

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF THE	)	CASE NO.
SERVICE, RATES AND FACILITIES OF	)	2021-00370
KENTUCKY POWER COMPANY	)	

ORDER

The Commission, on its own motion, establishes this proceeding to conduct a formal investigation of the provision of service, rates and facilities of Kentucky Power Company (Kentucky Power).

Kentucky Power is a utility as defined in KRS 278.010 (3)(a). Pursuant to KRS 278.040(2), “[t]he jurisdiction of the commission shall extend to all utilities in this state,” and “[t]he commission shall have exclusive jurisdiction over the regulations of rates and service of utilities.” The Commission’s regulation of rates and service, pursuant to KRS 278.030, ensures that utilities may only “demand, collect and receive fair, just and reasonable rates for service rendered,” and that utilities “shall furnish adequate, efficient and reasonable service.”<sup>1</sup> Furthermore, no utility may “begin the construction of any plant, equipment property or facility for furnishing”<sup>2</sup> any service regulated by the Commission until that utility obtains “a certificate that public convenience and necessity require the service or construction.” The transfer of control of “any utility furnishing utility service in this state, without having first obtained the approval of the commission . . . shall be void

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<sup>1</sup> KRS 278.020(1)(a).

<sup>2</sup> *Id.*

and of no effect.”<sup>3</sup> Additionally, Kentucky law provides that “whenever it is necessary in the performance of its duties, the commission may investigate and examine the condition of any utility subject to its jurisdiction.”<sup>4</sup> Finally, the Commission may make an investigation of a utility’s rates and service on its own motion.<sup>5</sup>

On September 3, 2020, Kentucky Power filed an application, pursuant to KRS 278.020(2) and 807 KAR 5:001, Section 15, for a Certificate of Public Convenience and Necessity (CPCN) to construct and retire certain transmission facilities in Pike and Floyd counties, Kentucky.<sup>6</sup> In a December 29, 2020 Order granting the requested relief, the Commission expressed concern regarding Kentucky Power’s planning, operation, and control of its transmission system vis-à-vis its relationship with American Electric Power Company, Inc. (AEP) Kentucky Transmission Company, Inc. (Kentucky Transco). Specifically, the Commission noted, “It would appear from the record in this matter that Kentucky Power, on its own volition or at the direction of another, plans to continue systematically transferring ownership of its transmission system in a piecemeal fashion under the auspices of the system’s rehabilitation and replacement.”<sup>7</sup> The Commission further expressed concern at “Kentucky Power’s indifference to the cost and risk attendant to transferring portions of its transmission system to affiliates in contravention

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<sup>3</sup> KRS 278.020(7).

<sup>4</sup> KRS 278.250.

<sup>5</sup> KRS 278.260.

<sup>6</sup> Case No. 2020-00062, *Electronic Application of Kentucky Power Company for a Certificate of Public Convenience and Necessity to Construct a 138 kV Transmission Line and Associated Facilities in Pike and Floyd Counties, Kentucky* (filed Sept. 3, 2020).

<sup>7</sup> *Id.*, Order (Ky. PSC Dec. 29, 2020) at 27–28

of the spirit, if not the letter of the law.”<sup>8</sup> Finally, in a subsequent Order on rehearing the Commission stated that Kentucky Power may not “permit Kentucky Transco to replace or upgrade any existing electric line and related appurtenances currently owned by Kentucky Power without prior Commission approval.”<sup>9</sup>

On January 13, 2021, the Commission issued its final Order<sup>10</sup> in Kentucky Power’s 2020 base rate case. The Commission’s Order in that matter discussed certain concerns “regarding Kentucky Power’s and AEP’s activities related to transmission investment, control and ownership in Kentucky Power’s territory,” noting its concern was neither “remote or inconsequential.”<sup>11</sup> Furthermore, the Commission expressed its concern and dismay about the significant amount of costs Kentucky Power deems to be “‘largely outside’ of the utility’s control,” even though “more than 90 percent of the expenses originate with entities who share a CEO and CFO with Kentucky Power.”<sup>12</sup> Finally, the Commission put Kentucky Power “on notice . . . to take immediate steps to materially address” the issue of increasing affiliates expenses, informing Kentucky Power that failure to do so would force the Commission to address its concerns itself.<sup>13</sup>

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<sup>8</sup> *Id.* at 28.

<sup>9</sup> *Id.*, Order (Ky. PSC June 11, 2021) at 8

<sup>10</sup> Case No. 2020-00174, *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 Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; and (5) All Other Required Approvals And Relief* (Ky. PSC Jan. 13, 2021). The January 13, 2021 Order decided all issues except those related to Net Metering and Qualifying Facilities.

<sup>11</sup> *Id.* at 60.

<sup>12</sup> *Id.* at 62–63.

<sup>13</sup> *Id.* at 63.

