COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

ELECTRONIC APPLICATION OF	**)**	
KENTUCKY POWER COMPANY FOR	**)**	
APPROVAL OF (1) A CERTIFICATE OF	**)**	
PUBLIC CONVENIENCE AND NECESSITY	**)**	
TO MAKE THE CAPITAL INVESTMENTS	**)**	**Case No. 2025-00175**
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	**)**	

ATTORNEY GENERAL'S POST-HEARING BRIEF

The Attorney General supports Kentucky Power Company's ("Kentucky Power" or "Company") continued ownership and utilization of the Mitchell Generating Station ("Mitchell") after December, 2028, because it is the most cost-effective way for the Company to meet its near-term capacity need.

At Hearing, Commissioner Wood asked a particularly astute question about the proposal to invest in the continued operation of Mitchell when he asked if this was the "least bad option."[1] It certainly feels that way. This is largely due to the circuitous route that the Kentucky Power and its stakeholders took to reach this resource planning

[1] See Hearing Transcript at 10:05:30.

decision. Let's look at a brief history of the recent Kentucky Power's Mitchell-related timeline.

Relevant Resource Planning History of Kentucky Power

In 2021, the Public Service Commission ("PSC" or "Commission") faced a decision that would effectively determine how long Kentucky Power could continue to utilize Mitchell to meet its capacity needs. Changes to EPA Rules dictated that investments would need to be made to meet two EPA Rules, or the plant could no longer operate. The Commission approved a request for a Certificate of Public Convenience and Necessity ("CPCN") which allowed Kentucky Power to engage in construction needed to meet the requirements of the Coal Combustion Residuals ("CCR") Rule.[2] This was necessary to allow Mitchell to continue to operate through 2028. But in that same Order, the Commission denied the Company's request to perform construction needed to meet the Effluent Limitations Guidelines ("ELG") Rule, which would have allowed Mitchell to continue to operate after 2028, though it was likely to be shut down by 2032 under the Biden Administration's EPA Rules.[3] However, Wheeling Power Company ("Wheeling"), a sister company also owned by AEP and with whom Kentucky Power co-owned Mitchell, was authorized to complete the ELG work at the plant by the West Virginia Public Service Commission. Acting on that authorization, Wheeling completed the ELG work. Thus, Mitchell will continue to operate. But this created difficult questions

[2] Case No. 2021-00004, *Electronic Application of Kentucky Power Company for Approval of a Certificate of Public Convenience and Necessity for Environmental Case Project Construction at the Mitchell Generation Station, an Amended Environmental Compliance Plan, and Revised Environmental Surcharge Tariff Sheets,* Final Order of July 15, 2021.
[3] *Id*. at 23-24.

regarding how Kentucky Power and Wheeling would resolve the Mitchell relationship at the end of 2028.

The Kentucky Commission's decision to deny Kentucky Power authorization to make the ELG investment was consistent with the proposal endorsed by the Attorney General and Kentucky Utility Industry Customers ("KIUC") in that docket.[4] The Attorney General made that endorsement for several reasons.[5] Here are two. First, around that time, American Electric Power ("AEP") had announced plans to explore the potential sale of Kentucky Power, and resolving the Mitchell issue would make such a transaction more attractive because allowing for greater resource flexibility would be attractive to a buyer. For example, if a Generation and Transmission Cooperative purchased the territory, it could have access to significantly lower financing costs for similar assets, or it may already own sufficient assets to serve the territory. Second, ending its involvement in Mitchell would allow Kentucky Power to build or buy new generating resources located *within* Kentucky. Mitchell is located fully in West Virginia and does not provide the ancillary benefits that a generating resource located in Kentucky would provide (e.g. jobs, taxes, local regulation, infrastructure, coal sales). The Attorney General, like the Commission,[6] prefers that Kentucky's utilities meet their generation

[4] Case No. 2021-00004, *Electronic Application of Kentucky Power Company for Approval of a Certificate of Public Convenience and Necessity for Environmental Case Project Construction at the Mitchell Generation Station, an Amended Environmental Compliance Plan, and Revised Environmental Surcharge Tariff Sheets,* Post-Hearing Brief of AG/KIUC of June 24, 2021.
[5] *Id*. at 13, et seq.
[6] Case No. 2023-00102, *In the Matter of: Electronic Tariff Filing of Big Rivers Electric Corporation for Approval of Proposed Changes to its Qualified Cogeneration and Small Power Production Facilities Tariffs*, Order of January 25, 2024 at 9.

needs through "steel in the ground" in Kentucky that provides the ancillary benefits mentioned above.[7]

Unfortunately, AEP did not sell Kentucky Power to a new owner who could have served ratepayers more efficiently. Nor did it build or buy new replacement resources in Kentucky.

