COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Electronic Application Of Kentucky Power Company For 1) A Certificate Of Public Convenience And Necessity To Construct A Mechanical Draft Cooling Tower At The Mitchell Plant 2) Approval Of Certain Regulatory And Accounting Treatments, And 3) All Other Required Approvals And Relief	))))))	Case No. 2026-00001

POST-HEARING RESPONSE BRIEF OF KENTUCKY POWER COMPANY

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I. INTRODUCTION

The record in this proceeding confirms that the Mitchell Cooling Tower Project is the least-cost, reasonable option to address the structural issues affecting the existing Mitchell Unit 2 Cooling Tower. Moreover, the Project has become even more beneficial to customers following the DOE's award of $51 million in federal funding to support the construction of the new mechanical draft cooling tower. The award substantially reduces customer costs while reinforcing the DOE's recognition of the Project's importance.

Notably, there is no meaningful dispute regarding the need for the Project, or that it is not wastefully duplicative, as the Attorney General, KIUC, and Sierra Club each acknowledge that the Project represents the least-cost, reasonable option. The remaining issues raised by the Intervenors do not undermine approval of the application. AG-KIUC's objections to the Company's requested accounting treatment, depreciation rate, and deferral authority are unsupported by Commission precedent or ignore benefits to Kentucky Power customers, and Sierra Club's requested reporting and modeling requirements are duplicative of existing requirements or unrelated to the narrow question presented in this matter.

Kentucky Power has adequately demonstrated the need for the Mitchell Cooling Tower Project and the absence of wasteful duplication, and its application should therefore be granted in its entirety.

II. RESPONSE

A. The Parties Agree That the Mitchell Cooling Tower Project is the Least-Cost, Reasonable Alternative

The Company has sufficiently demonstrated the need to address the structural issues at the Mitchell Unit 2 Cooling Tower. Addressing these structural issues is necessary because without making the repairs, the Cooling Tower will no longer be safe or useful.[1] The Cooling Tower will continue to deteriorate, and the continued operation of Mitchell Unit 2 will be at risk.[2] Additionally, constructing the Mitchell Cooling Tower Project to address these needs does not duplicate any existing facilities and does not result in an excess of capacity beyond need, or excess investment in relation to the productivity and efficiency to be gained.[3] The Company's thorough review of all four reasonable options demonstrates that the proposed Mitchell Cooling Tower Project is the least-cost, reasonable alternative.[4] The DOE award outlined in the testimony presented by Kentucky Power and discussed in its brief further set Option 3 apart as the least-cost, reasonable option to address the needs of the Unit 2 Cooling Tower.[5]

Each of the Intervenors agree that the Mitchell Cooling Tower Project is the least-cost, reasonable alternative. The Attorney General and KIUC assert that "[t]he Company's analysis makes it clear that the continued use of the existing hyperbolic-shaped Cooling Tower is not a viable, long-term option due to safety factors," and that it has "likewise demonstrated that Option 3 is the best course of action to address these issues."[6] This position is supported by the testimony of AG-KIUC Witness Kollen.[7] Sierra Club agreed, citing the $51 million DOE award granted to the Mitchell Cooling Tower Project through the Defense Production Act.[8]

Ultimately, the alternative to the Mitchell Cooling Tower Project is to leave the structural deficiencies of the Unit 2 Cooling Tower unaddressed. The parties therefore recognize that the Cooling Tower's structural deterioration must be remedied, as continued operation of the Cooling

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[1] Pizzino Direct Test. at 11.
[2] *Id*.
[3] Wolffram Direct Test. at 12.
[4] *See* Post-Hearing Brief of Kentucky Power Company at 14–16, 23–25 [hereinafter "KPCO Brief"].
[5] *See id.* at 17–19.
[6] Joint Post-Hearing Brief of Attorney General and Kentucky Industrial Utility Customers, Inc. at 5 [hereinafter "AG-KIUC Brief"].
[7] Kollen Direct Test. at 4; *see also* Kollen Hearing Test. at 232:7–12.
[8] Sierra Club's Post Hearing Brief at 2 [hereinafter "Sierra Club Brief"].

Tower without corrective action is not a viable option. Because the Mitchell Cooling Tower Project is demonstrably the best option for Kentucky Power's customers, the Commission should grant Kentucky Power's application for a CPCN.

