convenience and Necessity Authorizing the Phase Three Replacement of the AM07 Pipeline*, Case No. 2024-00189 (Ky. P.S.C. Jan. 17, 2025) (emphasis added); Order at 6, *In the Matter of: Electronic Application of Western Pulaski County Water District for a Certificate of Public Convenience and Necessity to Construct a System Improvements Project and an Order Authorizing the Issuance of Securities Pursuant to KRS 278.300*, Case No. 2024-00348 (Ky. P.S.C. Jan. 7, 2025) (emphasis added); Order at 6, *In the Matter of: Electronic Application of Kentucky Power Company for a Declaratory Order that the Proposed Installation of a New Three-Phase Reactor Circuit Breaker and Associated Construction at the Baker Substation in Lawrence County, Kentucky is an Ordinary Extension in the Usual Course of Business and Does Not Require a Certificate of Public Convenience and Necessity*, Case No. 2024-00283 (Ky. P.S.C. Dec. 27, 2024); and Order at 3, *In the Matter of: 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 of Evidences of Indebtedness Related to the Solar Facilities and Other Relief*, Case No. 2024-00129 (Ky. P.S.C. Dec. 26, 2024).

that the Company enter into a power purchase agreement with Wheeling Power in order to receive power and capacity from Mitchell only for the 2029-2031 period, without retaining its ownership interest or committing to share in long-term plant operations and maintenance costs.<sup>8</sup>

Because, as described in Section II.A. above, the current Commission standard for showing a lack of wasteful duplication is a demonstration that a thorough review of all *reasonable* alternatives has been performed, the question is whether Sierra Club's proffered alternative is reasonable. It is not.

Sierra Club's proffered alternative appears to assume that Kentucky Power will sell its interest in the Mitchell Plant to Wheeling Power Company ("Wheeling Power") and then enter into a three-year power purchase agreement ("PPA") with Wheeling Power. Nowhere does Sierra Club identify how such a PPA would be priced or whether Wheeling Power would even agree to enter into such a short-term PPA with Kentucky Power. In response to its first assertion that Kentucky Power should have evaluated Sierra Club's proposed three-year PPA alternative, the Company clarified that:

Witness Glick's suggestion ignores how a PPA would be priced and is on its face redundant. Entering into a PPA with Wheeling Power would be the same as Alternative 1 (Mitchell plant cost of service) presented in [Company Witness Vaughan's] Direct Testimony. Importantly, neither Wheeling Power, nor any other utility for that matter, would provide the Company with a PPA for service from the Mitchell Plant for an amount less than its cost of service. The real-world result of Witness Glick's proposal would actually be that the Company's customers would pay the same amount for service from the Mitchell Plant for the 2028-2031 period, but then the Company would not have access to the energy and capacity from the Plant after 2031. The Company would then be forced to acquire costly replacement capacity.<sup>9</sup>

Company Witness Vaughan confirmed at the hearing that the price for a hypothetical PPA would equal the cost of service for Mitchell (the same as Alternative 1):

I'm -- I'm telling you in my testimony and today that we discussed this with Wheeling Power, and they indicated that, yes, it would be for cost of service, right? You -- they have

---

<sup>8</sup> Sierra Club Post-Hearing Brief at 7.

<sup>9</sup> Rebuttal Testimony of Alex E. Vaughan ("Vaughan Rebuttal") at R9.

to answer to a public service commission as well as Kentucky Power does, so they – there’s not going to be a -- a discounted PPA under some sort of scenario here.<sup>10</sup>

Finally, even Sierra Club Witness Glick acknowledged during the hearing, in response to questions from the Commission Chair, that the three-year PPA was not a reasonable alternative:

Q. Okay. I don’t know how realistic any of that is.

A. Yes, I don’t either.<sup>11</sup>

The fantastical nature of the three-year PPA proposal is further highlighted by Section V of Sierra Club’s Post-Hearing Brief. Sierra Club argues in favor of converting the Mitchell Plant from a coal-fired generating station to a natural gas-fired generating station to comply with pending environmental regulations. Sierra Club does so while also advocating that the Company evaluate entering into a three-year PPA with Wheeling Power “without retaining its ownership interest or committing to share in long-term plant operations and maintenance costs.”<sup>12</sup> Unsaid in Sierra Club’s proposed, but unreasonable, alternative is that if the Company were to sell its ownership interest in the Mitchell Plant to Wheeling Power it would have zero say over how the post-2031 environmental compliance alternatives would be evaluated or implemented. Such decision would be Wheeling Power’s and Wheeling Power’s alone.

