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April 15, 2014

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**HAND DELIVERED**

Jeff R. Derouen  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, KY 40602-0615

RECEIVED

APR 15 2014

PUBLIC SERVICE  
COMMISSION

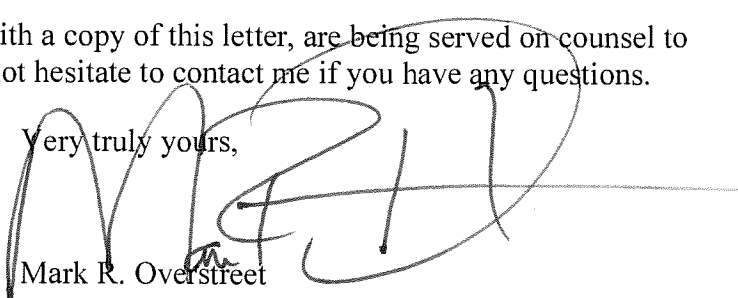
**RE: Case No. 2012-00578 (Post-Case Correspondence File)**

Dear Mr. Derouen:

Enclosed please find a copy of the application of American Electric Power Service Corporation, on behalf of Wheeling Power Company and AEP Generation Resources Inc., filed at the Federal Energy Regulatory Commission seeking authority under Section 203 of the Federal Power Act for the transfer by AEP Generation Resources Inc. of its interest in the Mitchell Power Generating Facility to Wheeling Power Company.

A copy of the FERC filing, along with a copy of this letter, are being served on counsel to the parties in the above matter. Please do not hesitate to contact me if you have any questions.

Very truly yours,

  
Mark R. Overstreet

MRO

cc: Jennifer B. Hans  
Michael L. Kurtz  
Shannon Fisk  
Kristin A. Henry

RECEIVED

APR 15 2014

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

PUBLIC SERVICE  
COMMISSION

Wheeling Power Company ) Docket No. EC14-\_\_-000  
AEP Generation Resources Inc. )

APPLICATION FOR AUTHORIZATION  
TO TRANSFER JURISDICTIONAL ASSETS  
UNDER SECTION 203 OF THE FEDERAL POWER ACT

American Electric Power Service Corporation (“AEPSC”), on behalf of its affiliates, Wheeling Power Company (“Wheeling”) and AEP Generation Resources Inc. (“AEP Generation Resources,” and collectively with AEPSC, the “Applicants”), hereby submits this application (“Application”) pursuant to Sections 203(a)(1)(A),(B), and (D) of the Federal Power Act (“FPA”), 16 U.S.C. §§ 824b(a)(1)(A), (B), and (D) (2006), and Part 33 of the Regulations of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. Part 33 (2013). The Applicants seek any and all necessary authorizations and approvals for an internal asset transfer (the “Transaction”) under which AEP Generation Resources, an indirect wholly-owned subsidiary of American Electric Power Company, Inc. (“AEP”), will transfer its interest in the Mitchell Power Generating Facility (“Mitchell Plant”), described below, to Wheeling, which also is a wholly-owned subsidiary of AEP. The Applicants also respectfully request that the Commission grant limited waivers of certain Part 33 filing requirements. As the Applicants demonstrate below, the proposed Transaction is consistent with the public interest and should be approved without a hearing.

## **I. BACKGROUND**

### **A. Description of the Applicants and Related Parties**

#### **1. American Electric Power Company, Inc. and AEPSC**

AEP is a multi-state electric utility holding company system whose operating companies provide electric service at wholesale and retail in parts of eleven states: Appalachian Power Company (“APCo”) serves customers in Virginia and West Virginia (and one wholesale requirements customer in Tennessee); Kentucky Power Company (“KPCo”) serves retail and wholesale customers in Kentucky; Ohio Power Company (“OPCo”) provides service to retail customers in Ohio; Indiana Michigan Power Company (“I&M”) serves retail and wholesale customers in Indiana and Michigan; Kingsport Power Company (“Kingsport”) serves retail customers in Tennessee; Wheeling serves retail customers in West Virginia; Southwestern Electric Power Company (“SWEPCO”) serves customers in Arkansas, Louisiana, and the Southwest Power Pool, Inc. (“SPP”) portion of Texas; Public Service Company of Oklahoma (“PSO”) serves customers in Oklahoma; and AEP Texas Central Company and AEP Texas North Company serve customers in the Electric Reliability Council of Texas (“ERCOT”) portion of Texas.

Those AEP operating companies located within the footprint of PJM Interconnection, L.L.C. (“PJM”) are referred to as the “AEP East” companies (OPCo, APCo, KPCo, I&M, Kingsport, and Wheeling), and the operating companies that are located within the SPP footprint (SWEPCO and PSO) are referred to as the “AEP SPP” companies. PJM and SPP are Commission-approved Regional Transmission Organizations (“RTOs”), and the AEP East and AEP SPP companies have transferred

functional control of their transmission facilities to PJM and SPP, respectively. AEP utilities in ERCOT have transferred functional control of their transmission facilities to the ERCOT RTO. The AEP SPP and ERCOT utilities will be unaffected by the Transaction.

AEPSC is a service company that provides management and professional services to AEP and its utility operating subsidiaries.

## **2. Wheeling**

Wheeling is a public utility that engages in the transmission and distribution of electric power. It serves approximately 41,000 retail customers in northern West Virginia. Wheeling does not serve any wholesale customers. Wheeling owns about 306 circuit miles of transmission lines and about 1,515 miles of distribution lines.

Wheeling's transmission facilities are under the operational control of PJM, and transmission service is provided over such facilities by PJM pursuant to the PJM Open Access Transmission Tariff ("PJM OATT").

## **3. AEP Generation Resources**

AEP Generation Resources is an indirect, wholly-owned subsidiary of AEP. AEP Generation Resources was formed to acquire, own, and operate certain generation assets from OPCo as a result of retail restructuring in Ohio ("Corporate Reorganization"). The Commission approved the transaction pursuant to which these assets were transferred in *Ohio Power Co.*, 143 FERC ¶ 61,075 (2013), *order on reh'g*, 146 FERC ¶ 61,016 (2014) ("*Ohio Power*"). Among the assets transferred to AEP Generation Resources was the Mitchell Plant, including assets and liabilities associated with that plant. The Commission also approved a subsequent transaction pursuant to which an undivided fifty

percent interest in the Mitchell Plant was transferred to KPCo. *Appalachian Power Co.*, 143 FERC ¶ 61,074 (2013) (“*Appalachian Power*”).

The Corporate Reorganization transactions approved in *Ohio Power* and *Appalachian Power* closed on December 31, 2013. Since then, AEP Generation Resources has been operating most of the generating facilities that were transferred from OPCo. AEP Generation Resources was granted market-based rate authority by the Commission in *AEP Generation Resources Inc.*, Docket No. ER13-1896, Letter Order issued December 6, 2013. AEP Generation Resources has no franchised service territory and no retail customers. As discussed below, AEP Generation Resources currently has one wholesale requirements customer, Wheeling, that is served under a contract that will terminate if the Transaction is consummated. AEP Generation Resources also provides capacity and energy to OPCo under a short-term agreement that enables OPCo to serve its non-shopping retail customers and to fulfill its capacity obligations in PJM. That agreement, which will run through May 31, 2015, was approved by the Commission in *AEP Generation Resources Inc.*, 145 FERC ¶ 61,275 (2013).

#### **B. The Mitchell Plant**

The Mitchell Plant is a two-unit coal-fired power plant located in Moundsville, West Virginia, with an average annual capacity rating of 1,560 MW. Currently, KPCo and AEP Generation Resources each own an undivided fifty-percent interest in the station. KPCo operates the Mitchell Plant pursuant to the Mitchell Plant Operating Agreement that was approved by the Commission, subject to certain conditions, in *Appalachian Power Co.*, 145 FERC ¶ 61,270 (2013). A compliance filing that was

submitted by KPCo and AEP Generation Resources on January 22, 2014, is pending before the Commission as of the filing of this Application.

## **II. THE TRANSACTION**

### **A. Background**

The purpose of the Transaction is for AEP Generation Resources to transfer its undivided fifty-percent interest in the Mitchell Plant and all appurtenant facilities (collectively, the “Mitchell Facilities”) to Wheeling.

#### **1. The Prior Proceedings**

As part of the original Corporate Reorganization plan, AEP Generation Resources had proposed to transfer to APCo an undivided fifty-percent interest in the Mitchell Facilities immediately following AEP Generation Resources’ acquisition of the facilities from OPCo. That transfer was approved in *Appalachian Power*. However, on July 13, 2013, the State Corporation Commission of Virginia (“Virginia Commission”) issued an order that denied APCo’s request to acquire the interest in the Mitchell Facilities.<sup>1</sup> As a result, AEP Generation Resources retained the fifty-percent interest that otherwise would have been transferred to APCo.

Also in connection with the Corporate Reorganization, APCo and Wheeling proposed a transaction under which Wheeling would be merged with and into APCo, through a transaction that was expected to take place on or about December 31, 2013.<sup>2</sup> By delegated Letter Order issued on April 29, 2013, in *Appalachian Power Co.*,

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<sup>1</sup> The Kentucky Public Service Commission approved KPCo’s request to obtain an undivided fifty percent interest in the Mitchell Plant.

<sup>2</sup> See Application for Authorization to Transfer Jurisdictional Assets under Section 203 of the Federal Power Act, *Ohio Power Co.*, Docket No. EC13-26 (Oct. 31, 2012).

143 FERC ¶ 62,072 (2013), the Commission approved the Wheeling-APCo merger. By order issued on July 31, 2013, the Virginia Commission approved the Wheeling-APCo merger, subject to certain conditions. However, by order issued on December 13, 2013, the Public Service Commission of West Virginia (“West Virginia Commission”) deferred ruling on the merger, subject to the requirement that APCo and Wheeling undertake an evaluation of alternatives to serve Wheeling’s retail customers.<sup>3</sup> As a result of the West Virginia Commission’s ruling, the Wheeling-APCo merger was not consummated on December 31, 2013, as had been contemplated.

As the applicants in the prior proceedings discussed in their filings, and as the Commission recognized in *Ohio Power*, if the Wheeling-APCo merger did not close by December 31, 2013, then a wholesale contract pursuant to which OPCo had agreed to serve Wheeling’s full load requirements (“the Wheeling Contract”) would be assigned to AEP Generation Resources.<sup>4</sup> The Commission found that the assignment of the Wheeling Contract to AEP Generation Resources, should it occur, would not adversely affect wholesale rates.<sup>5</sup> On February 28, 2014, the Commission issued an order granting AEP Generation Resources the authority to make sales to Wheeling under a revised Wheeling Contract through an initial term of December 31, 2014.<sup>6</sup>

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<sup>3</sup> Public Service Commission of West Virginia, Case No. 11-1775-E-P (Dec. 13, 2013) (“West Virginia Commission Order”).

<sup>4</sup> See *Ohio Power* at PP 33-34.

<sup>5</sup> *Id.* at P 41.

<sup>6</sup> *AEP Generation Resources Inc.*, 146 FERC ¶ 61,141 (2014).

## **2. The Updated Plan to Serve Wheeling's Retail Customers**

On March 4, 2014, APCo and Wheeling submitted to the West Virginia Commission their "Updated Plan to Serve the Load of Wheeling Power Company and Petition for the Commission's Consent and Approval to Implement the Updated Plan" ("Updated Plan," included herewith in Exhibit L). As required by the West Virginia Commission Order, the Updated Plan reflects the companies' assessment of the options available to serve Wheeling's retail customers and their recommendation that the West Virginia Commission approve the transfer of AEP Generation Resources' interest in the Mitchell Plant to Wheeling as the best available option. The companies proposed that the transfer price be the net book value of the Mitchell Facilities at the time of closing. At pages 5-8 of the Updated Plan, the companies detailed their reasons why the West Virginia Commission should approve the Transaction, including that the Mitchell Plant is a high quality asset with ready access to fuel and it has the environmental controls needed to ensure compliance with recent rules adopted by the U.S. Environmental Protection Agency. In response to the filing of the Updated Plan, on April 8, 2014, the West Virginia Commission issued a procedural order that convened an evidentiary hearing to be held in mid-August of this year, with final briefs due to be submitted on September 17, 2014.<sup>7</sup>

With Wheeling's acquisition of an interest in the Mitchell Plant, the companies recommended that their proposed merger continue to be deferred pending further

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<sup>7</sup> See *Appalachian Power Co., Petition for acquisition of Mitchell Plant by Wheeling Power Co.*, Commission Order, Case No. 14-0546-E-PC (Apr. 8, 2014). A copy of the order is included in Exhibit L.



regulatory proceedings. Finally, the companies stated that, once the Transaction closes, AEP Generation Resources and Wheeling will terminate the Wheeling Contract.

**B. Description of the Transaction**

As just noted, AEP Generation Resources' interest in the Mitchell Facilities will be transferred at net book value. Immediately upon closing, KPCo and Wheeling each will own an undivided fifty-percent interest in the Mitchell Plant and KPCo will continue to operate the plant.

The Mitchell Plant transfer will be effectuated through a series of near-simultaneous transactions designed to ensure that the transfer is accomplished without producing unintended tax results. First, AEP Generation Resources will form a new wholly-owned subsidiary (referred to as "NEWCO Wheeling"). AEP Generation Resources will contribute to NEWCO Wheeling its interest in the Mitchell Facilities. This will be accomplished through the Asset Contribution Agreement between AEP Generation Resources and NEWCO Wheeling, a form of which is included in Exhibit I. AEP Generation Resources will then distribute its shares of NEWCO Wheeling to an intermediate holding company, AEP Energy Supply LLC ("AEP Energy Supply"), and AEP Energy Supply will distribute those shares to AEP, the parent company.<sup>8</sup> In the final step, NEWCO Wheeling will merge with and into Wheeling, with Wheeling being the surviving entity. This will be accomplished through the Agreement and Plan of Merger of Wheeling and NEWCO Wheeling, a form of which also is attached hereto as

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<sup>8</sup> The Applicants do not believe that these intermediate steps trigger FPA Section 203(a)(2). Nonetheless, to the extent Section 203(a)(2) is triggered, Section 33.1(c)(2)(iii) provides a blanket authorization for a holding company to acquire any security of a subsidiary company within the holding company system. 18 C.F.R. § 33.1(c)(2)(iii).

Exhibit I. The end result will be Wheeling's ownership of an undivided fifty percent interest (approximately 780 MW) in Mitchell Units 1 and 2 and half of the various assets and liabilities associated with the Mitchell Plant.

The Applicants' plan is to close the Transaction shortly after receiving all requisite regulatory approvals. The Applicants request that the Commission approve the Transaction within 180 days, as provided under 18 C.F.R. § 33.11.

**C. Jurisdictional Facilities to Be Transferred**

The jurisdictional facilities that will be transferred to Wheeling are the undivided 50% interest in the Mitchell Facilities currently held by AEP Generation Resources.<sup>9</sup>

**D. Contracts Related to the Transaction**

Exhibit I contains the forms of the Agreement and Plan of Merger and the Asset Contribution Agreement between AEP Generation Resources and NEWCO Wheeling. The distribution of the shares of NEWCO Wheeling from AEP Generation Resources to its direct parent, and from its direct parent to AEP, will be carried out pursuant to board resolutions.

**III. THE TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST**

Section 203 of the FPA provides that the Commission will authorize a proposed transaction under Section 203 if it determines that the transaction "will be consistent with the public interest."<sup>10</sup> The Commission historically has reviewed three factors when

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<sup>9</sup> The only transmission facilities involved are the limited, generation-related interconnection facilities associated with the Mitchell Plant.

<sup>10</sup> 16 U.S.C. § 824b(a)(4). The disposition of the Mitchell Facilities by AEP Generation Resources requires prior approval under Section 203(a)(1)(A), 16 U.S.C. § 824b(a)(1)(A). The transfer of the generating facilities to Wheeling requires prior approval under Section 203(a)(1)(B) and (D), 16 U.S.C. § 824b(a)(1)(B) and (D).

evaluating proposed transactions under the Section 203 public interest standard: (i) the effect on competition, (ii) the effect on rates, and (iii) the effect on regulation.<sup>11</sup>

Additionally, Section 203(a)(4) states that the Commission must approve a proposed transaction if it finds that, in addition to being in the public interest based on the three factors above, it “will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless that cross-subsidization, pledge, or encumbrance will be consistent with the public interest.”<sup>12</sup> As shown below, the Transaction is consistent with the public interest under the Commission’s applicable standards.

**A. No Adverse Effect on Competition**

Order No. 642 identifies two types of analyses relevant to determining whether a transaction subject to Commission approval under Section 203 may pose potential adverse effects on competition: horizontal market power analysis and vertical market power analysis.<sup>13</sup> The Commission consistently has held that internal corporate reorganizations that combine assets within the corporate family do not have adverse effects on competition.<sup>14</sup> As with the prior transactions approved by the Commission in *Ohio Power* and *Appalachian Power*, that is the case here.

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<sup>11</sup> *Revised Filing Requirements Under Part 33 of the Commission’s Regulations*, Order No. 642, 65 Fed. Reg. 70983 (Nov. 28, 2000), FERC Stats. & Regs. ¶ 31,111 at 31,872-73 (2000) (“Order No. 642”), *order on reh’g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001).

<sup>12</sup> 16 U.S.C. § 824b(a)(4).

<sup>13</sup> Order No. 642 at 31,872.

<sup>14</sup> *See Ohio Power*, 143 FERC ¶ 61,075 at P 25; *Appalachian Power*, 143 FERC ¶ 61,074 at P 21. *See also Ameren Corp.*, 131 FERC ¶ 61,240 at P 18 (2010) (“*Ameren*”) (finding that showing has been made that there will be no adverse effect on horizontal competition when the transaction involves an intra-corporate transfer of generating assets); *Cinergy Corp.*, 126 FERC ¶ 61,146 at P 32 (2009) (“Consistent with our precedent, we find that the Proposed Transaction is an internal corporate

(continued)

## 1. No Adverse Effect on Horizontal Competition

The Transaction will not have an adverse effect on horizontal competition. No generation will enter (or leave) the AEP corporate family as a result of the Transaction. Therefore, the Transaction cannot have a concentrating effect under the Commission's horizontal market power analysis, because the corporate family is treated as a single entity for purposes of that analysis.<sup>15</sup> Further, the Commission's regulations state that such an analysis is required "if, as a result of the proposed transaction, a single corporate entity obtains ownership or control over the generating facilities of previously unaffiliated merging entities."<sup>16</sup> Here, such an analysis is not required because no entity will take ownership or control of previously unaffiliated generation. In short, the Transaction will not affect horizontal competition.

## 2. No Adverse Effect on Vertical Competition

The Transaction likewise will not have an adverse effect on vertical competition. The Commission's regulations state that a vertical market power analysis is required "if, as a result of the proposed transaction, a single corporate entity has ownership or control over one or more merging entities that provides inputs to electricity products and one or more merging entities that provides electric generation products."<sup>17</sup> No such analysis is

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reorganization that will have no adverse effect on competition.") (citing *Calpine Power Servs. Co.*, 92 FERC ¶ 61,150 at 64,187-88 (2000); *PP&L Res., Inc.*, 90 FERC ¶ 61,203 at 61,649 (2000) (finding that a transaction that realigns assets under the same parent company will not change the concentration of generation ownership in the market and thus will not have an adverse effect on horizontal competition); *Allegheny Energy Supply Co.*, 89 FERC ¶ 62,063 at 64,105 (1999)); see also Order No. 642 at 31,902.