B. AG-KIUC's Requests Concerning Accounting Treatment, Depreciation Rate, and Regulatory Assets Should Be Denied

1. CWIP Treatment of Financing Costs During Construction is Appropriate

Contrary to AG-KIUC's argument that financing costs during construction should be deferred as AFUDC and recovered through depreciation over the service life of the Plant,[9] treating such costs as CWIP is appropriate and beneficial to Kentucky Power customers. The Mitchell Cooling Tower Project represents a significant capital investment for Kentucky Power,[10] and, as addressed in Kentucky Power's post-hearing brief, CWIP treatment will allow the Company to maintain financial integrity by aligning the timing of cost recovery with the Company's capital investment for the Project. Additionally, CWIP treatment promotes the goal of gradualistic rate increases.[11] Contrary to the assertions of AG-KIUC,[12] customers will experience less of a rate increase if the Company can recover these costs at the outset of construction, rather than when the Project is completed, because the financing costs will be recovered when they are incurred and not as an increase to rate base when the Project goes into service.

The Company appreciates AG-KIUC's position that waiting until the Project is completed to recover these costs would allow TeraWulf, a prospective large-load industrial customer, to share

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[9] AG-KIUC Brief at 8.
[10] Kahn Rebuttal Test. at R8.
[11] *Id.*; *see also* Kahn Hearing Test. at 68:15–69:3, 89:6–12. *See generally* KPCO Brief at 25–28.
[12] AG-KIUC Witness Kollen's argument that AFUDC treatment results in lower costs than if CWIP were used is not true on a nominal basis. As described by Company Witness Coon, "[i]f you remove the impact of using the lower depreciation rate proposed by Mr. Kollen (3.19%) in the calculation of the revenue requirement, and instead use the 1/12th rate as filed by the Company, the revenue requirement associated with the new cooling tower after going into service is higher than the revenue requirement if CWIP treatment is used." Coon Rebuttal Test. at R7.

in the costs.[13] Although the Company expects TeraWulf to come online in 2028, the project is not yet concrete enough to displace the Company's practice, informed by its previous experience with other economic development projects, to match its currently-incurred costs to its customers.[14]

CWIP treatment is also appropriate here because it is supported by prior Commission decisions. The Commission has exercised its plenary authority to grant a return on CWIP for Kentucky Power, for example, in Case No. 2021-00004,[15] which also concerned a major construction project at Mitchell.[16] Moreover, the Company's request to recover a return on CWIP does not deviate from the approved revenue requirement calculation for the now-approved Generation Rider.[17] The Company's Generation Rider as proposed, in settlement, and in its compliance tariff filing all include a return on CWIP.[18] However, in settlement the Company agreed, and the Commission ultimately approved,[19] that the Generation Rider should include an AFUDC offset for any CWIP projects that are *eligible for such an allowance*.[20] The inclusion of this language mimics the calculation of rate base and operating income in rate cases and does not mandate that the company forego CWIP treatment.

[13] AG-KIUC Brief at 12.
[14] Elliott Hearing Test. at 29:14–30:4.
[15] Order at 24–25, *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*, Case No. 2021-00004 (Ky. P.S.C. July 15, 2021).
[16] Kahn Rebuttal Test. at R6.
[17] *Id*. at R7.
[18] *Id*.
[19] Order at 168, *In the Matter of: Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) Approval Of Tariffs And Riders; (3) Approval Of Certain Regulatory And Accounting Treatments; And (4) All Other Required Approvals And Relief*, Case No. 2025-00257 (Ky. P.S.C. Feb. 28, 2026).
[20] Because CWIP and associated AFUDC offset were already included in base rates, there was no adjustment necessary to the Generation Rider revenue requirement. Order at 163, *In the Matter of: Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) Approval Of Tariffs And Riders; (3) Approval Of Certain Regulatory And Accounting Treatments; And (4) All Other Required Approvals And Relief*, Case No. 2025-00257 (Ky. P.S.C. Feb. 28, 2026).

2. The Company's Request to Increase the Existing Depreciation Rates for the New Unit 2 Cooling Tower is Supported by Commission Practice

AG-KIUC posits that the Company's proposed depreciation rate of 8.33% should be denied because "[t]he Commission's historic practice has been to change depreciation rates only in the context of a base rate proceeding," and there is therefore "no compelling reason to increase" the depreciation rate.[21] The currently-approved depreciation rate for the Mitchell Plant was established in the Commission-approved Settlement Agreement in Case No. 2017-00179.[22] In the Company's most recent base rate case, a new depreciation study was prepared and supported a higher depreciation rate for the Mitchell Plant.[23] However, the Company proposed, and the Commission approved, maintaining the current Mitchell depreciation rate except updated to exclude interim and terminal net salvage (as agreed to in settlement).[24]

AG-KIUC's assertion that the Commission should not deviate from "historic practice" to only change such rates in base rate cases is undermined by recent Commission practice. Recently, there have been two Mitchell-related projects where the Commission has authorized unique depreciation rates, both of which are included within the environmental surcharge mechanism:

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[21] AG-KIUC Brief at 13.