Sierra Club also seemingly advocates for a ruling committing Mitchell to switch to natural gas by 2034 so that the plant “would not need to install zero liquid discharge [“ZLD”] technology,

---

<sup>10</sup> Vaughan Hearing Testimony at 155; *see also* Company’s Response to SC PHDR 2. In its Post-Hearing Brief (at 7-8), Sierra Club provides what it refers to as “damning” evidence that Company Witness Wolfram testified inconsistently with Company Witness Vaughan regarding inquiries to Wheeling Power about a PPA. As an initial matter, because Sierra Club’s proposed three-year PPA is not a reasonable alternative, Kentucky Power need not conduct a thorough evaluation of it. Second, Company Witness Vaughan’s discussions with Wheeling Power, as described in the Company’s response to SC PHDR-2 demonstrated that the price of any PPA would be, at a minimum, the cost of service at the Mitchell Plant and would not present the economic benefit that Sierra Club Witness Glick assumes, without evidence, would occur. Because a three-year PPA would have, at best, the same economic impact of Alternative 1, but without the flexibility for after service after 2031, no further evaluation was required. Company Witness Wolfram specifically deferred to Company Witness Vaughan to explain why it was not a viable option.

<sup>11</sup> Glick Hearing Testimony at 250.

<sup>12</sup> Sierra Club Post-Hearing Brief at 7.

but would only need to treat continuing discharges at a ‘much lower’ cost;”<sup>13</sup> thereby saving Mitchell from long-term environmental costs.<sup>14</sup> As an initial matter, the 2024 ELG rules to which Sierra Club refers should not be confused with the 2020 ELG rules that required the investment at issue in this case. While Mitchell may be relieved of some of its environmental obligations if it switches to 100% natural gas, Mitchell will not be relieved of its obligation to comply with the 2020 ELG rules as that timeline for required compliance has already passed. Moreover, full conversion to a natural gas-fired generating station, including reduced ZLD environmental investments, was evaluated as a potential post-2031 environmental compliance alternative (Alternative E3) in this case.<sup>15</sup> There is, however, too much regulatory uncertainty at this point, and the compliance deadlines under the existing regulations are sufficiently distant (2031), meaning that a compliance determination at this point would be premature. As the Company noted in its Post-Hearing Brief:

the Company is not seeking Commission approval for any post-2031 environmental compliance alternative in this proceeding. If the requested approvals are granted in this case and Kentucky Power is able to continue to take service from the Mitchell Plant after December 31, 2028, the Company will file an application for Commission approval, if required, for its selected environmental compliance alternative.<sup>16</sup>

Thus, while the post-2031 view is still unclear due to the uncertainty of the associated regulations, one thing is clear – Kentucky Power cannot select to convert the Mitchell Plant to natural gas or implement any other post-2031 environmental compliance alternative if Kentucky Power does not retain its interests in the Mitchell Plant after 2028 by making the necessary investment for ELG as proposed in this case.

---

<sup>13</sup> *Id.* at 11.

<sup>14</sup> *Id.* at 9.

<sup>15</sup> Vaughan Hearing Testimony at 160–61.

<sup>16</sup> Kentucky Power Post-Hearing Brief at 23, fn 88.



Sierra Club's proffered three-year PPA alternative has no basis in economics, ignores the impacts of affiliate transaction statutes in Kentucky and West Virginia, and effectively shuts the door on the Commission evaluating the long-term solution that Sierra Club asserts is best for Kentucky Power's customers. Kentucky Power is seeking a CPCN to make the investments necessary to continue receiving capacity and energy from the Mitchell Plant after December 31, 2028. The analysis performed by the Company demonstrates that making the investment to continue receiving capacity and energy from the Mitchell Plant is the lowest cost option for the Company's customers through at least 2031 when current environmental regulations would require additional investment in the plant. The analysis of post-2031 environmental compliance options further shows that making the investments in Mitchell now gives the Company and its customers multiple, viable, cost-effective options for complying with environmental regulations in the future, including the option preferred and proposed by Sierra Club. The Company and its customers need the flexibility that the continued investment in Mitchell will provide, especially in the face of ever-changing environmental regulations. Sierra Club's proffered alternative is not a reasonable alternative and, under the Commission's current standard, the Company was not required to thoroughly evaluate it. The Commission should reject Sierra Club's recommendation.