<sup>15</sup> See *Am. Elec. Power Serv. Corp.*, 100 FERC ¶ 61,346 (1999) (finding that "transfers that realign facilities under the same parent company generally will not change the concentration of generation ownership in the market" and thus do not raise competitive concerns).

<sup>16</sup> 18 C.F.R. § 33.3(a)(1).

<sup>17</sup> 18 C.F.R. § 33.4(a)(1).

required here because the Transaction is internal and will not result in the AEP corporate family owning or controlling any new entities that provide inputs to electricity products or electric generation products.<sup>18</sup> Further, the Transaction does not involve the transfer of transmission facilities, except limited facilities needed to connect the generating units to the grid. Moreover, Wheeling has turned over operational control of its transmission facilities to PJM, and wholesale transmission service over such facilities will continue to be provided pursuant to the rates and terms of the PJM OATT on file with the Commission, eliminating any concern about transmission-related vertical market power.<sup>19</sup> Consequently, the Transaction raises no vertical market power issues.

**B. No Adverse Effect on Rates**

In assessing the effect that a proposed transaction could have on rates, the Commission's primary concern is "the protection of wholesale ratepayers and

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<sup>18</sup> See *Ameren*, 131 FERC ¶ 61,240 at P 18 (finding that internal corporate reorganization transaction creates no new vertical combinations of assets and thus does not raise any vertical market power concerns).

<sup>19</sup> See *Ohio Power*, 143 FERC ¶ 61,075 at P 32; *Appalachian Power*, 143 FERC ¶ 61,074 at P 21. See also *Cinergy Corp.*, 140 FERC ¶ 61,180 at P 37 (2012) ("Consistent with our precedent, we find that, because the Proposed Transaction is an internal corporate reorganization and because operational control of Duke Ohio's transmission facilities has been turned over to PJM, the Proposed Transaction will have no adverse effect on horizontal or vertical competition."); *EDG Dev., Inc.*, 126 FERC ¶ 61,141 at P 23 (2009) ("Turning over operational control of transmission facilities to an independent entity mitigates any concerns about transmission-related vertical market power because it eliminates a company's ability to use its transmission system to harm competition.") (citing cases); *Okla. Gas & Elec. Co.*, 124 FERC ¶ 61,239 at P 57 (2008) ("[T]urning over functional control of an applicant's transmission facilities to a Commission-approved RTO mitigates vertical market power concerns.").

transmission customers.”<sup>20</sup> There will be no adverse impact on wholesale requirements customers because Wheeling does not have any such customers.<sup>21</sup>

As to transmission, AEP Generation Resources will not transfer any transmission facilities in connection with the Transaction, except limited facilities needed to connect the Mitchell generating units to the grid. No transmission facilities that are part of the bulk transmission system or included in transmission ratebase will be transferred to Wheeling. Therefore, the Transaction will not cause Wheeling to incur additional transmission costs that will flow through AEP pricing zone rates under the PJM OATT.<sup>22</sup>

In any event, Wheeling commits to holding wholesale customers harmless from any transaction costs related to the Transaction for a period of five years following the closing date of the Transaction.

### **C. No Adverse Effect on Regulation**

The Transaction will not have an adverse impact on regulation, at either the federal or state level. The Transaction will not diminish the Commission’s regulatory authority. Wheeling and AEP Generation Resources each will remain a “public utility”

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<sup>20</sup> See *New England Power Co.*, 82 FERC ¶ 61,179 at 61,659, *order on reh’g*, 83 FERC ¶ 61,275 (1998).

<sup>21</sup> The Commission typically addresses this prong of its Section 203 analysis by reviewing the potential impact of a transaction on wholesale requirements customers served under cost-based contracts with formulaic provisions that automatically would track changes in costs resulting from the Transaction. The Commission typically does not focus on market-based rate sales or sales under cost-based arrangements that require separate filings to adjust the rates. *Inquiry Concerning the Commission’s Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (Dec. 30, 1996), FERC Stats. & Regs. ¶ 31,044 at 30,123-24 (1996), *order on reconsideration*, Order No. 592-A, 79 FERC ¶ 61,321 (1997).

<sup>22</sup> This is consistent with the Commission’s finding concerning the earlier transfer of an interest in the Mitchell Plant to KPCo in *Appalachian Power*, 143 FERC ¶ 61,074 at P 26.

as defined in FPA Section 201(e)<sup>23</sup> and will continue to be subject to the Commission's Federal Power Act jurisdiction. Further, the Commission will have jurisdiction over wholesale sales from the Mitchell Plant after the Transaction closes. Accordingly, the Transaction will have no adverse effect on federal regulation.

The Transaction also will not adversely affect state regulation. After the Transaction closes, Wheeling will continue to be subject to regulation by the West Virginia Commission. (AEP Generation Resources is not subject to regulation by any state commissions.) Accordingly, the Transaction will have no adverse effect on state regulation.

**D. No Inappropriate Cross-Subsidization or the Pledge or Encumbrance of Utility Assets**

Under the Energy Policy Act of 2005 amendments to FPA Section 203 and the Commission's implementing regulations adopted in Order No. 669, an applicant must provide assurance that the proposed transaction will not result in cross-subsidization of a non-utility associate company or a pledge or encumbrance of utility assets for the benefit of an associate company, unless that cross-subsidization, pledge, or encumbrance will be consistent with the public interest.<sup>24</sup> In Order Nos. 669, 669-A, and 669-B,<sup>25</sup> the Commission established a four-factor test that applicants must satisfy to address the

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<sup>23</sup> 16 U.S.C. § 824(e).

<sup>24</sup> FPA Section 203(a)(4), 16 U.S.C. § 824b(a)(4).

<sup>25</sup> *Transactions Subject to FPA Section 203*, Order No. 669, 71 Fed. Reg. 1348 (Jan. 6, 2006), FERC Stats. & Regs. ¶ 31,200 at PP 91, 166, 193 (2005) ("Order No. 669"), *order on reh'g*, Order No. 669-A, 71 Fed. Reg. 28,422 (May 16, 2006), FERC Stats. & Regs. ¶ 31,214 (2006) ("Order No. 669-A"), *order on reh'g*, Order No. 669-B, 71 Fed. Reg. 42,579 (July 27, 2006), FERC Stats. & Regs. ¶ 31,225 (2006) ("Order No. 669-B").

concerns identified in FPA Section 203 regarding any possible cross-subsidization or pledge or encumbrance of utility assets associated with a proposed transaction. Under this test, the Commission examines whether a proposed transaction results in, at the time of the transaction or in the future:

(A) Any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company;

(B) Any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company;

(C) Any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or

(D) Any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under [FPA] sections 205 and 206.<sup>26</sup>

As required by Order Nos. 669-A and 669-B,<sup>27</sup> Applicants provide below a detailed showing regarding each of these factors, based on facts and circumstances that are known to the Applicants or are reasonably foreseeable.

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<sup>26</sup> 18 C.F.R. § 33.2(j)(1)(ii).

<sup>27</sup> Order No. 669-A at P 144; Order No. 669-B at P 49.



### **Transfers of Facilities**

The transfer of jurisdictional facilities pursuant to the Transaction will not result in any improper cross-subsidization of a non-utility affiliate. As explained above, consistent with the direction of the West Virginia Commission, the purpose of the Transaction is to allow Wheeling to obtain generating assets to meet its capacity and load requirements, and the Transaction will not close unless Wheeling obtains approval from the West Virginia Commission, and that process will include a review of whether the Transaction confers an undue advantage upon AEP Generation Resources over Wheeling and whether the Transaction adversely affects the public interest. Further, the Facilities will transfer at AEP Generation Resources' then-current net book value. This is the same arrangement that the Commission approved for the transfer of the Mitchell Plant from OPCo to AEP Generation Resources in *Ohio Power* and for the near simultaneous transfer of an undivided fifty percent interest in the plant from AEP Generation Resources to KPCo in *Appalachian Power*. Finally, Wheeling has made the standard "hold harmless" commitment with regard to transaction costs incurred under the Transaction.

### **New Issuance of Securities**

As discussed above, the Transaction is being undertaken to enable Wheeling to satisfy its capacity requirements in PJM and to provide baseload generation to meet its customers' energy requirements. Wheeling will reflect the generating units on its balance sheets at AEP Generation Resources' net book value as of closing.

In July 2013, OPCo entered into a \$1 billion term credit facility due in May 2015 (the "Credit Agreement") to provide liquidity and flexibility to reassign OPCo's

indebtedness during OPCo's corporate separation process and the subsequent transfer of generation assets and liabilities to AEP Generation Resources, APCo, and KPCo. Under the Credit Agreement, OPCo assigned all of its borrowings to AEP Generation Resources upon the transfer of OPCo's generation assets to AEP Generation Resources. AEP Generation Resources further assigned a portion of the borrowings to APCo and KPCo upon AEP Generation Resources' subsequent transfer of certain of those generation assets to APCo and KPCo. AEP Generation Resources may assign up to \$200 million of such borrowings under the Credit Agreement to NEWCO Wheeling, subject to the lenders' consent under the Credit Agreement (the "Existing Credit Agreement").

Alternatively, NEWCO Wheeling may enter into a new Credit Agreement and borrow up to \$200 million (the "New Credit Agreement"). Pursuant to the Merger Agreement with NEWCO Wheeling, Wheeling would become the obligor on such borrowings under the Existing Credit Agreement or the New Credit Agreement. As its rights and obligations with respect to such indebtedness would arise solely pursuant to the merger, Wheeling would have no obligations under either credit agreement unless and until the Merger is completed and the Transaction at issue here is consummated.

In addition, Applicants propose that one series of pollution control revenue bonds ("PCRBs") in the principal amount of \$65 million related to the Mitchell Plant be assigned to NEWCO Wheeling, subject to the consent of the PCRB lenders. Upon merger with NEWCO Wheeling, Wheeling will succeed to the obligations of NEWCO

Wheeling with respect to the PCRBs. As a result, Wheeling will be made contractually responsible for the costs of these assigned PCRBs after closing.<sup>28</sup>

**New Pledge or Encumbrance**

Wheeling will not enter into any new pledge or encumbrance of its assets in connection with the Transaction, at the time of the Transaction or in the future. There are no other traditional utilities involved in the Transaction.

**New Affiliate Contracts**

Other than the Agreement and Plan of Merger between Wheeling and NEWCO Wheeling, the Asset Contribution Agreement between AEP Generation Resources and NEWCO Wheeling, Wheeling will not be a party to any new contracts with AEP Generation Resources or any non-utility associate company related to the Transaction, at the time of the Transaction or in the future. Wheeling will be a party to a joint operating agreement under which KPCo will operate the jointly-owned Mitchell Plant after the closing of the Transaction.

As shown above, the Transaction satisfies the Commission's four-factor test and will not result in improper cross-subsidization.

**IV. THE TRANSACTION DOES NOT RUN AFOUL OF FPA SECTION 305(a)**

FPA Section 305(a) does not prohibit the Transaction. As described in Part II.B above, the Transaction involves a distribution by AEP Generation Resources to its parent companies of the shares of NEWCO Wheeling (which will immediately be followed by a merger of such companies with and into Wheeling). The distribution will include the

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<sup>28</sup> Wheeling's assumption of the debt discussed herein will be the subject of a subsequent filing under FPA Section 204.

Mitchell Facilities. Section 305(a) states in pertinent part: “It shall be unlawful for any officer or director of any public utility . . . to participate in the making or paying of any dividends of such public utility from any funds properly included in capital account.”<sup>29</sup>

The value of the generating units and related assets that AEP Generation Resources will distribute to its parent companies exceeds the retained earnings of AEP Generation Resources, which, at the time the Transaction is consummated, will have no retained earnings. The distribution is nonetheless permissible under Section 305(a), as explained below.

This case is like others in which the Commission has concluded that the concerns underlying FPA Section 305(a) are not present because it involves dividending of corporate interests as part of a corporate restructuring that “is less like a payment of dividends than it is a corporate restructuring with a one-time distribution of property . . . rather than a payment of cash.”<sup>30</sup> The concerns underlying enactment of FPA Section 305(a) included “that sources from which cash dividends were paid were not clearly identified and that holding companies had been paying out excessive dividends on the securities of their operating companies.”<sup>31</sup> A central concern thus “was corporate officials raiding corporate coffers for their personal financial benefit.”<sup>32</sup> A transaction is not barred by FPA Section 305(a) in cases, like this one, where “none of these problems is evident.”<sup>33</sup>

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<sup>29</sup> 16 U.S.C. § 825d(a).

<sup>30</sup> See *ALLETE, Inc.*, 107 FERC ¶ 61,041 at P 11 (2004) (“*ALLETE*”).

<sup>31</sup> *Citizens Utils. Co.*, 84 FERC ¶ 61,158 at 61,865 (1998) (citation omitted) (“*Citizens*”).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

Like other cases that the Commission has found permissible under FPA Section 305(a), this case involves an internal corporate restructuring with a one-time distribution of property.<sup>34</sup> The proposed Transaction “will have no adverse effect on the value of shareholders’ interests” because shareholders “will have the same ownership interests after the separation as before.”<sup>35</sup> Put differently, assets will simply be moved within the same corporate family, and shareholders’ ownership interests will remain unaffected. Further, the source of the distribution is clearly identified, no “excessive dividends” will be paid, and the Transaction plainly has nothing to do with “corporate officials raiding corporate coffers for their personal financial benefit.”<sup>36</sup>

## V. PART 33 FILING REQUIREMENTS

Other than those information requirements for which a waiver is requested, Applicants are submitting the following information pursuant to the filing requirements in 18 C.F.R. § 33.2. Applicants respectfully request full or partial waiver of certain of the information requirements of Part 33 on the grounds that (1) this is a purely internal asset transfer without the need for the higher level of scrutiny that might attach to a merger

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<sup>34</sup> *Cinergy*, 126 FERC ¶ 61,146 at P 69; *ALLETE*, 107 FERC ¶ 61,041 at PP 9-12; *Citizens*, 84 FERC ¶ 61,158 at 61,865.

<sup>35</sup> *ALLETE*, 107 FERC ¶ 61,041 at P 11.

<sup>36</sup> *Accord Delmarva Power & Light Co.*, 91 FERC ¶ 61,043 at 61,158 (2000) (“While both of the dividend payments at issue in this proceeding are from capital accounts, the proposed accounting entries reflecting these payments are clear. In addition, the dividend payments are not cash payments and the proposed entries, therefore, do not evidence any excessive payments of cash dividends. The dividend payments are payments of stock made from one affiliated corporation to another to accommodate an intra-corporate transfer of jurisdictional facilities, the ultimate aim of which is to separate transmission and distribution service from generation service within the . . . family of companies. The dividend payments are not made to the public, and the record does not suggest any impropriety. The concerns underlying section 305(a) are not present in this proceeding.”) (citing *Citizens*, 84 FERC ¶ 61,158 at 61,865).

resulting in a combination of previously unaffiliated assets; and (2) this information would not assist the Commission in determining whether the Transaction is in the public interest. Consistent with 18 C.F.R. § 33.3(a)(1), Applicants have not submitted a horizontal market power analysis, or any other competition information under 18 C.F.R. § 33.3, because the Transaction will not result in an AEP entity obtaining ownership or control over facilities of a previously unaffiliated entity.

In Order No. 642, the Commission stated that applicants may request waiver of specific information requirements.<sup>37</sup> The Commission’s practice is to grant such a waiver when the application contains “sufficient information to evaluate the proposed transaction.”<sup>38</sup> Based on the foregoing, and consistent with *Ohio Power* and *Appalachian Power* (which previously addressed the internal transfer of the Mitchell Facilities), Applicants request that the Commission waive certain requirements under Part 33 (as requested herein) and waive any other filing requirements as may be applicable.

**A. Section 33.2**

**1. The Exact Name and Principal Business Address of Applicants  
(18 C.F.R. § 33.2(a))**

American Electric Power Service  
Corporation  
1 Riverside Plaza  
Columbus, OH 43215

Wheeling Power Company  
1 Riverside Plaza  
Columbus, OH 43215

AEP Generation Resources Inc.  
1 Riverside Plaza  
Columbus, OH 43215

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<sup>37</sup> Order No. 642 at 31,877.

<sup>38</sup> *PSI Energy, Inc.*, 60 FERC ¶ 62,131 at 63,342 (1992); *Citizens Utils. Co.*, 41 FERC ¶ 62,064 at 63,180 (1987).

**2. Name and Address of Persons Authorized to Receive Notices and Communications (18 C.F.R. § 33.2(b))**

John C. Crespo\*  
Deputy General Counsel  
Regulatory Services  
American Electric Power  
Service Corporation  
1 Riverside Plaza  
Columbus, OH 43215  
(614) 716-3727  
jccrespo@aep.com

Steven J. Ross\*  
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036  
(202) 429-6279  
sross@steptoe.com

Chad Heitmeyer\*  
Manager – Regulatory Analysis  
and Case (FERC)  
American Electric Power  
Service Corporation  
1 Riverside Plaza  
Columbus, OH 43215  
(614) 716-3303  
caheimeyer@aep.com

Applicants request that the persons marked with an asterisk be placed on the official service list for this proceeding and respectfully request waiver of Rule 203(b)(3), 18 C.F.R. § 385.203(b)(3). Applicants will serve a copy of this Application on the Kentucky Public Service Commission, the West Virginia Commission, and the Virginia Commission. A copy of this filing will be posted to AEP's website at:

<http://www.aep.com/investors/currentRegulatoryactivity/regulatory/ferc.aspx>

**3. Exhibit A - Description of Applicants – All Business Activities, including Regulatory Authorizations (18 C.F.R. § 33.2(c)(1))**

A description of the Applicants and their primary businesses is provided in Part I.A. of this Application. Applicants seek a waiver of the need to provide any additional information under Section 33.2(c)(1).

**4. Exhibit B – List of Energy Subsidiaries and Affiliates, Applicants’ Ownership Interest and Description of their Primary Business (18 C.F.R. § 33.2(c)(2))**

Neither Applicant has any energy subsidiaries. Applicants seek a waiver of the need to provide any additional information related to any other AEP energy affiliates, which will be wholly unaffected by the Transaction.

**5. Exhibit C – Organizational Charts Depicting Applicants’ Current and Proposed Post-Transaction Corporate Structures (Including Any Pending but Not Implemented Changes) Indicating All Parent Companies, Energy Subsidiaries and Energy Affiliates (18 C.F.R. § 33.2(c)(3))**

Applicants request waiver of this requirement because the Transaction is an asset transfer, will not result in the creation or elimination of any AEP subsidiaries or affiliates, and thus will not affect the corporate structure of the AEP corporate family.

**6. Exhibit D – Description of All Joint Ventures, Strategic Alliances, Tolling Arrangements or Other Business Arrangements, Including Transfer of Operational Control to a Commission Approved RTO (18 C.F.R. § 33.2(c)(4))**

Applicants seek a waiver to provide any additional information under 18 C.F.R. § 33.2(c)(4), as the Transaction does not involve any change in any Wheeling joint ventures or strategic alliances, and Wheeling has no tolling arrangements.

**7. Exhibit E – Common Officers or Directors (18 C.F.R. § 33.2(c)(5))**

A list of common officers and directors of AEP Generation Resources and Wheeling is set out in Exhibit E.