First, AEP did not sell Kentucky Power to a new owner who could have served the ratepayers more efficiently. Instead, AEP agreed to sell Kentucky Power to Liberty Utilities Company, a Utility Company focused on a "greening the fleet" approach that would have been devastating for Kentucky Power ratepayers.[8] The Attorney General forcefully argued that this transaction was not in the interest of ratepayers and should be denied.[9] While the sale was conditionally approved by the Commission,[10] it was later denied by the Federal Energy Regulatory Commission ("FERC") who determined that the parties proposing the transaction had failed to show that the transaction "will not have an adverse effect on rates."[11] Thus, Kentucky ratepayers avoided the ill effects of having the "wrong" new owner, but they were deprived of the benefits of having the "right" new owner when no transaction took place at all.

---

[7] Importantly, contrary to erroneous reporting at the time, the AG/KIUC proposal left open the possibility that Mitchell would continue to operate through 2040, albeit with Wheeling Power Company as the primary beneficial owner. *Id*. at 14. "If West Virginia elects to operate Mitchell through 2040, then a contractual restructuring and renegotiation would be required."

[8] Case No. 2021-00481, *Electronic Joint Application of American Electric Power Co. Inc., Kentucky Power Co. and Liberty Utilities Co. for Approval of the Transfer of Ownership and Control of Kentucky Power Company*. See Post-Hearing Brief of AG/KIUC filed on April 12, 2022.

[9] *Id*. at 43.

[10] Case No. 2021-00481, *Electronic Joint Application of American Electric Power Co. Inc., Kentucky Power Co. and Liberty Utilities Co. for Approval of the Transfer of Ownership and Control of Kentucky Power Company*. See Order of May 4, 2022.

[11] FERC Docket No. EC22-25-00 at 20.

Second, Kentucky Power did not build or buy any new replacement resources in Kentucky, which would have provided ratepayers with the needed generating resources. Had they started doing so in 2021, they could have avoided the rising prices of existing plants or the increased cost and delays of building a new gas plant today that are a result of the Biden Administration's failed energy policies. Dispatchable power comes from three sources: nuclear, coal, and natural gas. When you essentially forbid two of those three resources, as the Biden Administration did, leaving only one available resource, this predictably means a decrease in supply, which in turn leads to increased prices.

It is undisputed that, without Mitchell, Kentucky Power now faces a deep capacity deficit.[12] This impending deficit has been known to Kentucky Power. In March of 2023, Kentucky Power proposed a Preferred Integrated Resource Plan ("IRP" or ("2022 IRP") which called for building 480 MW of new gas turbine generation, 800 MW of new solar generation, and 700 MW of new wind generation.[13] That plan was highly flawed for its considerable reliance on out-of-state, unreliable, intermittent resources, and even on its face, the plan failed to meet the baseline generational needs of Kentucky Power ratepayers, thereby exposing ratepayers to the volatility of the market.[14] Since the 2022 IRP, Kentucky Power has made one proposal which would have added generating resources to its Kentucky Portfolio. In July of 2024, Kentucky Power requested the authority to enter a Renewable Energy Purchase Agreement ("REPA") with Bright

[12] See Wolffram Direct Testimony at 14.
[13] Case No. 2023-00092, *In the Matter of: Electronic 2022 Integrated Resource Planning Report of Kentucky Power Company,* See Volume A of Kentucky Power's 2022 Integrated Resource Plan filed on March 20, 2023.
[14] Case No. 2023-00092, *In the Matter of: Electronic 2022 Integrated Resource Planning Report of Kentucky Power Company,* See Attorney General's Comment of October 6, 2023.

Mountain Solar, LLC.[15] The Attorney General and KIUC both intervened and raised objections to the economics of this proposal. That project would have supplied 4.8 MW of capacity in 2026 and 2027 and perhaps less thereafter due to the effects of Effective Load Carrying Capability ("ELCC") calculations in PJM. Kentucky Power acknowledges this resource would have provided neither dispatchable energy nor large amounts of accredited capacity to its system.[16] As a point of reference, the Commission noted Kentucky Power's capacity deficit will be 713 MW in 2028.[17] Ultimately, the Commission determined that the REPA was not the least cost reasonable alternative available to Kentucky Power and denied approval to the project.[18] Kentucky Power has noted that it investigated at least one other potential avenue to procure generation to serve ratepayers in Kentucky, but that investigation was not successful.[19]

In sum, Chair Hatton is absolutely correct when she says, "this feels a little late."[20] This proposal is the result of a process since 2021, that has seen multiple failed transactions, poor integrated resource planning decisions, and which has left ratepayers exposed to increasingly costly and volatile capacity and energy markets and similarly problematic generation construction markets.

---

[15] Case No. 2024-0043, *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,* Order of March 31, 2025.
[16] Vaughn Rebuttal Testimony at 7.
[17] *Id. at 15.*
[18] *Id.* at 25.
[19] See Hearing Transcript at 10:26:40.
[20] See Hearing Transcript at 10:25:30.