On February 8, 2021, Kentucky Power filed an application pursuant to KRS 278.020(1); KRS 278.183; 807 KAR 5:001, Section 14; 807 KAR 5:001, Section 15; 807 KAR 5:011; and any other applicable law, seeking CPCNs for the Mitchell Generating Station (Mitchell) and approval of an environmental compliance plan and tariffs.<sup>14</sup> Kentucky Power's proposed environmental compliance plan and CPCNs were to comply with the Environmental Protection Agency's (EPA) Coal Combustion Residuals (CCR) Rule and Steam Electric Effluent Limit Guidelines (ELG) Rule.

On April 22, 2021, AEP and Kentucky Power CEO Nicholas K. Akins announced "an ongoing review of our Kentucky assets. We expect to complete this review during 2021."<sup>15</sup> Upon analyst questioning, Mr. Akins further noted that "what we're going to find out through the strategic process is what valuation Kentucky's ownership of Mitchell in terms of valuation and its impact on an overall price would be."<sup>16</sup> Importantly, Mr. Akins's announcement of the strategic review was not specific to Kentucky Power, but rather "[AEP's] Kentucky assets."<sup>17</sup> Ostensibly, these assets include those the Commission does not regulate, such as the tens-of-millions of dollars of Kentucky Transco's rate base that Kentucky Power depends on to serve its retail customers; assets that but for AEP's use of state transmission companies, would be part of Kentucky Power's regulated rate

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<sup>14</sup> Case No. 2021-00004, *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* (filed Feb. 8, 2021).

<sup>15</sup> American Electric Power Company Inc. First Quarter 2021 Earnings Call, Thursday, April 22, 2021, 1:00 PM GMT.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

base. Additionally there are likely other assets AEP has in Kentucky, such as the extra high voltage Hanging Rock Line this Commission dealt with decades ago.<sup>18</sup>

Although Kentucky Power sought CPCNs for a plan that included compliance with both of EPA's Coal CCR and ELG Rules, the Commission's July 15, 2021 Order in the Mitchell environmental compliance case only granted a CPCN for CCR compliance. The Commission found that "Kentucky Power failed to carry its burden of proof that there is a need to construct projects to comply with ELG rules, that the proposed ELG compliance project will not create a wasteful duplication of facilities, and that the proposed ELG compliance project is reasonable and cost-effective."<sup>19</sup>

Mitchell, located in Moundsville, West Virginia, is owned by both Kentucky Power and affiliate Wheeling Power Company (Wheeling Power).<sup>20</sup> Each entity owns an undivided 50 percent interest in Mitchell, with Wheeling Power's interest being subject to the West Virginia Public Service Commission (WV PSC).<sup>21</sup> Further, "[o]n August 4, 2021, the West Virginia PSC granted Wheeling Power's request for a CPCN to construct projects to comply with both CCR and ELG rules."<sup>22</sup> The WV PSC's determination is conflicting with this Commission's Order regarding Mitchell environmental compliance. As required in the Commission's Order on rehearing in the Mitchell environmental case, Kentucky Power is required to provide status reports every ten days, with a requirement

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<sup>18</sup> See *Kentucky Power Company vs. Ky. Public Service Commission, et al.*, Ky. Ct. App., No. 86-CA-1031-MR (June 3, 1988) (unpublished).

<sup>19</sup> Case No. 2021-00004, *Kentucky Power Company* (Ky. PSC July 15, 2021), Order at 18–19.

<sup>20</sup> *Id.* Order (Ky. PSC Aug. 19, 2021) at 5.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

to detail “Kentucky Power and Wheeling Power’s plan regarding Mitchell.”<sup>23</sup> Kentucky Power’s September 13, 2021 update explained that Wheeling Power has petitioned the WV PSC regarding Mitchell, with a request that West Virginia fully fund the ELG investment in order for Mitchell to operate past 2028.<sup>24</sup>

Based on the foregoing, the Commission finds that this investigation is necessary for the Commission to satisfy its regulatory obligations, including, but not limited to, ensuring adequate, efficient and reasonable service and rates that are fair, just and reasonable. Given the current situation, caused almost exclusively by AEP’s management, the Commission is concerned about the future of Kentucky Power as a utility and about the customers it serves in Eastern Kentucky. KRS 278.260 requires a utility be provided notice not less than 20 days before the time set for a hearing. Therefore, the Commission finds that an evidentiary hearing in this case should be held at the Commission’s Office in the Richard Raff Hearing Room on October 5, 2021, at 9 a.m. Eastern Daylight Time.

In furtherance of ensuring an orderly hearing, the Commission will hold a formal, on the record, conference with parties in the Richard Raff Hearing Room on September 23, 2021, at 9 a.m. Eastern Daylight Time. The primary purpose of the formal conference will be to narrow the scope of the hearing and to ensure that Kentucky Power and any other party is adequately on notice about the items at issue for the Commission’s October 5, 2021 hearing. Understanding the sensitivity of the issues at hand in light of public statements indicating the active marketing of AEP assets for sale, as well as anticipated

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<sup>23</sup> *Id.* at Appendix A.

<sup>24</sup> *Id.*, Kentucky Power Response to Commission Staff’s Rehearing Data Requests Dated August 19, 2021 (filed Sept. 13, 2021).

or actual regulatory proceedings in another jurisdiction, the Commission will hold the September 23, 2021 formal conference on the record, but it will not be live-streamed or open to the public.