**8. Exhibit F – Description and Location of Wholesale Power Customers and Unbundled Transmission Customers Served by Applicants (18 C.F.R. § 33.2(c)(6))**

Wheeling has no wholesale power customers. As discussed above, AEP Generation Resources has one wholesale agreement with Wheeling, which will terminate upon consummation of the Transaction, and an agreement with OPCo, which will terminate on May 31, 2015. A list of the AEP East unbundled transmission customers is included in Exhibit F.

**9. Exhibit G – Description of the Applicants’ Jurisdictional Facilities (18 C.F.R. § 33.2(d))**

The generation units in which AEP Generation Resources has an ownership interest and the transmission facilities owned by Wheeling are described in Exhibit G. AEP Generation Resources owns no transmission facilities other than limited interconnection facilities and Wheeling currently owns no generation facilities.

**10. Narrative Description of the Proposed Transaction (18 C.F.R. § 33.2(e))**

A narrative description of the Transaction is provided in Part II of this Application. Applicants seek a waiver of the need to provide any additional information under Section 33.2(e).

**11. Exhibit H – Facilities Associated with or Affected by the Transaction (18 C.F.R. § 33.2(e)(2))**

A description of the jurisdictional facilities affected by the Transaction is provided in Part I.B of this Application. Applicants seek a waiver of the need to provide any additional information under Section 33.2(e)(2).

**12. Exhibit I – Contracts Related to the Proposed Transaction  
(18 C.F.R. § 33.2(f))**

Exhibit I contains the forms of the Agreement and Plan of Merger between Wheeling and NEWCO Wheeling and the Asset Contribution Agreement between AEP Generation Resources and NEWCO Wheeling. While these documents have not yet been executed, consistent with Commission precedent, Applicants certify that, to the best of their knowledge, the final agreements will reflect the terms and conditions contained in these form agreements in all material respects. The distribution of the shares of NEWCO Wheeling from AEP Generation Resources to its direct parent, and from its direct parent to AEP, will be carried out pursuant to board resolutions.

**13. Exhibit J – Public Interest Discussion and Any Other  
Information Relevant to Transaction (18 C.F.R. § 33.2(g))**

The Transaction is in the public interest for the reasons set forth in Part III of this Application. Applicants seek waiver of the need to provide any additional information pursuant to Section 33.2(g).

**14. Exhibit K – Maps (18 C.F.R. § 33.2(h))**

The map attached as Exhibit K shows the location of the Mitchell Plant.

**15. Exhibit L – Orders from Other Regulatory Bodies (18 C.F.R.  
§ 33.2(i))**

On March 4, 2014, Wheeling and APCo filed with the West Virginia Commission an “Updated Plan to Serve the Load of Wheeling Power Company and Petition for the Commission’s Consent and Approval to Implement the Updated Plan,” a copy of which is attached. Also attached is a copy of the West Virginia Commission procedural order issued on April 8, 2014. The Applicants will submit to the Commission copies of any

substantive orders issued by the West Virginia Commission before the date of a Commission ruling in this proceeding.

**16. Exhibit M – Explanation Providing Assurance that the Proposed Transaction Will Not Result in Cross-Subsidization or Pledges or Encumbrances of Utility Assets (18 C.F.R. § 33.2(j))**

The Applicants' detailed showing regarding the absence of any improper cross-subsidization is included in Part III.D of this Application. There are no material pledges or encumbrances of Wheeling's utility assets. The Applicants request waiver of the need to provide any additional information pursuant to Section 33.2(j).

**B. Proposed Accounting Entries (18 C.F.R. § 33.5)**

Pursuant to 18 C.F.R. § 33.5, Applicants provide in Attachment A the proposed accounting entries for the Transaction. These proposed accounting entries are based on account balances as of December 31, 2013. While these balances reasonably represent the expected assets, liabilities and total capitalization to be transferred, the actual account balances at the time of the Transaction will be different and the methods employed will be more detailed and precise. The transfer of assets constituting an operating unit or system will be recorded through Account 102 consistent with the instructions of Electric Plant Instruction No. 5 of the Commission's Uniform System of Accounts. The Applicants will submit proposed final accounting entries within six months of the consummation of the Transaction reflecting all entries made on the books and records of Wheeling pursuant to the Commission's Uniform System of Accounts, along with appropriate narrative explanations describing the basis for the entries.



**Exhibit E**

**Common Officers or Directors (18 C.F.R. § 33.2(c)(5))**

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**Exhibit E -- Common Officers and Directors  
(Wheeling Power and AEP Generation Resources)**

Common Directors

Nicholas K. Akins  
David M. Feinberg  
Brian X. Tierney

Common Officers

Nicholas K. Akins, Chairman of the Board, CEO  
Thomas G. Berkemeyer, Assistant Secretary  
Joseph M. Buonaiuto, Controller, CAO (Wheeling Power); Controller (AEP Generation Resources)  
Jeffrey D. Cross, Assistant Secretary (Wheeling Power); VP (AEP Generation Resources)  
David M. Feinberg, Secretary (Wheeling Power); Secretary, VP (AEP Generation Resources)  
Renee V. Hawkins, Assistant Treasurer  
Mark A. Pyle, VP-Tax  
Julia A. Sloat, Treasurer  
Brian X. Tierney, CFO, VP  
F. Scott Travis, Assistant Controller  
Julie Williams, Assistant Controller

**Exhibit F**

**Description and Location of Wholesale Power Customers and Unbundled  
Transmission Customers Served by Applicants (18 C.F.R. § 33.2(c)(6))**

**Exhibit F - Description and Location of Wholesale Power Customers  
and Unbundled Transmission Customers Served by Applicants**

**AEP PJM Zonal Network Interconnection Transmission Service Customers**

1	AEP
2	Allegheny Power Company
3	American Municipal Power - Ohio, Inc.
4	Buckeye Power, Inc.
5	Central Virginia Electric Co-op
6	City of Auburn
7	City of Bedford
8	City of Bluffton
9	City of Bristol
10	City of Bryan
11	City of Clyde
12	City of Columbus
13	City of Danville
14	City of Dover
15	City of Dowagiac
16	City of Garrett
17	City of Jackson
18	City of Martinsville
19	City of Mishawaka
20	City of Niles
21	City of Olive Hill
22	City of Orville
23	City of Radford
24	City of Salem
25	City of Shelby
26	City of South Haven
27	City of St. Marys
28	City of St. Clairsville
29	City of Sturgis
30	City of Vanceburg
31	City of Wapakoneta
32	City of Warren
33	City of Westerville

34	Craig Botetourt Electric Cooperative
35	Dayton Power & Light Co.
36	The Black Diamond Power Co.(formerly known as the Musser Co.)
37	Hoosier Energy Rural Electric Cooperative, Inc.
38	Indiana Municipal Power Agency
39	Joint Operating Group
40	Ohio City
41	Old Dominion Electric Cooperative
42	Town of Avilla
43	Town of New Carlisle
44	Town of Richlands
45	Village of Arcadia
46	Village of Bloomdale
47	Village of Carey
48	Village of Cygnet
49	Village of Deshler
50	Village of Glouster
51	Village of Greenwich
52	Village of Paw Paw
53	Village of Plymouth
54	Village of Republic
55	Village of Shiloh
56	Village of Sycamore
57	Village of Wharton
58	Village of Woodsfield
59	Virginia Polytechnic Institute and State University
60	Wabash Valley Power Association, Inc.

**Non-Zonal NITS Customers**

61	Buckeye Power, Inc (DPL)
62	Buckeye Power, Inc (FE)
63	Buckeye Power, Inc (Cinergy)



**Exhibit G**

**Description of the Applicants' Jurisdictional Facilities (18 C.F.R. § 33.2(d))**

**Generation Assets (WPCo)**

Plant	Unit No.	Fuel	Location	Capacity (MW)*
Mitchell	1 (Note A)	Coal	Moundsville, WV	385
Mitchell	2 (Note A)	Coal	Moundsville, WV	395
			<b>TOTAL CAPACITY</b>	<b>780</b>

Note A            Upon closing the herein transaction, Wheeling Power Company will own 50% of the Mitchell Plant (780 MW). The remaining 50% interest (780 MW) will continued to be owned by Kentucky Power Company.

**Generation Assets (AEP Generation Resources)**

Plant	Unit No.	Fuel	Location	Capacity (MW)*
Cardinal	1 (Note B)	Coal	Brilliant, OH	585
Conesville	4 (Note C)	Coal	Conesville, OH	339
Conesville	5	Coal	Conesville, OH	405
Conesville	6	Coal	Conesville, OH	405
Darby	1-6	Gas	Mount Sterling, OH	450
Gen. J.M. Gavin	1	Coal	Cheshire, OH	1,315
Gen. J.M. Gavin	2	Coal	Cheshire, OH	1,350
J.M. Stuart	1 (Note C)	Coal	Aberdeen, OH	150
J.M. Stuart	2 (Note C)	Coal	Aberdeen, OH	150
J.M. Stuart	3 (Note C)	Coal	Aberdeen, OH	150
J.M. Stuart	4 (Note C)	Coal	Aberdeen, OH	150
Kammer	1	Coal	Moundsville, WV	200
Kammer	2	Coal	Moundsville, WV	195
Kammer	3	Coal	Moundsville, WV	190
Mitchell	1 (Note A)	Coal	Moundsville, WV	385
Mitchell	2 (Note A)	Coal	Moundsville, WV	395
Muskingum River	1	Coal	Waterford, OH	150
Muskingum River	2	Coal	Waterford, OH	170
Muskingum River	3	Coal	Waterford, OH	190
Muskingum River	4	Coal	Waterford, OH	195
Muskingum River	5	Coal	Waterford, OH	600
Philip Sporn	2	Coal	New Haven, WV	145

**Exhibit G -- Description of the Applicants' Jurisdictional Facilities**

Philip Sporn	4	Coal	New Haven, WV	117
Picway	5	Coal	Lockbourne, OH	95
Racine	1-2	Hydro	Racine, OH	25
W.C. Beckjord	6 (Note C)	Coal	New Richmond, OH	48
Waterford	1-4	Gas	Waterford, OH	810
William H. Zimmer	1 (Note C)	Coal	Moscow, OH	330
<b>TOTAL CAPACITY</b>				<b>9,689</b>

Note A        Upon closing the herein transaction, Wheeling Power Company will own 50% of the Mitchell Plant (780 MW). The remaining 50% interest (780 MW) will continued to be owned by Kentucky Power Company.

Note B        The Cardinal Plant consists of three coal-fired steam units, with Unit No. 1 owned by Ohio Power and Unit Nos. 2 and 3 owned by Buckeye Power, Inc. ("Buckeye").

Note C        The capacity shown reflects AEP Generation Resources' share of the pertinent unit, which it jointly owns with Duke Energy Ohio, LLC and Dayton Power and Light Co. The jointly-owned units are Conesville 4, Stuart 1-4, Beckjord 6 and Zimmer 1.

\*                The capacity values shown on the above table may differ slightly from the summer seasonal values shown on the Appendix B submitted with AEP's market-based rate filings. AEP plans to retire several of the above units.

**Transmission Assets (WPCo)**

<b>Applicant</b>	<b>Asset</b>	<b>Controlled By</b>	<b>Location Balancing Authority Area</b>	<b>Size (circuit miles)</b>
WPCo	765kV Lines	PJM	PJM	0
WPCo	500kV Lines	PJM	PJM	16
WPCo	345kV Lines	PJM	PJM	15
WPCo	230kV Lines	PJM	PJM	0
WPCo	88-138kV Lines	PJM	PJM	191
WPCo	69kV or less Lines	PJM	PJM	84
<b>TOTAL</b>				<b>306</b>

**Exhibit I**

**Contracts Related to the Proposed Transaction (18 C.F.R. § 33.2(f))**

**AGREEMENT AND PLAN OF MERGER**

**BETWEEN**

**WHEELING POWER COMPANY**

**a West Virginia corporation**

**and**

**NEWCO WHEELING INC.**

**a West Virginia corporation**

This **AGREEMENT AND PLAN OF MERGER** is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 201\_, under Section 31D-11-1102 and 31D-11-1106 of the West Virginia Corporation Act, between **WHEELING POWER COMPANY**, a West Virginia corporation (“WPCo”), and **NEWCO WHEELING INC.**, a West Virginia corporation (“NEWCO Wheeling”).

### **RECITALS**

1. WPCo is a corporation duly organized, validly existing and in good standing under the laws of West Virginia and is a wholly owned subsidiary of American Electric Power Company, Inc., a New York corporation (“AEP”), which is a public utility holding company. WPCo is a regulated public utility engaged in the business of providing electric power and related services to its customers.
2. NEWCO Wheeling is a corporation duly organized, validly existing and in good standing under the laws of West Virginia and is a wholly owned subsidiary of AEP. NEWCO Wheeling owns certain electric generating facilities; however, it is not a regulated public utility.
3. WPCo currently has authorized 150,000 shares of common stock, no par value, of which 150,000 are issued and outstanding and held by AEP.
4. NEWCO WPCo currently has authorized 100 shares of common stock, no par value, of which 100 are issued and outstanding and held by AEP.
5. The Federal Energy Regulatory Commission and the Public Service Commission of West Virginia have authorized the merger of NEWCO Wheeling with and into WPCo.

6. The Boards of Directors of WPCo and NEWCO Wheeling have each determined that it is in the best interest of both companies and their shareholders to merge NEWCO Wheeling with and into WPCo, and have, by resolutions, duly approved and adopted this Agreement and Plan of Merger. AEP, the sole shareholder of WPCo and NEWCO Wheeling, has approved this Agreement and Plan of Merger.

### **AGREEMENT**

Now, therefore, in consideration of the premises and agreements contained herein, the parties agree as follows:

#### **ARTICLE I NAMES OF CORPORATIONS; MERGER**

The names of the constituent corporations to the merger are “Wheeling Power Company” and “Newco Wheeling Inc.” In accordance with the laws of West Virginia and this Agreement and Plan of Merger, NEWCO Wheeling shall be merged with and into WPCo which shall be, and is herein referred to as, the “Surviving Corporation.”

#### **ARTICLE II EFFECTIVE TIME**

As soon as practicable after the execution hereof, Articles of Merger shall be filed, as required by the West Virginia Corporation Act, with the Secretary of State of West Virginia. The merger shall become effective at \_\_\_\_\_ p.m. on \_\_\_\_\_, 201\_. Such date and time shall be the “Effective Time” referred to in this Agreement and Plan of Merger.

**ARTICLE III**

**EFFECT OF MERGER; ARTICLES OF INCORPORATION;  
BY-LAWS; DIRECTORS AND OFFICERS ON THE EFFECTIVE DATE**

- 3.1 At the Effective Time, NEWCO Wheeling shall be merged with and into WPCo (the “Merger”), the separate corporate existence of NEWCO Wheeling shall cease, and WPCo shall be the continuing and Surviving Corporation in the merger and shall continue to exist under the laws of West Virginia.
- 3.2 The Surviving Corporation shall have all the rights, privileges, immunities and powers and shall be subject to all of the duties and liabilities of a corporation organized under the West Virginia Corporation Act. Title to all real estate and other property owned by WPCo and NEWCO Wheeling shall be vested in the Surviving Corporation and the Surviving Corporation shall have all the liabilities of WPCo and NEWCO Wheeling. Any proceeding pending against WPCo or NEWCO Wheeling at the Effective Time may be continued as if the Merger did not occur or the Surviving Corporation may be substituted in such proceeding in the case of any such proceeding against NEWCO Wheeling.
- 3.3 The Restated Articles of Incorporation of WPCo, as in effect immediately prior to the Effective Time, shall be the Restated Articles of Incorporation of the Surviving Corporation until they shall thereafter be duly altered or amended.
- 3.4 The By-Laws of WPCo, as in effect immediately prior to the Effective Time, shall be the By-Laws of the Surviving Corporation until they shall thereafter be duly altered or amended.



3.5 The directors and officers of WPCo immediately prior to the Effective Time shall continue to be the directors and officers of the Surviving Corporation until changed in accordance with law.

#### **ARTICLE IV CONVERSION OF SHARES**

The manner of carrying into effect the Merger, and the manner and the basis of converting and canceling the capital stock of the constituent companies, shall be as follows: At the Effective Time, (1) each share of capital stock of WPCo then issued and outstanding shall, by virtue of the Merger and without any action by the holder thereof, constitute one issued and outstanding share of stock of the Surviving Corporation and shall include the same rights, privileges and preferences as appertained to the capital stock of WPCo immediately prior to the merger; (2) each share of capital stock of NEWCO Wheeling then issued and outstanding shall, by virtue of the Merger and without any action by the holder thereof, be canceled and extinguished; and (3) no new or additional stock of the Surviving Corporation shall be issued in consummating the Merger.

#### **ARTICLE V MISCELLANEOUS**

- 5.1 The parties to this Agreement and Plan of Merger shall pay the expenses incurred by each of them, respectively, in connection with the transactions contemplated herein.
- 5.2 The title of this Agreement and Plan of Merger and the headings herein set out are for the convenience of reference only and shall not be deemed to be part of this Agreement and Plan of Merger.

- 5.3 Subject to applicable law, this Agreement and Plan of Merger may be amended by agreement between the parties hereto and approved by their respective Board of Directors.
- 5.4 This Agreement and Plan of Merger and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of West Virginia.
- 5.5 The parties intend that, for United States federal income tax purposes, the merger will qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the “Code”), and that this Agreement and Plan of Merger will be, and is hereby, adopted as a plan of reorganization for purposes of Section 368(a) of the Code.

*Signatures appear on the following page*

**IN WITNESS WHEREOF**, each of WPCo and NEWCO Wheeling has caused this Agreement and Plan of Merger to be executed on its behalf and in its corporate name as of the date first above written.

**WHEELING POWER COMPANY**

By \_\_\_\_\_  
Its \_\_\_\_\_

**NEWCO WHEELING INC.**

By \_\_\_\_\_  
Its \_\_\_\_\_

**ASSET CONTRIBUTION AGREEMENT**

**BETWEEN**

**AEP GENERATION RESOURCES INC.**

**AND**

**NEWCO WHEELING INC.**

\_\_\_\_\_, 2014

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**EXHIBITS**

Exhibit A	Form of Assignment of Contracts
Exhibit B	Form of Assignment of Easements and Rights of Way
Exhibit C	Form of Assignment of Real Property Leases
Exhibit D	Form of Assumption Agreement
Exhibit E	Form of Asset Transfer Agreement

**SCHEDULES**

Schedule 1.01	Mitchell Plant
Schedule 1.02	Assumed Payables
Schedule 1.03	Debt
Schedule 1.04	Easements and Rights of Way
Schedule 1.05	Franklin Real Property
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Schedule 2.01(l)	Tangible Personal Property
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Schedule 2.01(p)	Generation Transmission Assets
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Schedule 4.01(g)	Environmental Matters and Environmental Permits
Schedule 4.01(i)	Contracts
Schedule 4.01(j)	Legal Proceedings
Schedule 4.01(k)	Permits

**ASSET CONTRIBUTION AGREEMENT**

This **Asset Contribution Agreement** (this "Agreement"), dated as of \_\_\_\_\_, 2014, is between **AEP Generation Resources Inc.**, a Delaware corporation ("Transferor"), and **Newco Wheeling Inc.**, a West Virginia corporation ("Transferee"). Collectively, Transferee and Transferor may be referred to herein as the "Parties" and each, individually, as a "Party."

W I T N E S S E T H

**WHEREAS**, Transferor owns an undivided 50% interest in the Mitchell Power Generation Facility in Moundsville, West Virginia, which is comprised of two 800 MW generating units and associated plant, equipment and facilities and certain other assets, improvements, properties (both tangible, including real and personal property, and intangible), and rights associated therewith or ancillary thereto, all as more specifically described in Schedule 1.01 (the "Mitchell Plant").