Kentucky Power's continued participation in Mitchell

The foregoing aside, based on the operative facts today, it is in the best interests of Kentucky Power's ratepayers to continue its active ownership interest in Mitchell, because it is the most cost-effective way for Kentucky Power to meet its capacity need in the current power supply market. With the Trump Administration's reversal of the Biden Administration's failed energy policies, the Attorney General hopes that the Mitchell Plant will run well past 2031, providing a valuable resource for many years to come.

To simply do nothing and rely on the market is not an option. The cost of relying on the market has increased substantially in recent years as reliable, dispatchable resources have been retired and unreliable, intermittent resources have taken their place. Mr. Wolffram has correctly indicated that, "at the time the RFP was issued, market energy prices were significantly lower than they are currently."[21] As described in the Attorney General's Comments on Kentucky Power's IRP, poor policy and resource planning decisions regionally have caused increased volatility in PJM (and other) markets.[22] These facts illustrate the wisdom of the Commission's requirement for Kentucky utilities to meet their capacity needs through owning generating resources as opposed to relying on a volatile market.[23]

Continuing to take the capacity it already owns by making the required

[21] Kentucky Power Responses to KPSC 1-17 and AG 1-6.
[22] Case No. 2023-00092, *In the Matter of: Electronic 2022 Integrated Resource Planning Report of Kentucky Power Company,* See Attorney General's Comment of October 6, 2023 at 17, *et seq*.
[23] Case No. 2023-00102, *In the Matter of: Electronic Tariff Filing of Big Rivers Electric Corporation for Approval of Proposed Changes to its Qualified Cogeneration and Small Power Production Facilities Tariffs*, Order of January 25, 2024 at 9.

investments in Mitchell is the least reasonable cost method for Kentucky Power to meet its capacity need through 2031 and perhaps thereafter. As explained by Company Witness Vaughn, the option to make the requested investments and receive the Mitchell capacity in 2029-2031 compares favorably to the other current, viable capacity procurement options.[24] Continuing its active utilization of Mitchell also allows Kentucky Power the valuable optionality of utilizing the plant post-2031 under a variety of scenarios.

Given the ever-changing political and regulatory landscape, preserving this optionality is a reasonable approach. For example, Sierra Club's expert witness argued that there are benefits to converting Mitchell from operating on coal to gas.[25] While there may be uncertainty about EPA's regulations in the long term, by retaining ownership in the Mitchell, Kentucky Power remains in the game as an owner of dispatchable capacity, whether it burns coal or natural gas in the future. If Kentucky Power does not retain its ownership in Mitchell, then there is certainty; Kentucky Power will soon be over 700 MW short of needed capacity with no viable alternative to replace it.

Conclusion

We cannot change the past. Closing the Big Sandy Coal Plant and taking a 50% ownership stake in the Mitchell Plant over decade ago was a mistake. Regardless, we must make the best of the situation as it exists now. The fact remains that Kentucky Power needs capacity, and a significant amount of it. The options are to build a new

[24] See Vaughn Direct Testimony at 8 and Vaughn Rebuttal Testimony generally.
[25] Direct Testimony of Devi Glick at 13, *et seq*.

plant, buy a plant, enter a purchase power agreement, buy power on the market, or continue ownership in the Mitchell Plant. The economics of these choices are clear — continuing ownership in the Mitchell Plant is the least cost option. And the potential to securitize some of the Mitchell Plant cost makes this option even more attractive.

The long-term goal for any utility serving Kentucky should be building cost-effective generating resources in Kentucky to support its infrastructure and economic development. In the near-term, given current market conditions, historical decisions and investments that have already been made, it makes sense to continue owning and utilizing Mitchell, because it is the least reasonable cost resource to meet Kentucky Power's capacity need.

Respectfully submitted,

RUSSELL COLEMAN
ATTORNEY GENERAL

J. MICHAEL WEST
LAWRENCE W. COOK
ANGELA M. GOAD
T. TOLAND LACY
JOHN G. HORNE II
ASSISTANT ATTORNEYS GENERAL
1024 CAPITAL CENTER DRIVE SUITE 200
FRANKFORT, KY40601-8204
PHONE: (502) 696-5433
FAX: (502) 573-1005
Michael.West@ky.gov
Larry.Cook@ky.gov
Angela.Goad@ky.gov
Thomas.Lacy@ky.gov
John.Horne@ky.gov

Certificate of Service and Filing

Pursuant to the Commission's Order dated March 17, 2020 in Case No. 2020-00085, and in accord with all other applicable law, Counsel certifies that, on December 10, 2025, a copy of the forgoing was served on the individuals on the e-service list.

this 10th day of December, 2025.

Assistant Attorney General