[22] Order at 63–64, *In the Matter of: Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs And Riders; (4) An Order Approving Accounting Practices To Establish Regulatory Assets And Liabilities; And (5) An Order Granting All Other Required Approvals And Relief*, Case No. 2017-00179 (Ky. P.S.C. Jan. 18, 2018).

[23] Order at 49, *In the Matter of: Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) Approval Of Tariffs And Riders; (3) Approval Of Certain Regulatory And Accounting Treatments; And (4) All Other Required Approvals And Relief*, Case No. 2025-00257 (Ky. P.S.C. Feb. 28, 2026); Spanos Direct Test., Exh. JJS-1 *In the Matter of: Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) Approval Of Tariffs And Riders; (3) Approval Of Certain Regulatory And Accounting Treatments; And (4) All Other Required Approvals And Relief*, Case No. 2025-00257 (Ky. P.S.C. Aug. 29, 2025).

[24] Order at 53, *In the Matter of: Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) Approval Of Tariffs And Riders; (3) Approval Of Certain Regulatory And Accounting Treatments; And (4) All Other Required Approvals And Relief*, Case No. 2025-00257 (Ky. P.S.C. Feb. 28, 2026).

Project 22 for the CCR compliance project and Project 23 for the ELG compliance project.[25] Importantly, these rates were established to align with the Mitchell Plant's expected retirement date as is being proposed here.

Accordingly, AG-KIUC's request to keep the depreciation rate at the status quo should be denied. Utilizing a clearly stale depreciation rate will result in an increased total remaining net book value for the Mitchell Cooling Tower Project to be recovered from customers if the Plant retires in 2040.[26] While the Commission approved maintaining the rate (except updated to exclude interim and terminal net salvage) in Case No. 2025-00257, it also stated in the same order that "[i]n general, the Commission seeks to minimize future ratepayers paying for current expenses that do not benefit them."[27] The Company's proposal in this case is consistent with the Commission's stated approach. Accordingly, AG-KIUC's request should be denied.

3. The Company Withdrew Its Request to Defer Construction Costs to a Regulatory Asset

While the Company disagrees[28] with AG-KIUC's position that deferring construction costs is inconsistent with Generally Accepted Accounting Principles and the FERC Uniform System of Accounts, and therefore do not qualify for deferral to a regulatory asset,[29] the approval of the

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[25] Order at 12, *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*, Case No. 2021-00004 (Ky. P.S.C. May 3, 2022); Order at 60, *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 (Ky. P.S.C. Dec. 30, 2025).
[26] Kahn Rebuttal Test. at R9.
[27] Order at 93, *In the Matter of: Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) Approval Of Tariffs And Riders; (3) Approval Of Certain Regulatory And Accounting Treatments; And (4) All Other Required Approvals And Relief*, Case No. 2025-00257 (Ky. P.S.C. Feb. 28, 2026).
[28] Kahn Rebuttal Test. at R12.
[29] AG-KIUC Brief at 14.

Generation Rider in Case No. 2025-00257 has negated the need for the Company to seek this deferral authority.[30]

4. The Company Should Be Permitted to Defer Incremental O&M Expense and Property Tax Expense in Tariff G.R.

AG-KIUC argues that the Company should not be permitted to defer incremental O&M expense and property tax expense in Tariff G.R. because the tariff does not include those expenses.[31] With respect to incremental O&M expense, the Commission stated in Case No. 2021-00004 that:

> the Commission expects [a] jurisdictional utility seeking a CPCN to present to the Commission the engineering plans and specifications for those projects and to base its costs of construction and costs of operation estimates on data pertaining to the project it intends to construct. In order to provide the necessary information to consider a CPCN, Kentucky Power was required to perform certain preconstruction activities. Based upon review of the case record, the Commission finds that the . . . costs incurred . . . were prudently incurred preconstruction activities appropriate for the pursuit of a CPCN.[32]

The Company's request here is consistent with this language as it is for the engineering and related work to investigate alternatives, including the Worley feasibility study required for the application in this case.[33] With respect to property tax expense, the Mitchell Cooling Tower Project is scheduled for completion in 2029 with the new mechanical draft cooling tower scheduled to be in service in the second quarter of 2028.[34] The Company's request to defer incremental property tax expense is limited to these costs incurred until such time that a level can be established within

[30] Kahn Rebuttal Test. at R12.
[31] AG-KIUC Brief at 14–15.
[32] Order at 10, *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*, Case No. 2021-00004 (Ky. P.S.C. May 3, 2022) (footnote omitted).
[33] *See* Kahn Hearing Test. at 86:3–20.
[34] Kahn Rebuttal Test. at R13.