**WHEREAS**, Transferor desires to transfer and assign to Transferee, and Transferee desires to acquire and assume from Transferor, the Transferred Assets (as hereinafter defined) and certain liabilities, upon the terms and conditions hereinafter set forth;

**WHEREAS**, Transferor and Transferee intend that the transfer of the Transferred Assets contemplated herein qualify as contributions to capital under Section 351 of the Internal Revenue Code of 1986, as amended; and

**WHEREAS**, Transferor directly owns all of the outstanding capital stock of Transferee.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants, agreements, representations and warranties hereinafter set forth, the Parties, intending to be legally bound, hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Section 1.01 Definitions.

(a) As used in this Agreement, the following terms have the following meanings:

**"Affiliate"** means a Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified. The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**"Ancillary Agreements"** means the Assumption Agreement, the Asset Transfer Agreement, the Deeds, the Assignment of Easements and Rights of Way, the Assignment of Real Property Leases, the Assignment of Contracts and any other agreements or instruments entered into between the Parties with respect to the transactions contemplated by this Agreement.

**"Asset Transfer Agreement"** means the Asset Transfer Agreement to be executed and delivered at Closing by Transferor to Transferee in substantially the form attached hereto as Exhibit E.

**"Assignment of Contracts"** means the Assignment of Contracts agreement to be entered into between Transferor and Transferee at Closing, in substantially the form attached hereto as Exhibit A.

**"Assignment of Easements and Rights of Way"** means the Assignments of Easements and Rights of Way agreement to be entered into by Transferor and Transferee at Closing, in substantially the form attached hereto as Exhibit B.

**"Assignment of Real Property Leases"** means the Assignment of Real Property Leases agreement to be entered into by Transferor and Transferee at Closing, in substantially the form attached hereto as Exhibit C.

**"Assumed Liabilities"** has the meaning set forth in Section 2.03.



**"Assumed Payables"** means payables owed by Transferor with respect to the Transferred Assets as generally set forth in Schedule 1.02.

**"Assumption Agreement"** means the Assumption Agreement to be entered into by Transferor and Transferee at Closing, in substantially the form attached hereto as Exhibit D.

**"Business Day"** means a day other than a Saturday, Sunday or day on which banks are permitted or required to remain closed in the state of Ohio.

**"CERCLA"** means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended from time to time.

**"Closing"** has the meaning set forth in Section 3.03.

**"Closing Date"** has the meaning set forth in Section 3.03.

**"Contracts"** has the meaning set forth in Section 4.01(i).

**"CWIP"** has the meaning set forth in the definition of "Improvements."

**"Debt"** means the long-term and short-term debt owed by Transferor as described in Schedule 1.03.

**"Deeds"** means those certain deeds to be executed and delivered at Closing by Transferor to Transferee.

**"Deferred Tax Assets"** means the Transferor's deferred tax assets relating to the Transferred Assets or any assumed Liability that is carried on its books.

**"Deferred Tax Liability"** means the Transferor's deferred tax liability relating to the Transferred Assets or any assumed Liability that is carried on its books.

**"Easements and Rights of Way"** means the easements and rights of way as described in Schedule 1.04.

**"Effective Time"** has the meaning set forth in Section 3.03.

**"Emissions Allowances"** means all authorizations issued to Transferor by a Governmental Authority pursuant to a statutory or regulatory program promulgated by a Governmental Authority pursuant to which air emissions sources subject to the program are authorized to emit a prescribed quantity of air emissions.

**"Encumbrance"** means any security interest, pledge, mortgage, lien, charge, option to purchase, lease, claim, restriction, covenant, title defect, hypothecation, assignment, deposit arrangement or other encumbrance of any kind or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or title retention agreement).

**"Environmental Condition"** means the presence or Release to the environment, whether at the Real Property or otherwise, of Hazardous Substances, including any migration of Hazardous Substances through air, soil or groundwater at, to or from the Real Property or at, to or from any Off-Site Location, regardless of when such presence or Release occurred or is discovered.

**"Environmental Laws"** means all (i) Laws relating to pollution or protection of the environment, natural resources or human health and safety, including Laws relating to Releases or threatened Releases of Hazardous Substances or otherwise relating to the manufacture, formulation, generation, processing, distribution, use, treatment, storage, Release, transport, remediation, abatement, cleanup or handling of Hazardous Substances; (ii) Laws with regard to recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Substances; and (iii) Laws relating to the management or use of natural resources.

**"Environmental Permits"** has the meaning set forth in Section 4.01(g).

**"Excluded Liabilities"** has the meaning set forth in Section 2.04.

**"FERC"** means the Federal Energy Regulatory Commission.

**"Franklin Real Property"** means that certain real property held by Franklin Real Estate Company, a wholly owned subsidiary of the Parent, as agent for and for the benefit of Transferor's electric generation assets as more specifically described in Schedule 1.05.

**"Generation Transmission Assets"** has the meaning set forth in Section 2.01(p).

**"Good Utility Practice"** means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods or acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition.

**"Governmental Authority"** means any: (i) nation, state, county, city, town, village, district, or other jurisdiction of any nature; (ii) federal, state, local, municipal, foreign, or other government; (iii) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal); (iv) multi-national organization or body; or (v) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.

**"Hazardous Substances"** means (i) any petrochemical or petroleum products, oil or coal ash, radioactive materials, radon gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid which may contain levels of polychlorinated biphenyls; (ii) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants," "pollutants," "toxic pollutants," or words of similar meaning and regulatory effect under any applicable Environmental Law; and (iii) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

**"Improvements"** means all buildings, structures, machinery and equipment (including all fuel handling and storage facilities), fixtures, construction work in progress ("CWIP"), and other improvements, including all piping, cables and similar equipment forming part of the mechanical, electrical, plumbing or HVAC infrastructure of any building, structure or equipment, located on and affixed to the Real Property, the Leased Real Property and the Easements and Rights of Way.

**"Intellectual Property"** means all of the following and similar intangible property and related proprietary rights, interests and protections, however arising, (i) all software necessary to operate or maintain the Transferred Assets, (ii) confidential information, formulas, designs, devices, technology, know-how, research and development, inventions, methods, processes, compositions and other trade secrets, whether or not patentable and (iii) patented and patentable designs and inventions, all design, plant and utility patents, letters patent, utility models, pending patent applications and provisional applications and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, reexaminations and renewals of such patents and applications.

**"Inventories"** means (i) all inventories of fuels and consumables owned by Transferor for use at the Mitchell Plant, whether located on Real Property, Leased Real Property or the Easements and Rights of Way associated with the Mitchell Plant or in transit thereto or stored offsite and (ii) all materials and supplies, including without limitation, spare parts, owned by Transferor for use at or in connection with the Mitchell Plant.

**"Knowledge"** means the actual and current knowledge of the corporate officer or officers of the specified Person charged with responsibility for the particular function as of the date of this Agreement, or, with respect to any certificate delivered pursuant to this Agreement, the date of delivery of the certificate, without any implication of verification or investigation concerning such knowledge.

**"Laws"** means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of the United States, any foreign country and any domestic or foreign state, county, city or other political subdivision or of any Governmental Authority.

**"Leased Real Property"** has the meaning set forth in Section 4.01(e)(i).

**"Liability"** means any liability or obligation, whether known or unknown, whether asserted or not asserted, whether absolute or contingent, whether accrued or not accrued, whether liquidated or not liquidated, whether incurred or consequential, and whether due or to become due.

**"Material Adverse Effect"** means (i) any event, circumstance or condition materially impairing the ability of Transferor to perform its obligations under this Agreement or any Ancillary Agreement or (ii) any change in or effect on Transferor or the Transferred Assets that is materially adverse to the Transferred Assets, other than (a) any change resulting from changes in the international, national, regional or local wholesale or retail markets for electricity, (b) any change resulting from changes in the international, national, regional or local markets for fuel or consumables used at the Mitchell Plant, (c) any change resulting from changes in the North American, national, regional or local electric transmission system, and (d) any change in Law generally applicable to similarly situated Persons.

**"Mitchell Plant"** has the meaning set forth in the first recital.

**"Net Book Value"** means an amount in dollars, as reflected in the corresponding line item or items of the balance sheet of Transferor as of the applicable date for all Transferred Assets and all Assumed Liabilities. With respect to the Transferred Assets, Net Book Value is equal to total Transferred Assets net of accumulated depreciation or amortization as appropriate.

**"Off-Site Location"** means any real property other than the Real Property, the Leased Real Property or real property covered by the Easements and Rights of Way.

**"Operator"** means the operator of the Transferred Assets, currently Kentucky Power Company.

**"Organizational Documents"** means (i) the articles or certificate of incorporation and the bylaws of a corporation; (ii) the limited liability company or operating agreement and certificate of formation of a limited liability company; (iii) the partnership agreement and any statement of partnership of a general partnership; (iv) the limited partnership agreement and the certificate of limited partnership of a limited partnership; (v) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person and (vi) any amendment to any of the foregoing.

**"Parent"** means American Electric Power Company, Inc.

**"Party"** has the meaning set forth in the first paragraph of this Agreement.

**"Permits"** has the meaning set forth in Section 4.01(k).

**"Permitted Encumbrances"** means: (i) mechanics', carriers', workmen's, repairmen's or other like Encumbrances arising or incurred in the ordinary course of business that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (ii) Encumbrances for Taxes not yet due or which are being contested in good faith by appropriate proceedings and that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; (iii) imperfections of title or encumbrances, if any, that, individually or in the aggregate, do not materially impair, and would not reasonably be expected to have a Material Adverse Effect; (iv) leases, subleases and similar agreements, and liens of any landlord or other third party on property over which Transfer has easement rights or on any Leased Real Property and subordination or similar agreements relating thereto; (v) leases, mineral reservations and conveyances, easements, covenants, rights-of-way and other similar restrictions of record; (vi) any conditions that may be shown by a current, accurate survey or physical inspection of the Real Property or the Leased Real Property made prior to the Closing; (vii) zoning, planning, conservation restriction and other land use and environmental regulations by Governmental Authorities; (viii) the respective rights and obligations of the Parties under this Agreement and the Ancillary Agreements; (ix) Encumbrances resulting from legal proceedings being contested in good faith by appropriate proceedings that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and (x) other Encumbrances that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**"Person"** means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Authority.

**"Real Property"** has the meaning set forth in Section 2.01(b).

**"Real Property Leases"** has the meaning set forth in Section 4.01(e)(i).

**"Release"** means any release, spill, leak, discharge, disposal of, pumping, pouring, emitting, emptying, injecting, leaching, dumping or allowing to escape into or through the environment.

**"Tax"** means all federal, state, local and foreign taxes, charges, fees, levies, imposts, duties or other assessments, including, without limitation, income, gross receipts, excise, employment, sales, use, transfer, license, payroll, franchise, severance, stamp, occupation, windfall profits, environmental (including taxes under Code Section 59A), premium, federal highway use, commercial rent, customs duties, capital stock, paid up capital, profits, withholding, social security, single business and unemployment, disability, real property, personal property, registration, ad valorem, value added, alternative or add-on minimum, estimated, or other tax or governmental fee of any kind whatsoever, imposed or required to be withheld by any Governmental Authority, including any interest, penalties or additions thereto, whether disputed or not.

**"Transferee"** has the meaning set forth in the first paragraph of this Agreement.

**"Transferor"** has the meaning set forth in the first paragraph of this Agreement.

**"Transferred Assets"** has the meaning set forth in Section 2.01.

(b) **Interpretation.** In this Agreement, unless otherwise specified or where the context otherwise requires:

(i) a reference, without more, to a recital is to the relevant recital to this Agreement, to an Article or Section is to the relevant Article or Section of this Agreement, and to a Schedule or Exhibit is to the relevant Schedule or Exhibit to this Agreement;

(ii) words importing any gender shall include other genders;

(iii) words importing the singular only shall include the plural and vice versa;

(iv) the words "include," "includes" or "including" shall be deemed to be followed by the words "without limitation;"

(v) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(vi) reference to any applicable Law means, if applicable, such Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder;

(vii) "or" is used in the inclusive sense of "and/or";

(viii) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto;

(ix) the words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement; and

(x) references to any party hereto or any other agreement or document shall include such party's successors and permitted assigns, but, if applicable, only if such successors and assigns are not prohibited by this Agreement.

## ARTICLE II TRANSFER OF ASSETS

Section 2.01 Transfer of Assets. Upon the terms and conditions set forth in this Agreement, at the Closing but effective as of the Effective Time, Transferor shall transfer, convey, assign and deliver to Transferee as a contribution to capital, and Transferee shall acquire and assume from Transferor as a contribution to capital, free and clear of all Encumbrances other than Permitted Encumbrances, an undivided fifty percent (50%) ownership interest in and to the following described assets (the "Transferred Assets"):

- (a) the Mitchell Plant;
- (b) the real property (including the Improvements) described in Schedule 2.01(b) (and together with the Franklin Real Property, the "Real Property");
- (c) the Real Property Leases (including the Improvements) ;
- (d) the Easements and Rights of Way (including the Improvements);
- (e) all Inventories;

## Form of Asset Contribution Agreement

- (f) the Contracts;
- (g) the Permits;
- (h) the Environmental Permits;
- (i) the Intellectual Property;
- (j) the Emissions Allowances;
- (k) the Deferred Tax Assets;
- (l) all vehicles, equipment, machinery, furniture and other tangible personal property used in connection with the Mitchell Plant or located on or at the Real Property, the Leased Real Property and the Easements and Rights of Way, a partial list of which is described on Schedule 2.01(l);
- (m) the other assets described in Schedule 2.01(m);
- (n) all unexpired, transferable warranties and guarantees from manufacturers, vendors and other third parties with respect to any Improvement or item of real or tangible personal property constituting part of the Transferred Assets;
- (o) all books, purchase orders, operating records, operating, safety and maintenance manuals, engineering design plans, blueprints and as-built plans, specifications, procedures, studies, reports, equipment repair, safety, maintenance or service records, and similar items (subject to the right of Transferor to retain copies of same for its use), other than such items that are proprietary to third parties and accounting records (to the extent that any of the foregoing is contained in an electronic format, Transferor shall reasonably cooperate with Transferee to transfer such items to Transferee in a format that is reasonably acceptable to Transferee);
- (p) the electrical transmission facilities associated with the Mitchell Plant located at or forming part of the Mitchell Plant, including all energized switchyard facilities on the generation asset side of the appropriate interconnection points and real property directly associated therewith, all substation facilities and support equipment, as well as all permits, contracts and warranties related thereto, including those certain assets and facilities specifically identified on Schedule 2.01(p) (the "Generation Transmission Assets");



(q) all Mitchell Plant power generation function equipment including, but not limited to, generation step-up transformers, turbine-generators, plant power distribution equipment and such unit auxiliary transformers, forced draft fans, coal handling facilities, precipitator facilities, and protection and control equipment and systems that are associated with the Mitchell Plant;

(r) the rights of Transferor in and to any causes of action against third parties relating to the Transferred Assets or any part thereof, including any claim for refunds (but excluding any refund, credit, penalty, payment, adjustment or reconciliation related to Taxes paid or due for periods ending prior to the Effective Time in respect of the Transferred Assets, whether such refund, credit, penalty, payment, adjustment or reconciliation is received as a payment or, subject to Section 3.02, as a credit against future Taxes payable), prepayments, offsets, recoupment, insurance proceeds, condemnation awards, judgments and the like, whether received as a payment or credit against future liabilities, relating specifically to Transferred Assets and relating to any period ending prior to, on or after the Effective Time;

(s) the rights of Transferor in, to and under all contracts, agreements, arrangements, permits or licenses of any nature and related to the Transferred Assets, which are not expressly excluded pursuant to Section 2.02 and of which the obligations of Transferor thereunder are not expressly excluded by Transferee pursuant to Section 2.04; and

(t) to the extent not otherwise described in this Section 2.01, all other assets and property, whether real or personal, tangible or intangible, that are associated with or used in connection with ownership and operation of the Mitchell Plant.

Section 2.02 Excluded Assets. Notwithstanding anything to the contrary contained in Section 2.01 or elsewhere in this Agreement, nothing in this Agreement shall constitute or be construed as conferring on Transferee, and Transferee is not acquiring, any right, title or interest in and to any properties, assets, business, operation, or division of Transferor or any of its Affiliates (other than Transferee) not expressly set forth in Section 2.01.

Section 2.03 Assumed Liabilities. On the Closing Date, Transferee shall execute and deliver the Assumption Agreement, pursuant to which, among other things, Transferee shall assume all Liabilities described therein and, in addition, Transferee shall assume the following Liabilities (collectively, the "Assumed Liabilities"):

(a) on the terms and subject to the conditions set forth in this Agreement, at the Closing, Transferee shall assume and become responsible for, and shall thereafter pay, perform and discharge as and when due fifty percent (50%) of the Liabilities arising under or related to the Transferred Assets whether arising from, or relating to, periods prior to, on or after the Effective Time;

(b) all Liability of Transferor with respect to the Assumed Payables;

(c) all Liability of Transferor with respect to the Debt to the extent relating to periods of time after the Effective Time;

(d) all Liability of Transferor with respect to the Deferred Tax Liability; and

(e) all Liability of Transferor with respect to the property Taxes related to the Transferred Assets.

2.04 Excluded Liabilities. Notwithstanding the foregoing provisions of Section 2.03, Transferee shall not assume by virtue of this Agreement, the Assumption Agreement or any other Ancillary Agreement, or the transactions contemplated hereby or thereby, or otherwise, and shall have no liability for any of the following Liabilities or any Liability of Transferor that is not related to the Transferred Assets (the "Excluded Liabilities"):

(a) any Liabilities of Transferor in respect of any assets of Transferor that are not Transferred Assets;

(b) any Liabilities in respect of Transferor's current income Taxes and any other Taxes not otherwise assumed pursuant to Section 2.03(d) and (e);

(c) any fines and penalties imposed by any Governmental Authority resulting from any act or omission by Transferor and not related to the Transferred Assets;

(d) any Liabilities of Transferor associated with the disposal of waste and by-products from the Kammer Plant into the Conner Run Impoundment at the Mitchell Plant site; and

(e) any Liability of Transferor arising as a result of its execution and delivery of this Agreement or any Ancillary Agreement, the performance of its obligations hereunder or thereunder, or the consummation by Transferor of the transactions contemplated hereby or thereby.

**ARTICLE III**  
**ASSET TRANSFER; CLOSING**

Section 3.01 Asset Transfer. Transferor shall transfer to Transferee an undivided fifty percent (50%) ownership interest in and to the Transferred Assets at Net Book Value as of the Effective Time. In the event that final amounts for the Net Book Value of the Transferred Assets are not available on the Closing Date, the final Net Book Value of the Transferred Assets shall be determined and agreed to by Transferee and Transferor within ninety (90) days after the Closing Date. Transferor and Transferee agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm the final Net Book Value of the Transferred Assets.

Section 3.02 Proration.

(a) Transferee and Transferor agree that all of the items normally prorated, including those listed below, relating to the business and operation of the Transferred Assets shall be prorated as of the Effective Time, with Transferor liable to the extent such items relate to any time period through the Effective Time, and Transferee liable to the extent such items relate to periods subsequent to the Effective Time:

(i) personal property, real estate, occupancy and any other Taxes, assessments and other charges, if any, on or with respect to the business and operation of the Transferred Assets. Provided, however, that the Parties shall not prorate any Taxes, assessments or charges relating to the Transferred Assets that are to be assumed by Transferee pursuant to Section 2.03;

(ii) rent, Taxes and other items payable by or to Transferor under any of the Contracts to be assigned to and assumed by the Transferee hereunder; and

(iii) sewer rents and charges for water, telephone, electricity and other utilities.