The Commission will entertain any party's petition for confidentiality after the conclusion of the formal conference to determine the applicability of relevant exclusions to Kentucky Open Records Act to the record of that proceeding. Finding any or all of the formal conference to not fall under an exclusion to the Kentucky Open Records Act, the Commission will make public the record of the formal conference.

The Commission will further incorporate the record of certain prior proceedings into this investigation. As noted above, the basis for the Commission's concerns span a number of relatively recent matters before this body. Thus, the Commission will incorporate by reference the entirety of the records in the following cases: Case No. 2020-00062, Case No. 2020-000174, and Case No. 2021-00004. Furthermore, the Commission finds that any party to any of the above-mentioned cases shall be made parties to this case by merely filing a notice in this matter informing the Commission of their interest. The Commission understands that making those entities parties to this case through this order and requiring them to withdraw should they choose not to participate may add additional and unnecessary cost and work. Nevertheless, the parties to those other matters created the case record through their involvement in those cases. As such, they should be offered an opportunity to participate in this case should they choose to do so. Ultimately, regardless of the parties to this case, this is the Commission's investigation and as an administrative agency, it has the ability and duty to

weigh all evidence and arguments provided to it. Therefore, the involvement of any of these parties in this matter will not prejudice Kentucky Power's rights under the law.

Lastly, Kentucky Power recently noted its intent "to explore [the issues regarding Mitchell and Wheeling Power] and will work to bring the Commission a recommendation on how to handle the Mitchell operating agreement in a new docket for review."<sup>25</sup> The Commission appreciates Kentucky Power's interest in exploring paths forward that are to the ultimate benefit of its customers and the Commonwealth. Insofar as the Commission doesn't provide a path forward by order in this matter, Kentucky Power should use this docket to propose recommendations on any of the subjects mentioned, or related to those discussed, herein. Should deviations from regulations be necessary to accommodate requests or applications made in this docket, the Commission will give due consideration to any motions requesting such deviations.

IT IS THEREFORE ORDERED that:

1. This proceeding is initiated to investigate the provision of service, rates, and facilities of Kentucky Power.
2. A formal conference in this matter shall be held on Thursday, September 23, 2021, at 9 a.m. Eastern Daylight Time, in the Richard Raff Hearing Room at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, to discuss the AEP strategic review of Kentucky assets; ownership of Mitchell, including whether Kentucky Power has considered selling its interest to Wheeling Power Company and finding other capacity; the need for a CPCN even if WV PSC approves Wheeling's

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<sup>25</sup> *Id.*

petition; transmission planning and operation; and any other related matter. Commission Staff will contact parties to indicate who should be present from each party.

3. Pursuant to KRS 278.360 and 807 KAR 5:001, Section 9(9), a digital video transcript shall be made of the formal conference and filed in the record of this case.

4. An in-person evidentiary hearing in this matter shall be held on Tuesday, October 5, 2021, at 9 a.m. Eastern Daylight Time, in the Richard Raff Hearing Room at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky.

5. Kentucky Power shall give notice of the hearing in compliance with 807 KAR 5:001, Section 9(2)(b). In addition, the notice of hearing shall include the following statements: "This hearing will be streamed live and may be viewed on the PSC website, [psc.ky.gov](http://psc.ky.gov)"; and "Public comments may be made at the beginning of the hearing. Those wishing to make oral public comments may do so by following the instructions listed on the PSC website, [psc.ky.gov](http://psc.ky.gov)." At the time the notice is mailed or publication is requested Kentucky Power shall forward a duplicate of the notice and request to the Commission.

6. Pursuant to KRS 278.360 and 807 KAR 5:001, Section 9(9), a digital video transcript shall be made of the hearing.

7. Within three business days, counsel for Kentucky Power shall make an entry of appearance in this matter.

8. The Commission's Executive Director shall serve a copy of this Order on the following entities: the Attorney General of the Commonwealth of Kentucky, by and through his office of Rate Intervention; Kentucky Industrial Utility Customers; Walmart Inc.; Kentucky Solar Industries Association, Inc.; Mountain Association, Kentuckians for

the Commonwealth, and Kentucky Solar Energy Society, collectively; SWVA Kentucky, LLC; and the Sierra Club.

9. Should any of the entities identified in ordering paragraph 8 above seek to participate in this matter as a party, they shall file notice with the Commission indicating their interest to be made a party along with an entry of appearance of counsel and a written statement pursuant to 807 KAR 5:001, Section 8(9), that:

a. Certifies that it, or its agent, possesses the facilities to receive electronic transmissions; and

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

10. Any entity that files the notice permitted by order paragraph 9 shall be entitled to the full rights of a party and shall be served with the Commission's orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of their notice.

By the Commission



ATTEST:

  
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Executive Director

\*Brett Mattison  
COO  
Kentucky Power Company  
1645 Winchester Avenue  
Ashland, KY 41101

\*Kentucky Power Company  
1645 Winchester Avenue  
Ashland, KY 41101

\*Kentucky Power Company  
Kentucky Power Company  
1645 Winchester Avenue  
Ashland, KY 41101