Kentucky Power's base rates.[35] Moreover, property tax expense was not included in the calculation of the rate impact for the Generation Rider.

C. Sierra Club's Extraneous Requests Should Be Denied

1. Kentucky Power Already Provides an Annual Report Concerning the Mitchell Plant

Sierra Club contends that "the Commission should direct Kentucky Power to provide actual prior year expenditures and ten-year annual forecasts for capital expenditures for the Mitchell Plant in all future IRPs and CPCNs at the Mitchell Plant, and to compare those costs to the $12.3 million average capital expenditures the Company forecast here for Mitchell Unit 2."[36] The Commission has, in fact, already imposed such a requirement in Case No. 2025-00175:

> By February 1 of each year from 2026 to 2031, Kentucky Power shall file a report:
>
> a. Identifying each capital project that was completed at the Mitchell Plant in the preceding calendar year, identifying the cost of the project and whether it was on or over budget, and briefly explaining the need for the project;
>
> b. Identifying material projects expected in the calendar year in which the report is filed, identifying the cost of the project, and briefly explaining the need for the project;
>
> c. Providing the most recent ten-year capital budget for Mitchell Plant and any capital budget variance reports for Mitchell Plant prepared for management pertaining to the proceeding calendar year; and
>
> d. Identifying its current and future plans for Mitchell Plaint based on Kentucky Power or its affiliates internal resource planning, including its post-2031 plans for Mitchell Plant, and explaining each basis for the resource decisions.[37]

Sierra Club's request that the Commission order Kentucky Power to provide this same information "in all future IRPs and CPCNs," is duplicative, unnecessary, and wasteful of the Commission's

[35] *Id*.
[36] Sierra Club Brief at 4–5.
[37] Order at 64, *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 (Ky. P.S.C. Dec. 30, 2025).

and Kentucky Power's regulatory resources, adding to the Company's cost to operate. Additionally, this forecasted information is already included in the IRP process. When developing an IRP, the Company includes ongoing capital projections. This is provided for a total of 15 years, capturing the information that Sierra Club seeks here, just not in the format that it describes.

Moreover, to the extent the Sierra Club's intention is to create the expectation that Kentucky Power never recover costs exceeding a forecasted amount, such assertion is not supported by any authority. There are a number of reasons that the actual costs of a capital project exceed the forecasted amount; actual costs in excess of a forecasted amount do not mean that the costs were imprudently incurred. Accordingly, Sierra Club's request should be denied.

2. Conducting Capacity Expansion Modelling is Not Required or Warranted in Every CPCN Application

Sierra Club also requests that "the Commission should instruct the Company to conduct capacity expansion modelling as part of any future CPCN for investments" in the Mitchell Plant.[38] Notably, there is nothing in the statutes or regulations governing applications for a CPCN that require or express a preference that utilities conduct capacity expansion modelling.[39] Moreover, capacity expansion modeling is not necessary in every instance in which a CPCN may be sought. For example, no such analysis was required in this case because the question presented to the Commission was not whether it should "continu[e] to invest" in the Mitchell Plant, but rather how to address structural issues affecting a cooling tower at the Plant.[40] Such requirement going forward would be an onerous addition to cases in which the Plant's capacity is not at issue.

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[38] Sierra Club Brief at 6.

[39] *See* KRS 278.020; 807 KAR 5:001, Sections 14 and 15.

[40] Sierra Club Brief at 6; Order at 63, *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 (Ky. P.S.C. Dec. 30, 2025).

Although Sierra Club's skepticism concerning the prudency of Kentucky Power maintaining its interest in the Mitchell Plant based on the Plant's age may lead it to believe that every CPCN concerning the Plant is an opportunity to challenge the Company's ownership of it, such desire does not make it so, and does not put the Plant's capacity at issue. Accordingly, this request should be denied.

III. CONCLUSION

The record developed in this matter clearly demonstrates that the Mitchell Cooling Tower Project is the least-cost reasonable alternative to address the structural issues at the Unit 2 Cooling Tower, as evidenced by the Attorney General, KIUC, and Sierra Club all agreeing as such. The remaining outstanding issues, such as AG-KIUC's requests concerning accounting treatment and deferral of certain expenses, and Sierra Club's proposed, forward-looking, unnecessary requirements are all, unlike Kentucky Power's requests, unsupported by any relevant authority or fail to appreciate the benefits that the Company's proposals provide to customers. Accordingly, the Commission should grant the Company's application.

Respectfully submitted,

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