(b) In connection with such proration, in the event that actual figures are not available at the Closing Date, the proration shall be based upon the actual amount of such Taxes or fees for the preceding year (or appropriate period) for which actual Taxes or fees are available and such Taxes or fees shall be re-prorated upon request of either Transferor or Transferee made

within ninety (90) days after the date that the actual amounts become available. Transferor and Transferee agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this Section 3.02.

Section 3.03 Closing. The transfer, assignment, conveyance and delivery of fifty percent (50 %) of the Transferred Assets, and the consummation of the other transactions contemplated by this Agreement, shall take place at a closing (the "Closing") to be held at the offices of American Electric Power, 1 Riverside Plaza, Columbus, Ohio 43215 at a time mutually acceptable to the Parties on the date of the execution and delivery of this Agreement by each of the Parties (the "Closing Date"). The Closing shall be effective for all purposes as of \_\_\_\_\_, 2014 at 11:50 p.m. EST (the "Effective Time").

Section 3.04 Closing Deliveries.

(a) At the Closing, Transferor will deliver, or cause to be delivered, to Transferee the following items:

- (i) possession of the Transferred Assets;
- (ii) an original of each of the Deeds, duly executed and acknowledged by Transferor;
- (iii) an original of the Asset Transfer Agreement duly executed by Transferor;
- (iv) an original of the Assumption Agreement duly executed by Transferor;
- (v) an original of each Assignment of Easements and Rights of Way duly executed by Transferor;
- (vi) an original of each Assignment of Real Property Leases duly executed by Transferor;
- (vii) an original of the Assignment of Contracts duly executed by Transferor; and

(viii) such other documents as are contemplated by this Agreement or as Transferee may reasonably request to carry out the purposes of this Agreement.

(b) At the Closing, Transferee will deliver, or cause to be delivered, to Transferor the following items:

(i) an original of the Asset Transfer Agreement duly executed by Transferee;

(ii) an original of the Assumption Agreement duly executed by Transferee;

(iii) an original of each Assignment of Easements and Rights of Way duly executed by Transferee;

(iv) an original of each Assignment of Real Property Leases duly executed by Transferee;

(v) an original of the Assignment of Contracts duly executed by Transferee; and

(vi) such other documents as are contemplated by this Agreement or as Transferor may reasonably request, including vehicle titles, to consummate the transactions contemplated hereby.

(c) Transferee may direct Transferor at Closing to assign or transfer any portion of the Transferred Assets directly to one or more of its affiliates.

#### ARTICLE IV

#### REPRESENTATIONS AND WARRANTIES

Section 4.01 Representations and Warranties of Transferor. Transferor represents and warrants to Transferee as follows:

(a) Organization and Good Standing; Qualification. Transferor is a corporation duly formed, validly existing and in good standing under the laws of the state of Delaware. Transferor has all requisite power and authority to own, lease or operate the Transferred Assets and to carry on its business as it is now being conducted.

(b) Authority and Enforceability. Transferor has full power and authority to execute and deliver, and carry out its obligations under, this Agreement and each Ancillary Agreement to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Transferor of this Agreement and each Ancillary Agreement to which it is a party, and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary action on the part of Transferor. Assuming the due authorization, execution and delivery of this Agreement and each Ancillary Agreement to which it is a party by Transferee, this Agreement and each such Ancillary Agreement constitutes a legal, valid and binding obligation of Transferor enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency and other similar laws affecting the rights and remedies of creditors generally and by general principles of equity.

(c) No Violation; Consents and Approvals.

(i) Neither the execution, delivery and performance by Transferor of this Agreement and each Ancillary Agreement to which it is a party, nor the consummation by Transferor of the transactions contemplated hereby and thereby, will (i) conflict with or result in any breach of any provision of the Organizational Documents of Transferor; (ii) result in a default (or give rise to any right of termination, cancellation or acceleration), or require a consent, under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which Transferor is a party or by which it or any of the Transferred Assets may be bound, except for any such defaults or consents (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; or (iii) constitute a violation of any law, regulation, order, judgment or decree applicable to Transferor, except for any such violations as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ii) Transferor has obtained all consents and approvals from each Governmental Authority necessary for the execution, delivery and performance of this Agreement by Transferor or of any Ancillary Agreement to which Transferor is a party, or the consummation by Transferor of the transactions contemplated hereby and thereby, other than

such consents and approvals which, if not obtained or made, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) Insurance. All material policies of property, liability, workers' compensation and other forms of insurance owned or held by, or on behalf of, Transferor and insuring the Transferred Assets are in full force and effect, all premiums with respect thereto covering all periods up to and including the date hereof have been paid (other than retroactive premiums), and no notice of cancellation or termination has been received with respect to any such policy which was not replaced on substantially similar terms prior to the date of such cancellation.

(e) Leased Real Property.

(i) Schedule 4.01(e) sets forth a description of each lease of real property held by Transferor (the "Real Property Leases") and the real property covered thereby (the "Leased Real Property") that is to be transferred as contemplated herein by Transferor to Transferee.

(ii) Each Real Property Lease (a) constitutes a legal, valid and binding obligation of Transferor and, to Transferor's Knowledge, constitutes a valid and binding obligation of the other parties thereto and (b) is in full force and effect and Transferor has not delivered or received any written notice of termination thereunder.

(iii) There is not under any Real Property Lease any default or event which, with notice or lapse of time or both, (a) would constitute a default by Transferor or, to Transferor's Knowledge, any other party thereto, (b) would constitute a default by Transferor or, to Transferor's Knowledge, any other party thereto which would give rise to an automatic termination, or the right of discretionary termination, thereof, or (c) would cause the acceleration of any of Transferor's obligations thereunder or result in the creation of any Encumbrance (other than any Permitted Encumbrance) on any of the Transferred Assets. There are no claims, actions, proceedings or investigations pending or, to the Knowledge of Transferor, threatened against Transferor or any other party to any Real Property Lease before any Governmental Authority or body acting in an adjudicative capacity relating in any way to any Real Property Lease or the subject matter thereof. Transferor has no Knowledge of any defense, offset or counterclaim arising under any Real Property Lease.

(f) Title; Condition of Assets.

(i) Subject to Permitted Encumbrances, Transferor holds title to an undivided interest in fifty percent (50%) of the Real Property and the Easements and Rights of Way and has good and valid title thereto and to an undivided interest in fifty percent (50%) of the other Transferred Assets that it purports to own or in which it has an interest, free and clear of all Encumbrances.

(ii) The tangible assets (real and personal) at, related to, or used in connection with Mitchell Plant, taken as a whole, (a) are in good operating and usable condition and repair, free from any defects (except for ordinary wear and tear, in light of their respective ages and historical usages, and except for such defects as do not materially interfere with the use thereof in the conduct of the normal operation and maintenance of the Transferred Assets taken as a whole) and (b) have been maintained consistent with Good Utility Practice.

(g) Environmental Matters. Except as disclosed in Section II of Schedule 4.01(g):

(i) Transferor or the Operator holds, and is in compliance with, all permits, certificates, certifications, licenses and other authorizations issued by Governmental Authorities under Environmental Laws that are required for Transferor to conduct the business and operations of the Transferred Assets (collectively, "Environmental Permits"), and Transferor is otherwise in compliance with all applicable Environmental Laws with respect to the business and operations of the Transferred Assets, except for any such failures to hold or comply with required Environmental Permits, or such failures to be in compliance with applicable Environmental Laws, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(ii) Transferor has not received any written request for information, or been notified of any violation, or that it is a potentially responsible party, under CERCLA or any other Environmental Law for contamination or air emissions at the Mitchell Plant, the Real Property, the Leased Real Property or the real property covered by the Easements and Rights of Way, except for any such requests or notices that would result in liabilities under such laws as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and there are no claims, actions, proceedings or investigations pending or, to the



Knowledge of Transferor, threatened against Transferor before any Governmental Authority or body acting in an adjudicative capacity relating in any way to any Environmental Laws or against Transferor or Parent concerning contamination or air emissions at the Mitchell Plant, the Real Property, the Leased Real Property or the real property covered by the Easements and Rights of Way; and

(iii) there are no outstanding judgments, decrees or judicial orders relating to the Transferred Assets regarding compliance with any Environmental Law or to the investigation or cleanup of Hazardous Substances under any Environmental Law relating to the Transferred Assets, except for such outstanding judgments, decrees or judicial orders as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(iv) Section I of Schedule 4.01(g) lists all material Environmental Permits. The representations and warranties made in this Section 4.01(g) are the exclusive representations and warranties of Transferor relating to environmental matters.

(h) Condemnation. There are no pending or, to the Knowledge of Transferor, threatened proceedings or governmental actions to condemn or take by power of eminent domain all or any part of the Transferred Assets.

(i) Contracts and Leases.

(i) Schedule 4.01(i) lists all written contracts, agreements, licenses (other than Environmental Permits, Permits or Intellectual Property) or personal property leases of Transferor that are material to the business or operations of the Transferred Assets (the "Contracts").

(ii) Each Contract (a) constitutes a legal, valid and binding obligation of Transferor and, to Transferor's Knowledge, constitutes a valid and binding obligation of the other parties thereto and (b) is in full force and effect and Transferor has not delivered or received any written notice of termination thereunder.

(iii) There is not under any Contract any default or event which, with notice or lapse of time or both, (a) would constitute a default by Transferor or, to Transferor's Knowledge, any other party thereto, (b) would constitute a default by Transferor or, to Transferor's Knowledge, any other party thereto which would give rise to an automatic termination, or the right of discretionary termination, thereof, or (c) would cause the acceleration

of any of Transferor's obligations thereunder or result in the creation of any Encumbrance (other than any Permitted Encumbrance) on any of the Transferred Assets. There are no claims, actions, proceedings or investigations pending or, to the Knowledge of Transferor, threatened against Transferor or any other party to any Contract before any Governmental Authority or body acting in an adjudicative capacity relating in any way to any Contract or the subject matter thereof. Transferor has no Knowledge of any defense, offset or counterclaim arising under any Contract.

(j) Legal Proceedings. Except as set forth on Schedule 4.01(j), there are no actions or proceedings pending or, to the Knowledge of Transferor, threatened against Transferor before any court, arbitrator or Governmental Authority, which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. Transferor is not subject to any outstanding judgments, rules, orders, writs, injunctions or decrees of any court, arbitrator or Governmental Authority that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(k) Permits.

(i) Transferor or the Operator has all permits, licenses, franchises and other governmental authorizations, consents and approvals (other than Environmental Permits, which are addressed in Section 4.01(g)) necessary to own and operate the Transferred Assets (collectively, "Permits"), except where any failures to have such Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Transferor has not received any written notification that Transferor is in violation, nor does Transferor have Knowledge of any violations, of any such Permits, or any Law or judgment of any Government Authority applicable to Transferor with respect to the Transferred Assets, except for violations that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ii) Schedule 4.01(k) lists all material Permits (other than Environmental Permits).

(l) Taxes. To the Knowledge of Transferor, Transferor has filed all Tax Returns that are required to be filed by it with respect to any Tax relating to the Transferred Assets, and Transferor has paid all Taxes that have become due as indicated thereon, except where such Tax is being contested in good faith by appropriate proceedings, or where any

failures to so file or pay would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There are no Encumbrances for Taxes on the Transferred Assets that are not Permitted Encumbrances.

(m) Intellectual Property. Transferor has such ownership of or such rights by license or other agreement to use all Intellectual Property necessary to permit Transferor to conduct its business with respect to the Transferred Assets as currently conducted, except where any failures to have such ownership, license or right to use would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Transferor is not, nor has Transferor received any notice that Transferor is, in default (or with the giving of notice or lapse of time or both, would be in default) under any contract to use such Intellectual Property, and there are no material restrictions on the transfer of any material contract, or any interest therein, held by Transferor in respect of such Intellectual Property. Transferor has not received notice that it is infringing any Intellectual Property of any other Person in connection with the operation or business of the Transferred Assets.

(n) Compliance with Laws. Transferor is in compliance with all applicable Laws with respect to the ownership or operation of the Transferred Assets, except where any such failures to be in compliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(o) Limitation of Representations and Warranties. **EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT AND IN ANY ANCILLARY AGREEMENT, TRANSFEROR IS NOT MAKING, AND HEREBY DISCLAIMS, ANY OTHER REPRESENTATIONS AND WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, CONCERNING TRANSFEROR OR THE TRANSFERRED ASSETS OR ANY PART THEREOF.**

Section 4.02 Representations and Warranties of Transferee. Transferee represents and warrants to Transferor as follows:

(a) Organization and Good Standing. Transferee is a corporation duly formed, validly existing and in good standing under the laws of the state of West Virginia and has all requisite power and authority to own, lease or operate its properties and to carry on its business as it is now being conducted.

(b) Authority and Enforceability. Transferee has full power and authority to execute and deliver and carry out its obligations under this Agreement and each Ancillary Agreement to which it is a party, and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Transferee of this Agreement and each such Ancillary Agreement, and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary action by Transferee. Assuming the due authorization, execution and delivery of this Agreement and each such Ancillary Agreement by the other party or parties thereto, each of this Agreement and each such Ancillary Agreement constitutes a legal, valid and binding obligation of Transferee, enforceable against Transferee in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency and other similar laws affecting the rights and remedies of creditors generally and by general principles of equity.

(c) No Violation; Consents and Approvals.

(i) Neither the execution, delivery and performance by Transferee of this Agreement and each Ancillary Agreement to which Transferee is a party, nor the consummation by Transferee of the transactions contemplated hereby and thereby, will (a) conflict with or result in any breach of any provision of the Organizational Documents of Transferee; (b) result in a default (or give rise to any right of termination, cancellation or acceleration), or require a consent, under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which Transferee is a party or by which any of their respective material properties or assets may be bound, except for any such defaults or consents (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the ability of Transferee to perform its obligations under this Agreement and the Ancillary Agreements; or (c) constitute a violation of any law, regulation, order, judgment or decree applicable to Transferee, except for any such violations as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the ability of Transferee to perform its obligations under this Agreement and the Ancillary Agreements.

(ii) Transferee has obtained all consents and approvals from each Governmental Authority or other Person necessary for the execution and delivery of this

Agreement or any Ancillary Agreement by Transferee, or the consummation by Transferee of the transactions contemplated hereby and thereby, except for any such consents and approvals which, if not obtained or made, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the ability of Transferee to perform its obligations under this Agreement and the Ancillary Agreements.

(d) Legal Proceedings. There are no actions or proceedings pending or, to the Knowledge of Transferee, threatened against Transferee before any court, arbitrator or Governmental Authority, which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on the ability of Transferee to perform its obligations under this Agreement and the Ancillary Agreements. Transferee is not subject to any outstanding judgments, rules, orders, writs, injunctions or decrees of any court, arbitrator or Governmental Authority which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on the ability of Transferee to perform its obligations under this Agreement and the Ancillary Agreements.

**ARTICLE V  
CERTAIN COVENANTS AND AGREEMENTS**

Section 5.01 Transfer Tax; Recording Costs. All transfer, use, stamp, sales and similar Taxes and recording costs incurred in connection with this Agreement and the transactions contemplated hereby shall be the sole responsibility of Transferee.

Section 5.02 Further Assurances.

(a) Subject to the terms and conditions of this Agreement, Transferor and Transferee shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the transfer of the Transferred Assets pursuant to this Agreement and the assumption of the Assumed Liabilities, including using commercially reasonable efforts with a view to obtaining all necessary consents, approvals and authorizations of, and making all required notices or filings with, third parties required to be obtained or made in order to consummate the transactions hereunder, including the transfer of the Environmental Permits and the Permits to Transferee. Neither Transferor, on the one hand, nor Transferee, on the other hand, shall, without prior written consent of the other, take or fail to take any action

which might reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement.

(b) In the event that any portion of the Transferred Assets shall not have been conveyed to Transferee at the Closing, Transferor shall, subject to paragraphs (c) and (d) immediately below, convey such asset to Transferee as promptly as practicable after the Closing.

(c) To the extent, if any, that Transferor's rights under any Contract, Real Property Leases or Easements and Rights of Way may not be assigned without the consent of any other party thereto, which consent has not been obtained by the Closing Date, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful. Transferor and Transferee agree that if any consent to an assignment of any Contract, Real Property Lease or Easement and Right of Way has not been obtained at the Closing Date, or if any attempted assignment would be ineffective or would impair Transferee's rights and obligations under the Contract, Real Property Lease or Easement and Right of Way in question, so that Transferee would not in effect acquire the benefit of all such rights and obligations, Transferor, at its option and to the maximum extent permitted by law and such Contract, Real Property Lease or Easement and Right of Way, shall, after the Closing Date, (i) appoint Transferee to be Transferor's agent with respect to such Contract, Real Property Lease or Easement and Right of Way or (ii) to the maximum extent permitted by law and such Contract, Real Property Lease or Easement and Right of Way, enter into such reasonable arrangements with Transferee or take such other commercially reasonable actions to provide Transferee with the same or substantially similar rights and obligations of such Contract, Real Property Lease or Easement and Right of Way. From and after the Closing Date, Transferor and Transferee shall cooperate and use commercially reasonable efforts to obtain an assignment to Transferee of any such Contract, Real Property Lease or Easement and Right of Way.

(d) To the extent that Transferor's rights under any warranty or guaranty described in Section 2.01(n) may not be assigned without the consent of another Person, which consent has not been obtained by the Closing Date, this Agreement shall not constitute an agreement to assign the same, if an attempted assignment would constitute a breach thereof or be unlawful. The Parties agree that if any consent to an assignment of any such warranty or guaranty has not been obtained or if any attempted assignment would be ineffective or would

impair Transferee's rights and obligations under the warranty or guaranty in question, so that Transferee would not in effect acquire the benefit of all such rights and obligations, Transferor shall use commercially reasonable efforts to the extent permitted by law and such warranty or guaranty, to enforce such warranty or guaranty for the benefit of Transferee to the maximum extent possible so as to provide Transferee with the benefits and obligations of such warranty or guaranty. Notwithstanding the foregoing, Transferor shall not be obligated to bring or file suit against any third party, provided that if Transferor determines not to bring or file suit after being requested by Transferee to do so, Transferor shall assign, to the extent permitted by law or any applicable agreement, its rights in respect of the claims so that Transferee may bring or file such suit.

Section 5.03 Survival. The representations and warranties of the Parties contained herein shall not survive the Closing and thereafter shall be of no further force and effect.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

Section 6.01 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given (i) on the day when delivered personally or by e-mail (with confirmation) or facsimile transmission (with confirmation), (ii) on the next Business Day when delivered to a nationally recognized overnight delivery service, or (iii) five (5) Business Days after deposited as registered or certified mail (return receipt requested), in each case, postage prepaid, addressed to the recipient Party at its address set forth below (or to such other addresses and e-mail and facsimile numbers for a Party as shall be specified by like notice; provided, however, that any notice of a change of address or e-mail or facsimile number shall be effective only upon receipt thereof):

If to Transferor, to:

AEP Generation Resources Inc.  
1 Riverside Plaza  
Columbus, OH 43215  
Attn: Charles E. Zebula - President  
Facsimile No.: (614) 716-1404  
Email: cezebula@aepes.com

If to Transferee, to:

Newco Wheeling Inc.  
1 Riverside Plaza  
Columbus, OH 43215  
Attn: Jeffrey D. Cross - Vice President  
Facsimile No.: (614) 716-2904  
Email: jdcross@aep.com

Section 6.02 Waiver. The rights and remedies of the Parties are cumulative and not alternative. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable Law, (a) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by each other Party; (b) no waiver that may be given by a Party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one Party will be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

Section 6.03 Entire Agreement; Amendment; Etc.