## **2. Kentucky Power Thoroughly Reviewed All Reasonable Alternatives.**

The Application filed by the Company is the result of a thorough evaluation of all reasonable alternatives to meet Kentucky Power's impending capacity shortfall arising from the currently required termination of its interest in the Mitchell Plant no later than December 31, 2028. The evaluation took place over the four years following the Commission's decision in Case No. 2021-00004. The Company completed an integrated resource plan ("IRP") in 2022<sup>17</sup> and based

---

<sup>17</sup> Wolfram Direct Testimony at 14

on the results of the IRP, issued an all-source request for proposals (“RFP”) on September 22, 2023, seeking power purchase agreements (“PPA”) to address the Company’s capacity and energy needs.<sup>18</sup> The Company’s review of the responses was impacted by EPA’s issuance of the GHG Rule (which caused a “sharp uptick in cost” from bidders)<sup>19</sup> and a dramatic increase in capacity pricing in PJM.<sup>20</sup> Kentucky Power entered into negotiations with one of the bidders to the RFP for the acquisition of an existing generation resource, but those negotiations ultimately were terminated.<sup>21</sup>

Kentucky Power then reconsidered its interest in the Mitchell Plant in light of the changes in the market and performed a thorough and timely evaluation of all reasonable alternatives. The results of this thorough evaluation is detailed in the Company’s Post-Hearing Brief and is summarized in this table:<sup>22</sup>

---

<sup>18</sup> Wolfram Direct Testimony at 15.

<sup>19</sup> Vaughan Hearing Testimony at 152.

<sup>20</sup> See Company’s Response to KPSC PHDR 15.

<sup>21</sup> Wolfram Hearing Testimony at 67.

<sup>22</sup> Kentucky Power Post-Hearing Brief at 14-24.

<b>Alternative</b>	<b>Cost</b>	<b>Increase Over Alternative 1 (assuming Cooling Tower Option 3)</b>
Alternative 1 (As Filed)	\$ 335,405,979	N/A
Alternative 1 (Cooling Tower Option 3)	\$ 375,956,757	N/A
Alternative 1 (Cooling Tower Option 4)	\$ 356,031,775	N/A
Alternative 2 – PPAs (As-Filed)	\$ 471,440,143	\$ 95,483,386
Alternative 2 – PPAs (Updated for Most Recent PJM Capacity Pricing)	\$ 493,668,015	\$ 117,711,258
Alternative 3 – Market (As-Filed)	\$ 895,305,244	\$ 519,348,487
Alternative 3 – Market (Updated for Most Recent PJM Capacity Pricing)	\$ 976,263,975	\$ 600,307,218

The analysis is clear. Making the investments necessary to continue to receive capacity and energy from the Mitchell Plant after December 31, 2028 is by far the most cost-effective, reasonable method for Kentucky Power to meet its customers’ needs. This remains true accounting for the costs to address the structural issues at the Unit 2 cooling tower and is even more beneficial if the most recent PJM capacity pricing is used. In addition, investing now and maintaining the Company’s interest in the Mitchell Plant capacity and energy gives the Company and its customers multiple, viable, cost-effective options for providing service to its customers in compliance with upcoming environmental regulations.

### **III. CONCLUSION**

Nothing in Sierra Club’s Post-Hearing Brief changes the fact that making the investments necessary to continue to receive capacity and energy from the Mitchell Plant after December 31, 2028 is by far the most cost-effective, reasonable method for Kentucky Power to meet its

customers' needs. The Commission therefore should grant the Company's application, as modified by the Settlement Agreement.

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](mailto: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](mailto:kgish@stites.com)  
[jdawson@stites.com](mailto:jdawson@stites.com)

COUNSEL FOR KENTUCKY POWER  
COMPANY