(a) This Agreement and the Ancillary Agreements, including the Schedules, Exhibits, documents, certificates and instruments referred to herein or therein, embody the entire agreement and understanding of the Parties hereto in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. This Agreement supersedes all prior or contemporaneous agreements, understandings or statements or agreements between the Parties, whether written or oral, with respect to the transactions contemplated hereby. Each Party acknowledges and agrees that no employee, officer, agent or representative of the other Party has the authority to make any representations, statements or promises in addition to or in any way different than those contained in this Agreement and the Ancillary Agreements, and that it is not entering into this Agreement or the Ancillary Agreements in reliance upon any r



representation, statement or promise of the other Party except as expressly stated herein or therein.

(b) This Agreement may not be amended, supplemented, terminated or otherwise modified except by a written agreement executed by Transferor and Transferee.

(c) This Agreement shall be binding upon and inure solely to the benefit of each Party hereto and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 6.04 Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by, on the one hand, Transferor, and, on the other hand, Transferee, in whole or in part (whether by operation of law or otherwise), without the prior written consent of the other Party, and any attempt to make any such assignment without such consent will be null and void. Notwithstanding the foregoing, Transferor or Transferee may assign or otherwise transfer its rights hereunder and under any Ancillary Agreement to any bank, financial institution or other lender providing financing to Transferor or Transferee, as applicable, as collateral security for such financing; provided, however, that no such assignment shall (i) impair or materially delay the consummation of the transactions contemplated hereby or (ii) relieve or discharge Transferor or Transferee, as the case may be, from any of its obligations hereunder and thereunder.

Section 6.05 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 6.06 Governing Law. This Agreement, the construction of this Agreement, all rights and obligations between the Parties to this Agreement, and any and all claims arising out of or relating to the subject matter of this Agreement (including all tort and contract claims) will be governed by and construed in accordance with the laws of the state of Ohio, without giving effect to choice of law principles thereof.

Section 6.07 Counterparts: Facsimile Execution. This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the Parties and delivered to each other Party, it being understood that the Parties need not sign the same counterpart. This Agreement may be executed by facsimile signature(s) or signatures in portable document format.

Section 6.08 Schedules. The Schedules to this Agreement are intended to be and hereby are specifically made a part of this Agreement.

Section 6.09 Specific Performance. The Parties hereto agree that irreparable damage would occur in the event any of the provisions of this Agreement were not to be performed in accordance with the terms hereof and that the Parties will be entitled to specific performance of the terms hereof in addition to any other remedies at law or in equity.

*Signatures appear on following page*

**Form of Asset Contribution Agreement**

**IN WITNESS WHEREOF**, each of the Parties has caused this Asset Contribution Agreement to be executed on its behalf by its respective officer thereunto duly authorized, all as of the day and year first above written.

**TRANSFEROR**

**AEP GENERATION RESOURCES INC.**

By: \_\_\_\_\_  
Charles E. Zebula, President

**TRANSFeree**

**NEWCO WHEELING INC.**

By: \_\_\_\_\_  
Jeffrey D. Cross, Vice President

**Exhibit K**

**Map (18 C.F.R. § 33.2(h))**



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Plant	Location
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1 Mitchell	Moundsville, WV
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**Exhibit L**

**Orders from Other Regulatory Bodies (18 C.F.R. § 33.2(i))**



WILLIAM C. PORTH  
ATTORNEY AT LAW

P.O. BOX 1791  
CHARLESTON, WV 25326

DIRECT DIAL: (304) 347-8340  
E-MAIL: [wcp@ramlaw.com](mailto:wcp@ramlaw.com)

March 4, 2014

**BY HAND DELIVERY**

03:25 PM MAR 04 2014 PSC EXEC SEC DIV

Ingrid Ferrell, Executive Secretary  
West Virginia Public Service Commission  
201 Brooks Street  
Charleston, WV 25301

Re: *Appalachian Power Company and Wheeling Power Company*  
*Case No. 11-1775-E-P*

Dear Ms. Ferrell:

12-1655-E-PC

As directed by the Commission in its December 13, 2013 Order in the above-referenced proceeding (then-consolidated with Case No. 12-1655-E-PC), Appalachian Power Company and Wheeling Power Company are filing herewith in the above-referenced docket the original and twelve (12) copies of their Updated Plan to Serve the Load of Wheeling Power Company and Petition for the Commission's Consent and Approval to Implement the Updated Plan.

Very truly yours,

A handwritten signature in black ink, appearing to read 'William C. Porth', written over a horizontal line.

William C. Porth (W.Va. State Bar #2943)

Counsel for  
Appalachian Power Company and  
Wheeling Power Company

WCP:ss  
Enclosures  
c: Service List

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**CASE NO. 11-1775-E-P**

APPALACHIAN POWER COMPANY and  
WHEELING POWER COMPANY,  
public utilities.

Joint Petition for Evaluation of a Possible  
Merger of Appalachian Power Company  
and Wheeling Power Company.

**UPDATED PLAN TO SERVE THE LOAD OF WHEELING POWER COMPANY  
AND PETITION FOR THE COMMISSION'S CONSENT AND  
APPROVAL TO IMPLEMENT THE UPDATED PLAN**

COME NOW Appalachian Power Company ("APCo") and Wheeling Power Company ("WPCo") (collectively, the "Companies") and respectfully file this Updated Plan to serve the load of WPCo as directed by the Commission's Order of December 13, 2013 in then-consolidated Case Nos. 12-1655-E-PC and 11-1775-E-P. In addition to presenting the Updated Plan, the Companies also seek the Commission's consent and approval, pursuant to W. Va. Code § 24-2-12, to implement the Updated Plan.

**Procedural Background**

On December 16, 2011, the Companies filed a petition initiating a proceeding for an evaluation of a possible merger of APCo and WPCo (the "Merger"). This petition was docketed as Case No. 11-1775-E-P (the "Merger Case") and considered, among other things, the power supply needs of the Companies after the Merger.

On December 18, 2012, APCo filed a petition for the approval of an arrangement by which certain generating assets then owned by Ohio Power Company ("OPCo") would be



transferred to it. This petition (the “2012 Asset Transfer Petition”) was docketed as Case No. 12-1655-E-PC (the “Asset Transfer Case”). APCo sought the Commission’s approval of the transfer to it of the two-thirds interest in Unit 3 of the John E. Amos Plant and associated facilities then owned by OPCo (the “Amos Asset”) and a one-half interest in OPCo’s Mitchell Plant and associated facilities (the “Mitchell Asset”), which has since been transferred to AEP Generation Resources Inc. (“Generation Resources”). The proposed transfer of the Amos Asset and the Mitchell Asset to APCo was designed, in part, to meet the power supply needs of the Companies after the Merger. Also, on December 18, 2012, the Companies initiated a parallel proceeding before the Virginia State Corporation Commission (“VSCC”) for the approval of the transfer of the Amos Asset and the Mitchell Asset to APCo and for approval of the Merger. This proceeding was docketed as Case No. PUE-2012-00141.

On June 6, 2013, the Commission issued an Order that, *inter alia*, consolidated the Asset Transfer Case and the Merger Case.

On July 31, 2013, the VSCC issued an Order in Case No. PUE-2012-00141 in which, among other things and subject to certain findings and requirements, it granted the Companies’ request for the transfer of the Amos Asset to APCo and the Companies’ request to merge, but denied the Companies’ request for the transfer of the Mitchell Asset to APCo.

On December 13, 2013, this Commission issued an Order in the then-consolidated Asset Transfer and Merger Cases (the “December 13, 2013 Order”). The December 13, 2013 Order was a final Order in the Asset Transfer Case. Among other things, the Commission approved the transfer to APCo of the Amos Asset, and did not approve but withheld a final ruling on the transfer to APCo of the Mitchell Asset. The Commission declined to issue a final Order respecting the Merger, but directed the Merger Case to remain open. The Commission required

APCo to file in the Merger Case by March 3, 2014 an Updated Plan to serve the WPCo load after the Merger.

In its discussion of the Merger in the December 13, 2013 Order, the Commission emphasized the importance of securing a long-term, reasonably priced supply of capacity and energy to meet the needs of WPCo's customers. WPCo's load is currently served by a contract with Generation Resources (the "WPCo Contract"), which replaced WPCo's power supply contract with OPCo. The WPCo Contract will terminate if some alternate supply mechanism for WPCo is implemented. Moreover, as the Commission noted in its December 13, 2013 Order, the WPCo Contract "may be cancelled at any time upon only a one year notice."<sup>1</sup> December 13, 2013 Order at 34. In its December 13, 2013 Order, the Commission observed that the transfer of the Mitchell Asset to APCo, as proposed by APCo in the Asset Transfer Case, would provide adequate capacity to meet the WPCo load at a cost that would provide net benefits to the Companies' West Virginia customers. However, the Commission concluded that, in light of the July 31, 2013 VSCC Order in Case No. PUE-2012-00141, the transfer of the Mitchell Asset to APCo could not proceed as proposed at this time. *Id.* at 45 (Conclusion of Law No. 42).

The Commission noted that, without the transfer of the Mitchell Asset, APCo would be left without a clear plan to serve WPCo's load and that a significant capacity shortfall would arise in the event of the Merger. *Id.* at 33. The Commission therefore concluded that it would not be in the public interest to consummate the Merger and create this capacity shortfall for APCo without a defined, economical, and achievable plan in place to cover the capacity shortfall. *Id.* at 33, 45 (Conclusion of Law No. 41). The Commission directed APCo to develop

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<sup>1</sup> On February 28, 2014, the Federal Energy Regulatory Commission ("FERC") issued an Order in Docket No. ER-14-899-000 that approved the WPCo Contract for an initial term, up to December 31, 2014. The FERC's Order is attached as Exhibit F to this Updated Plan.

a plan to address this shortfall and determined that it would consider the Merger only after the filing of this Updated Plan to acquire readily achievable and reasonably priced long-term capacity and energy to meet WPCo's needs. *Id.* at 47.

### **The Updated Plan**

Since the Commission issued its December 13, 2013 Order, the Companies have considered various options for serving the WPCo load. The Companies have concluded that (as the analyses and testimony presented in the formerly consolidated Asset Transfer and Merger Cases clearly demonstrated) the Mitchell Asset remains the best source of the capacity and energy supply to serve WPCo's load. Therefore, the Companies propose to serve the WPCo load with the Mitchell Asset.<sup>2</sup> But, since there appears to be only one practical option of transferring the Mitchell Asset, without significant issues and lead time and without the consent of the VSCC, which may or may not be obtainable, the Companies propose to transfer the Mitchell Asset to WPCo.

The Companies therefore request the Commission's consent and approval, pursuant to W.Va. Code §24-2-12, to enter into an arrangement whereby the Mitchell Asset will be transferred to WPCo (the "WPCo Mitchell Transfer").

The Companies propose that the WPCo Mitchell Transfer be accomplished within the next few months with a transfer price of the then-existing net book value of the Mitchell Asset. With the transfer to WPCo of the Mitchell Asset, the WPCo Contract would terminate. The Companies further propose to effect the WPCo Mitchell Transfer through a series of near

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<sup>2</sup> The Companies considered different possible avenues to effect that result, including (1) a transfer of the Mitchell Asset to APCo to serve the post-merger load, but with a direct assignment of the Mitchell Asset to the West Virginia jurisdiction for ratemaking purposes and (2) a comparable transfer of the Mitchell Asset to a West Virginia company resulting from an APCo that has been corporately separated into two state jurisdictions.

simultaneous transactions to ensure that the transfer is accomplished without producing unintended tax results. This series of transactions would be comparable to the series of transactions by which the Amos Asset was transferred to APCo pursuant to the Commission's December 13, 2013 Order and which APCo described in detail in its 2012 Asset Transfer Petition. Exhibit A to this filing shows the anticipated transactions, which are described in more detail below, to execute the transfer of the Mitchell Asset from Generation Resources to WPCo.

With respect to the specific timing of the WPCo Mitchell Transfer transaction, the Companies propose a closing at or around June 30, 2014. This date provides a number of advantages. It would sync up with the expected date of such revised rates as may be ordered by the Commission in the Companies' 2014 ENEC proceeding and thus permit the coordination of regulatory action on rates associated with both the ENEC proceeding and the WPCo Mitchell Transfer. Also, it would provide the Companies' customers with the benefits of power from the Mitchell Asset during the summer months of 2014, when the power markets may well be characterized by seasonally higher costs and volatility. In order to accommodate a June 30, 2014 closing, the Companies respectfully request a final order on the WPCo Mitchell Transfer by June 13, 2014.

#### **Reasons for Adopting the Plan**

The WPCo Mitchell Transfer offers significant advantages to the Companies' West Virginia customers. As an initial matter, the Mitchell Plant is well known to the Commission and the Companies. It is a high quality asset, with ready access to fuel. It has the environmental controls needed to ensure its compliance with the Mercury and Air Toxics Standards Rule (the "MATS Rule"). Mitchell is located in WPCo's service area and provides a significant number of

jobs to West Virginia residents and tax revenues to West Virginia governmental bodies. These benefits were considered in detail in testimony and studies submitted in the formerly-consolidated Asset Transfer and Merger Cases and recognized by the Commission in its December 13, 2013 Order. December 13, 2013 Order at 40 (Findings of Fact 47-50). The Commission observed that the Mitchell Plant “is expected to continue to provide competitive generation well into the future.” *Id.* at 30. Further, the Mitchell Plant is operated efficiently in accordance with good utility practice by the Companies’ affiliate Kentucky Power Company (“KPCo”), under the ultimate supervision of Jeffery D. LaFleur, Vice President of Generating Assets and a witness of the Companies in the formerly consolidated Merger and Asset Transfer Cases. The operation of the Mitchell Plant will not change with the WPCo Mitchell Transfer. KPCo, which owns the other one-half interest in the Mitchell Plant, as discussed further below, would continue to operate the Mitchell Plant after the WPCo Mitchell Transfer.

The WPCo Mitchell Transfer will ensure that the Companies’ West Virginia customers benefit from the many advantageous features of co-ownership of the Mitchell Plant.<sup>3</sup> The WPCo Mitchell Transfer will provide a suitable amount of capacity to serve WPCo’s load and to accommodate projected load growth associated with the growing shale gas industry in the Wheeling area. Exhibit B attached to this filing shows the capacity and energy positions of a combined APCo/WPCo West Virginia jurisdiction, assuming the Companies’ Updated Plan to transfer the Mitchell Asset is approved. This exhibit demonstrates that the addition of the Mitchell Asset to the Companies’ portfolio of plants places the Companies’ West Virginia service areas in much more favorable energy and capacity positions. WPCo’s acquisition of the Mitchell Asset will ensure that the Companies’ West Virginia customers have adequate and

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<sup>3</sup> APCo’s West Virginia customers will be advantaged as well as WPCo’s because the Commission treats the Companies as one for ratemaking purposes.

reliable power supplies, while insulating them from the volatility of wholesale power markets. Indeed, this protection from power market volatility will become increasingly important, given the planned retirement of significant amounts of APCo and other coal-fired generating capacity in 2015, much of it as a result of the MATS Rule, on top of significant retirements over the past few years. PJM experienced the retirement of approximately 11,000 MW of generation in 2011-2013, and expects almost another 10,500 MW to be retired in 2014-2015. The experience of this winter's low temperatures and high market prices for power confirms the risks of power market volatility and the value that ownership of the Mitchell Asset would have for the Companies and their West Virginia customers.

The WPCo Mitchell Transfer is far superior to other options that might be contemplated, such as constructing new generating capacity, acquiring existing generating capacity, or procuring long-term contracts for power. As the Companies demonstrated in the formerly consolidated Asset Transfer and Merger Cases, these other options are problematic for a number of reasons. They would be more costly for the Companies' customers. Further, they could limit significantly the role of the Companies and this Commission in providing reasonably priced reliable electric service for West Virginia's residents. For example, negotiating a new wholesale power supply contract for WPCo could increase costs over which the Commission would have little regulatory oversight. The WPCo Mitchell Transfer is a long-term economical power supply option for the WPCo load, as demonstrated by the Companies' analyses admitted into evidence in the formerly consolidated Asset Transfer and Merger Cases.

The WPCo Mitchell Transfer is a significantly better option than a new unit power contract with Generation Resources to be supplied from the Mitchell Asset. Not only could such a unit power contract have many of the same shortcomings as a wholesale contract with an

unaffiliated third party, but it would also impose higher costs on the Companies' customers as a result of the higher financing costs to which Generation Resources will be subject.

In light of the manifest benefits of the WPCo Mitchell Transfer and the evidentiary record in the formerly consolidated Asset Transfer and Merger Cases, there is only one new issue that would need to be resolved as the Commission considers the WPCo Mitchell Transfer. This sole issue is the suitability of WPCo as the ultimate transferee of the Mitchell Asset. The Companies submit that WPCo is an appropriate transferee of the Mitchell Asset. As noted, the WPCo Mitchell Transfer will not result in any change to the operation of the Mitchell Plant. Further, because of the combined ratemaking for WPCo and APCo's West Virginia service territory, transferring the Mitchell Asset to WPCo provides all of the Companies' West Virginia customers with benefits of the Mitchell Asset. For West Virginia customers, this combined ratemaking provides benefits similar to those of the originally proposed transfer of the Mitchell Asset to APCo. For instance, at times the Mitchell Asset will produce energy in excess of WPCo's needs, while at other times there may be a need to supplement available capacity and energy with purchases from the market. However, due to the fact that APCo's units and the Mitchell Asset are dispatched as part of the same market, the results on fuel costs for West Virginia customers should be comparable to having the Mitchell Asset and APCo's units reside in a single company. As more fully explained elsewhere in this Updated Plan, however, the substitution of the Mitchell Asset for the WPCo Contract would move costs from ENEC rates to base rates.

#### **Transaction Details**

The WPCo Mitchell Transfer will be effected by means of a series of near-simultaneous transactions designed to ensure that the transfer of Mitchell is accomplished without producing

unintended tax results. First, Generation Resources will form a new wholly-owned subsidiary of Generation Resources (referred to as “NEWCO Wheeling”). Generation Resources will contribute to NEWCO Wheeling its interest in the Mitchell Plant. Generation Resources will then distribute its shares of NEWCO Wheeling to an intermediate holding company, AEP Energy Supply LLC (referred to herein as “AEP Energy Supply”), and AEP Energy Supply will distribute those shares to American Electric Power Company, Inc., the parent company. In the final step, NEWCO Wheeling will merge with and into WPCo, with WPCo being the surviving entity. The end result will be WPCo’s ownership of an undivided fifty percent interest (approximately 780 MW) in Mitchell Units 1 and 2 and half of the various assets and liabilities associated with the Mitchell Plant. A graphic depiction of these transactions is attached hereto as Exhibit A. The form of the Agreement and Plan of Merger of WPCo and NEWCO Wheeling is attached hereto as Exhibit E.

One essential action necessitated by the WPCo Mitchell Transfer is the modification of the Mitchell Operating Agreement. A modified operating agreement will be developed which will remove Generation Resources and add WPCo. KPCo, the operator of the Mitchell Plant, and American Electric Power Service Corporation, the other party to the operating agreement, will continue to be parties to the agreement.

Attached to this filing as Exhibit C is a list of the proposed accounting entries associated with the transfer of the Mitchell Asset to WPCo. If the Commission’s consent and approval of the WPCo Mitchell Transfer is granted, the Companies will make a future filing seeking any additional approval that may be required with respect to financing the asset transfer proposed in the Updated Plan, beyond the transfer of liabilities reflected on Exhibit C to this filing.



### **FERC Filings**

Subsequent to this filing, the Companies will make any necessary filing(s) with the FERC for the approval of the WPCo Mitchell Transfer and any associated filings, such as approval of the Operating Agreement discussed previously and revisions to the Power Coordination Agreement to add WPCo as a party.

### **The Merger**

The Companies recognize that the Merger has been under consideration by the Commission for some years and they remain committed to progressing toward its ultimate consummation. There has been some functional movement in that direction. While APCo and WPCo remain separate legal entities, various operational functions that OPCo used to provide for WPCo have been assumed by personnel of the Companies. These changes should be imperceptible to the Companies' customers and should facilitate any future transition to a merged company.

The principal impediment to a speedy conclusion of the Merger, however, is substantially the same set of circumstances that the Companies discussed in their briefs in the then-consolidated Asset Transfer and Merger Cases and that the Commission discussed in its December 13, 2013 Order, namely reconciling the decisions of this Commission with those of the VSCC. Any new or revised capacity plan for WPCo, including the Updated Plan, will affect significantly WPCo's operations. With such changes to the *status quo*, APCo concludes that it could not rely on the VSCC's approval of the Merger in its July 31, 2013 Order, the end result of which would be a surviving APCo that would own (post-merger) the very Mitchell Asset that the VSCC declined to approve being transferred to APCo. At the very least, APCo concludes that it would need to present to the VSCC the changed circumstances involved in the Merger once

WPCo's power supply plan has been determined. Accordingly, the Companies suggest that the Merger will need to await final regulatory approval by all the relevant regulatory bodies after the approval of a power supply plan for WPCo, before it can be consummated.

Deferring the Merger will not have an adverse effect on the Companies' West Virginia customers. Rather, it will provide those customers with significant advantages, by allowing them to receive the benefits of the Mitchell Asset at the earliest possible date, and irrespective of the ultimate outcome of other regulatory proceedings respecting the Merger.

### **Form 10 Representations**

As part of its request for the Commission's consent and approval pursuant to W.Va. Code §24-2-12, the Companies provide below certain information to ensure compliance, to the extent necessary given the information already provided in the instant proceeding, with the requirements of the Commission's Rules of Practice and Procedure and, in particular, Rule 10.9 and Form 10.

The names of the Petitioners are Appalachian Power Company and Wheeling Power Company. APCo is incorporated in the Commonwealth of Virginia and authorized to do business in West Virginia. WPCo is incorporated in West Virginia. The Companies provide electric service as public utilities in West Virginia, subject to regulation by the Commission. Their principal office in West Virginia is at 707 Virginia Street, East, Charleston, West Virginia 25301.

The name of the affiliate with which the Petitioners wish to enter into an arrangement for the transfer of the Mitchell Asset is AEP Generation Resources Inc. It is incorporated in the State of Delaware and its principal office has an address of 1 Riverside Plaza, Columbus, Ohio 43215. Additionally, to facilitate the WPCo Mitchell Transfer as discussed above without

incurring unintended tax consequences, the special purpose affiliated entity NEWCO Wheeling will be used. NEWCO Wheeling will be incorporated in the State of West Virginia with its principal office address at 1 Riverside Plaza, Columbus, Ohio 43215. AEP Energy Supply is a Delaware limited liability company with its principal office address at 1 Riverside Plaza, Columbus, Ohio 43215.

The financial condition of the Companies and their affiliates is well known to the Commission. The Companies therefore request waiver of any requirement to file certificates of existence or financial data pursuant to Rule 21 and Form 10. In its December 13, 2013 Order, the Commission granted an exemption from filing statements of financial condition for APCo and its affiliates as required by Rule 21 and Form 10 and also granted an exemption from the filing of copies of articles of incorporation. The Companies submit that these exemptions dispose of any requirement to file certificates of existence or Rule 21 data in the instant proceeding with respect to all pertinent affiliates except NEWCO Wheeling and AEP Energy Supply. The Companies now seek waiver with respect to NEWCO Wheeling and AEP Energy Supply and also to the extent that any further waiver is necessary.

As noted above, a copy of the form of merger agreement pursuant to which the Mitchell Asset would be transferred to WPCo is attached as Exhibit E to this Updated Plan.

The WPCo Mitchell Transfer will enhance the service that the Companies provide to their customers and should be approved for the reasons set forth in this Updated Plan.

#### **Statutory Standard**

W.Va. Code §24-2-12 requires that the terms and conditions of the arrangement proposed herein are fair and reasonable, that the arrangement does not confer upon any party thereto an undue advantage over any other party thereto, and that the arrangement does not adversely affect

the public in West Virginia. The terms and conditions of the WPCo Mitchell Transfer are reasonable. As discussed herein, the proposed arrangement offers benefits to all of the entities involved and does not impose any disadvantages upon any entity. The WPCo Mitchell Transfer does not adversely affect the public in West Virginia. To the contrary, the public will be advantaged in a number of ways, particularly the segment of the public receiving its public utility electric service from APCo and WPCo. West Virginia customers of the Companies will be assured of adequate and reliable power supplies at reasonable prices and the long-term stability of the rates of the Companies' West Virginia customers will be enhanced.

#### **Cost and Rate Impacts**

The WPCo Mitchell Transfer will have certain rate impacts for the Companies' West Virginia customers. Since the Companies propose that the WPCo Mitchell Transfer occur simultaneously with the termination of the WPCo Contract, there will be a reduction in ENEC and an increase in base rate costs. The best approach to addressing these rate impacts would be to synchronize the rate impacts of ENEC reductions and base rate increases. Doing so will ensure the maximum level of rate stability. This is exactly the approach that the Commission followed when designing the Base Rate Surcharge associated with the Amos Asset.

The table below shows the estimated changes in the ENEC and base rate costs anticipated with the WPCo Mitchell Transfer and simultaneous cancellation of the WPCo Contract. More detail for the numbers shown in the table below is provided in Exhibit D.

	<b>Annual Amounts</b>		
	<b>\$Millions</b>		
	<b>Asset Transfer Surcharge</b>	<b>ENEC</b>	<b>Net</b>
<b>Mitchell Fixed Costs</b>	<b>118</b>		<b>118</b>
<b>Mitchell Net Energy Costs</b>		<b>78</b>	<b>78</b>
<b>WPCo Contract (termination)</b>		<b>(173)</b>	<b>(173)</b>
<b>Net Cost</b>	<b>118</b>	<b>(95)</b>	<b>23</b>

The Companies have considered these potential impacts in their request of a new ENEC rate effective July 1, 2014 and recommend that, effective with the closing of the WPCo Mitchell Transfer, assuming the Companies' requested ENEC increase is granted, an offsetting increase in a base rate surcharge rider and a reduction of ENEC rates of \$118 million should be implemented, thus resulting in no increase in total rates beyond the proposed ENEC increase. The Companies propose no additional change to ENEC in this proceeding, since it is recognized that the net \$23 million is within the range of historical variation from the Companies' forecasts. The base rate surcharge rider would be in effect until new base rates are established in the Companies' 2014 base rate case. Any difference between actual ENEC revenues and costs would be recognized in the Companies' 2015 ENEC case. That said, the Companies acknowledge that other procedural approaches could be taken, particularly given the Companies' 2014 ENEC and base rate cases.

With this approach to ratemaking, as noted above, the WPCo Mitchell Transfer would provide the Companies' West Virginia customers with significant benefits, including enhancing long term rate stability and mitigating the effects of wholesale power market volatility. Moreover, the Companies' West Virginia customers would have the benefit of any off system sales from the Mitchell Asset.

### Procedural Schedule

The Companies recognize that certain procedural matters will need to be addressed as the Updated Plan and the Companies' request for the WPCo Mitchell Transfer are considered. These procedural matters include the information to be supplied by the Companies and a schedule for adjudicating the Companies' proposal. Additional procedural matters that could be addressed include intervention, notice, and the use of the evidentiary record in the formerly consolidated Asset Transfer and Merger Cases in the WPCo Mitchell Transfer docket. The Companies offer the following observations and comments.

The Companies respectfully suggest that the Commission issue a procedural Order detailing how consideration of the WPCo Mitchell Transfer should proceed and specifying times, to the extent necessary, for any additional intervention, discovery, supplemental testimony, and evidentiary hearings. This procedural Order should clarify the scope of the Commission's consideration of the WPCo Mitchell Transfer by noting that the evidentiary record in the formerly consolidated Asset Transfer and Merger Proceedings constitutes part of the evidentiary record in the Commission's consideration of the WPCo Mitchell Transfer, that the issues resolved by the December 13, 2013 Order are not subject to *de novo* re-litigation, and that the only issue to be ruled on is the suitability of WPCo as the ultimate transferee of the Mitchell Asset.

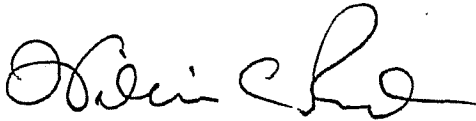
In any event, the Companies propose June 30, 2014 as the date of the WPCo Mitchell Transfer and the termination of the WPCo Contract. The Companies respectfully request that the Commission adopt a procedural schedule that allows for the adjudication of this proceeding comfortably in advance of that date, with the issuance of a final order by June 13, 2014.

WHEREFORE the Companies respectfully request that the Commission enter an Order approving this Updated Plan, granting its consent and approval for WPCo to enter into the proposed arrangement for the transfer of the Mitchell Asset, granting waivers as requested herein, and granting such other relief as may be appropriate.

Respectfully submitted,

APPALACHIAN POWER COMPANY and  
WHEELING POWER COMPANY

By Counsel



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Charleston, West Virginia 25326

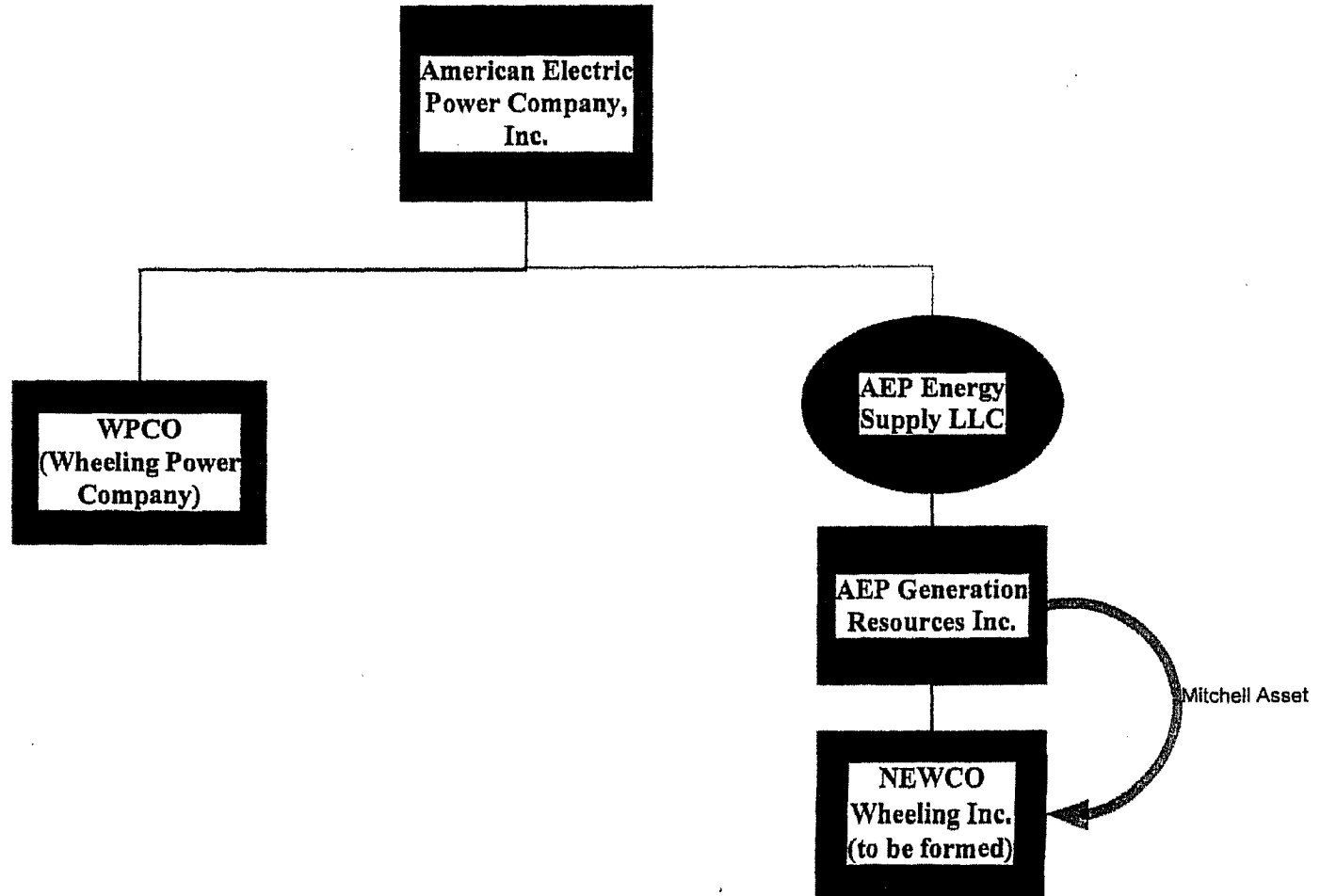
James R. Bacha  
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American Electric Power Service Corporation  
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Columbus, Ohio 43215

Counsel for Appalachian Power Company  
and Wheeling Power Company

Dated: March 4, 2014

**AMERICAN ELECTRIC POWER**

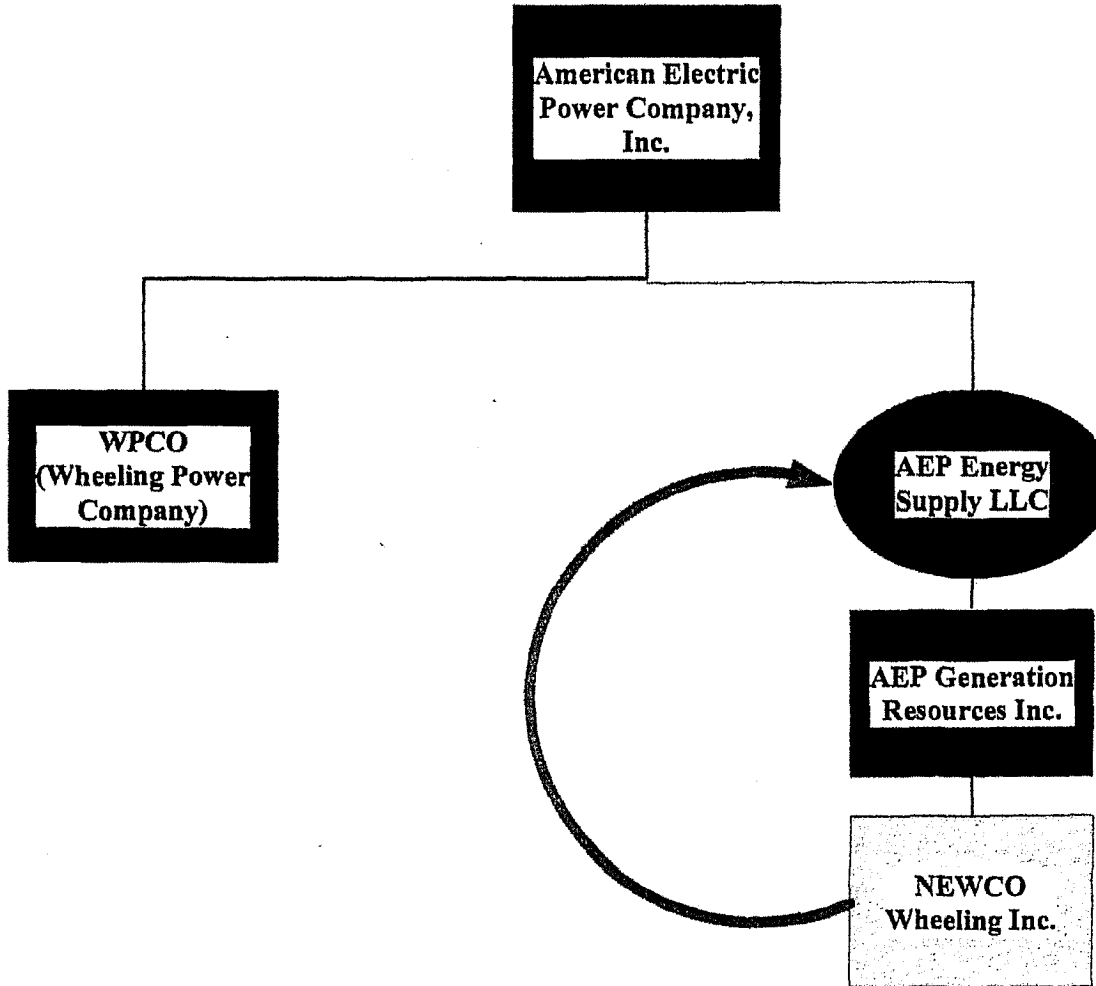
**Step 1: AEP Generation Resources contributes Mitchell Asset to NEWCO Wheeling**





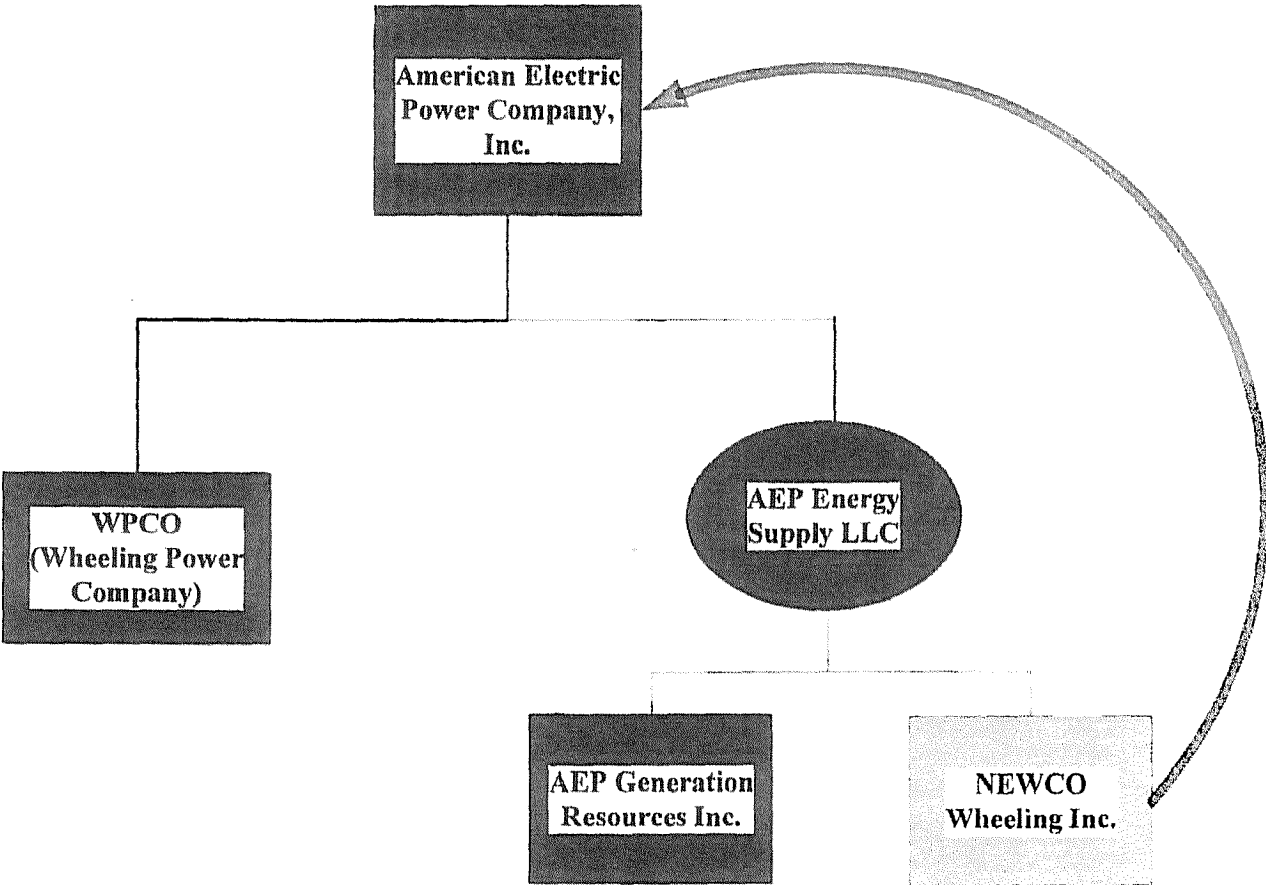
# AMERICAN ELECTRIC POWER

Step 2: NEWCO Wheeling Inc. shares distributed to AEP Energy Supply LLC



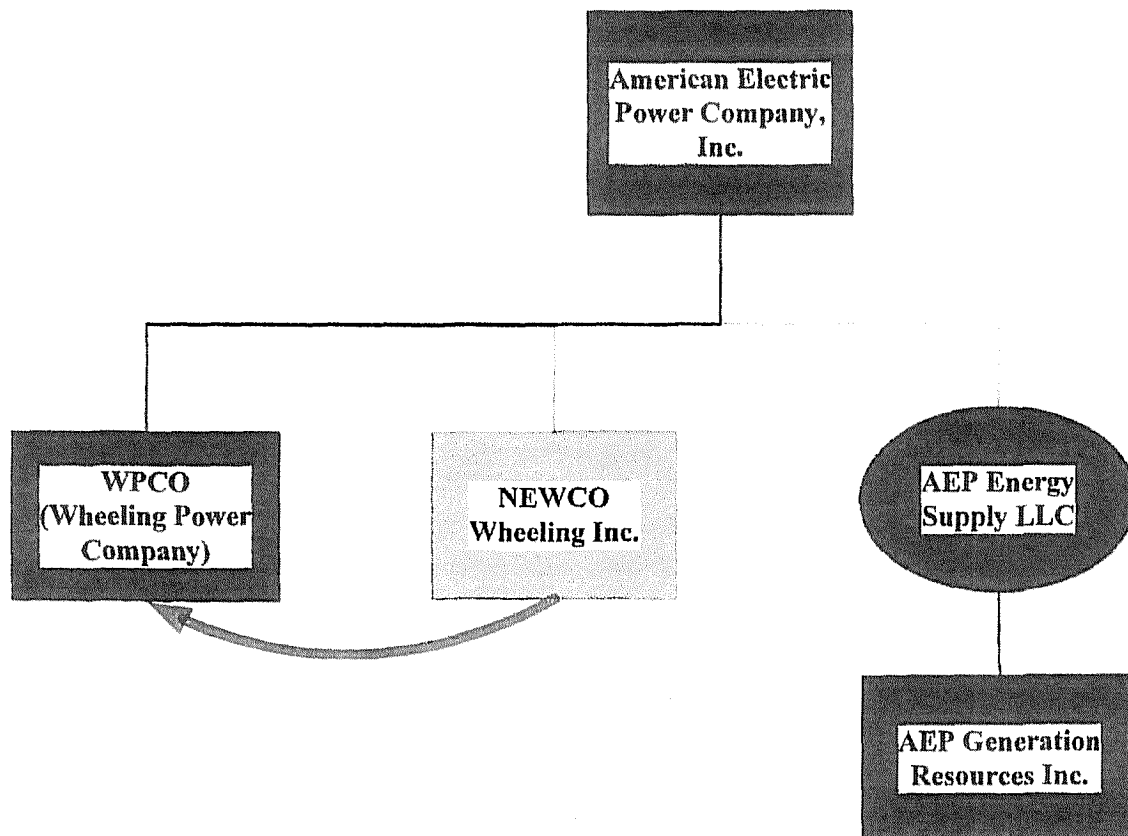
**AMERICAN ELECTRIC POWER**

**Step 3: NEWCO Wheeling Inc. shares distributed to AEP Company, Inc.**

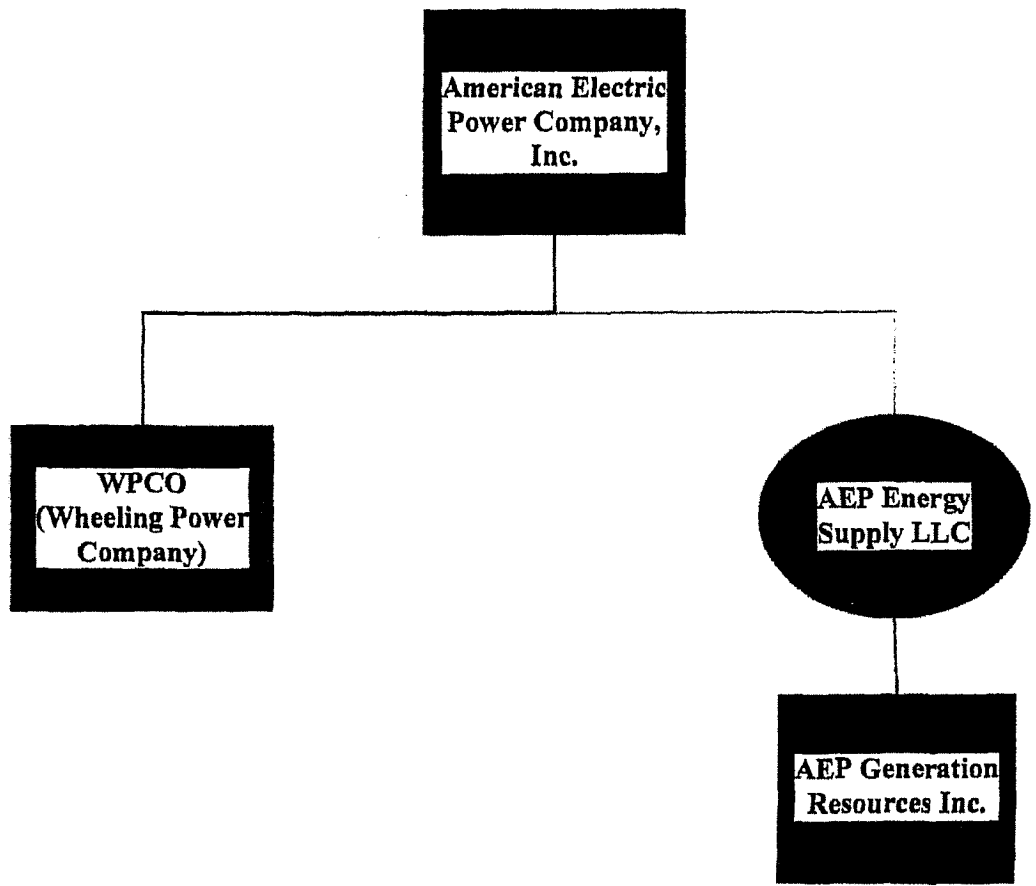


# AMERICAN ELECTRIC POWER

Step 4: NEWCO Wheeling Inc. merges into Wheeling Power Company



**AMERICAN ELECTRIC POWER  
FINAL STRUCTURE**



## NET CAPACITY AND ENERGY POSITIONS FOR WV

### CAPACITY - NET MW ABOVE PJM RESERVE REQUIREMENT OF 15.7%

PJM PY	TOTAL West Virginia			
	APC 100%	APC 43.4%	WPC 100%	TOTAL WV Jurisdiction
2015	75	33	178	211
2016	67	29	168	198
2017	16	7	165	172
2018	362	157	163	320
2019	370	161	161	321
2020	351	152	158	310
2021	300	130	154	284

### ENERGY - NET GWH PURCHASES (MARKET SALES LESS MARKET PURCHASES) - SHORT POSITION = ( )

Year	TOTAL West Virginia			
	APC 100%	APC 42.6%	WPC 100%	TOTAL WV Jurisdiction
2015	(3,920)	(1,670)	532	(1,138)
2016	(3,777)	(1,609)	1,200	(409)
2017	(1,795)	(765)	1,313	548
2018	(3,080)	(1,312)	1,209	(103)
2019	(2,452)	(1,045)	1,154	109
2020	(2,778)	(1,183)	1,384	201
2021	(2,890)	(1,231)	1,152	(80)

## **WHEELING POWER COMPANY PROPOSED ACCOUNTING ENTRIES**

Wheeling Power Company is providing proposed accounting entries reflecting the proposed transfer of AEP Generation Resources' generation assets and related liabilities to Wheeling Power Company.

The proposed accounting entries in this filing are based on account balances as of December 31, 2013. While these balances reasonably represent the expected assets, liabilities and total capitalization to be transferred, the actual account balances at the time of transfer will be different and the methods employed will be more detailed and precise. The transfer of assets constituting an operating unit or system will be recorded through Account 102 consistent with the instructions of Electric Plant Instruction No. 5 of the Federal Energy Regulatory Commission's Uniform System of Accounts.

Wheeling Power Company will submit proposed final accounting entries within six months of the consummation of the transaction reflecting all entries made on the books and records of Wheeling Power Company pursuant to the Federal Energy Regulatory Commission's Uniform System of Accounts, along with appropriate narrative explanations describing the basis for the entries.

**A. TO BE RECORDED ON THE BOOKS OF WHEELING POWER COMPANY (WPCO):**

**ENTRY 1: TO RECORD THE TRANSFER OF CERTAIN GENERATION ASSETS & RELATED LIABILITIES TO WPCO (Based on 12/31/13 Balances)**

		(in thousands)	
<u>Account</u>	<u>Account Description</u>	<u>Debit</u>	<u>Credit</u>
102	Electric Plant Purchased or Sold	682,308	
124	Other Investments	2,634	
151	Fuel Stock	32,979	
152	Fuel Stock Expenses Undistributed	1,041	
154	Plant Materials and Operating Supplies	10,533	
158.1, 158.2	Allowances	3,159	
182.3	Regulatory Assets	28,835	
186	Miscellaneous Deferred Debits	4,474	
190	Accumulated Deferred Income Tax	21,033	
201-226	Proprietary Capital & Long-term Debt		556,871
230	Asset Retirement Obligations		16,421
236	Taxes Accrued		4,175
242	Miscellaneous Current and Accrued Liabilities		267
253	Other Deferred Credits		356
281	Accum. Deferred Income Taxes-Accelerated Amort Property		61,534
282	Accum. Deferred Income Taxes-Other Property		93,124
283	Accum. Deferred Income Taxes-Other		54,248
	<b>Total</b>	<b>786,996</b>	<b>786,996</b>

**ENTRY 2: TO CLEAR THE BALANCE IN ACCOUNT 102 TO THE APPROPRIATE ELECTRIC PLANT ACCOUNTS, IN ACCORDANCE WITH CFR 18 PART 101, ELECTRIC PLANT INSTRUCTIONS 5(B).**

		(in thousands)	
<u>Account</u>	<u>Account Description</u>	<u>Debit</u>	<u>Credit</u>
101-106	Utility Plant	917,142	
107	Construction Work in Progress	75,253	
102	Electric Plant Purchased or Sold		682,308
108, 111, 115	Accum Prov for Depreciation & Depletion - Utility		310,087
	<b>Total</b>	<b>992,395</b>	<b>992,395</b>

Wheeling Power Company  
Estimated Surcharge for  
Transferring 50% of Mitchell Plant to WPCo

Line	Revenue Requirement* (\$000)
(1) Rate Base (a)	\$577,973
(2) Rate of Return (b)	7.176%
(3) Return Component on Plant in Service	\$41,475
(4) Rate Base Financed by Equity (b)	\$252,249
(5) Return on Rate Base Financed by Equity	\$25,225
(6) Return Grossed Up for Taxes	\$33,904
(7) Income Taxes (@ 25.6%) (c)	\$8,680
(8) Pre-tax Return Requirement	\$50,155
(9) O&M Expense	\$32,069
(10) Depreciation and Amortization	\$29,463
(11) Taxes Other Than Income Taxes	\$6,394
<b>(12) Annual Revenue Requirement</b>	<b>\$118,081</b>

\*Excludes ENEC components

- (a) Rate base at transfer date will include environmental CWIP, if any.
- (b) Based on Capital Structure and 10% Return on Equity from case nos. 13-0467-E-GI and 10-0699-E-42T, respectively. Includes est. cost for WPCo L-T Debt of 5.25%.
- (c) Tax rate approved in case number 10-0699-E-42T.



APPALACHIAN POWER COMPANY  
AND WHEELING POWER COMPANY  
Expanded Net Energy Cost  
With Wheeling Contract Compared to Mitchell Transfer to Wheeling  
(\$000)

Line No.		ENEC With Wheeling Contract	ENEC Impacts With Mitchell Transfer to WPCo	Comparison Totals
1	<u>Expanded Net Energy Cost (\$000)</u>			
2	Fossil Generation (Energy)			
3	Fuel Expense	758,881	92,528	851,409
4	Fuel Handling	46,599	3,791	50,391
				-
5	Plus:			
6	Purchased Power Non-Affil (Energy)	277,545	20,513	298,058
7	Purchased Power Non-Affil (Demand)	-	-	-
8	Purchased Power Affil (Demand)	-	-	-
9	Purchased Power Affil (Energy)	-	-	-
10	Purchased Power - Wind (Energy)	64,221	-	64,221
11	PJM Ancillaries (Demand)	(9,048)	(1,231)	(10,279)
12	PJM Ancillaries (Energy)	29,934	3,001	32,935
13	Capacity Settlement (Demand)	-	-	-
14	Off-System Sales Received from Pool (Energy)	-	-	-
15	Primary Energy Received (Energy)	-	-	-
16	FTR Revenue Net of Congestion Costs - LSE (Demand)	4,526	465	4,990
17	Transmission Losses (Energy)	15,506	1,505	17,011
18	SO <sub>2</sub> , NO <sub>x</sub> and CO <sub>2</sub> Expenses (Energy)	50,593	7,655	58,248
		-	-	-
19	Less:			
20	Energy Delivered to Pool for Off-System Sales (Energy)	-	-	-
21	Primary Energy Delivered (Energy)	-	-	-
22	Transmission Agreement Costs (Demand)	(93,540)	(9,827)	(103,368)
23	3rd Party Transmission Revenue (Demand)	86,760	5,720	92,480
24	3rd Party Transmission Revenue (Energy)	105	-	105
25	Off-System Sales Revenue COGS (Demand)	-	-	-
26	Off-System Sales Revenue COGS (Energy)	121,692	33,960	155,653
27	Off-System Sales Margin (Demand)	6,181	2,422	8,603
28	Off-System Sales Margin (Energy)	64,897	17,218	82,115
29	Gain/(Loss) on Sale of Allowances (Energy)	153	271	424
30	Total Expanded Net Energy Cost (\$000)	<u>1,052,510</u>	<u>78,465</u>	<u>1,130,974</u>
31	<u>Expanded Net Energy Cost (Demand &amp; Energy)</u>			
32	Total Demand	(3,923)	920	(3,004)
33	Total Energy	1,056,433	77,545	1,133,978
34	Total Expanded Net Energy Cost (\$000)	<u>1,052,510</u>	<u>78,465</u>	<u>1,130,974</u>
35	Memo Items:			
36	Amos Low Sulfur Coal Inventory	20,528		20,528
37	Transmission Agreement Phase-In Deferrals	1,150		1,150
38	Wheeling Contract Expenses (Demand)	54,521	(54,521)	-
39	Wheeling Contract Expenses (Energy)	118,633	(118,633)	-
	Total	<u>1,247,342</u>	<u>(94,689)</u>	<u>1,152,653</u>

**AGREEMENT AND PLAN OF MERGER**

**BETWEEN**

**WHEELING POWER COMPANY**

**a West Virginia corporation**

**and**

**NEWCO WHEELING INC.**

**a West Virginia corporation**

This **AGREEMENT AND PLAN OF MERGER** is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 201\_, under Section 31D-11-1102 and 31D-11-1106 of the West Virginia Corporation Act, between **WHEELING POWER COMPANY**, a West Virginia corporation (“WPCo”), and **NEWCO WHEELING INC.**, a West Virginia corporation (“NEWCO Wheeling”).

**RECITALS**

1. WPCo is a corporation duly organized, validly existing and in good standing under the laws of West Virginia and is a wholly owned subsidiary of American Electric Power Company, Inc., a New York corporation (“AEP”), which is a public utility holding company. WPCo is a regulated public utility engaged in the business of providing electric power and related services to its customers.
2. NEWCO Wheeling is a corporation duly organized, validly existing and in good standing under the laws of West Virginia and is a wholly owned subsidiary of AEP. NEWCO Wheeling owns certain electric generating facilities; however, it is not a regulated public utility.
3. WPCo currently has authorized 150,000 shares of common stock, no par value, of which 150,000 are issued and outstanding and held by AEP.
4. NEWCO WPCo currently has authorized 100 shares of common stock, no par value, of which 100 are issued and outstanding and held by AEP.
5. The Federal Energy Regulatory Commission and the Public Service Commission of West Virginia have authorized the merger of NEWCO Wheeling with and into WPCo.

6. The Boards of Directors of WPCo and NEWCO Wheeling have each determined that it is in the best interest of both companies and their shareholders to merge NEWCO Wheeling with and into WPCo, and have, by resolutions, duly approved and adopted this Agreement and Plan of Merger. AEP, the sole shareholder of WPCo and NEWCO Wheeling, has approved this Agreement and Plan of Merger.

**AGREEMENT**

Now, therefore, in consideration of the premises and agreements contained herein, the parties agree as follows:

**ARTICLE I  
NAMES OF CORPORATIONS; MERGER**

The names of the constituent corporations to the merger are “Wheeling Power Company” and “Newco Wheeling Inc.” In accordance with the laws of West Virginia and this Agreement and Plan of Merger, NEWCO Wheeling shall be merged with and into WPCo which shall be, and is herein referred to as, the “Surviving Corporation.”

**ARTICLE II  
EFFECTIVE TIME**

As soon as practicable after the execution hereof, Articles of Merger shall be filed, as required by the West Virginia Corporation Act, with the Secretary of State of West Virginia. The merger shall become effective at \_\_\_\_ p.m. on \_\_\_\_\_, 201\_. Such date and time shall be the “Effective Time” referred to in this Agreement and Plan of Merger.

**ARTICLE III**  
**EFFECT OF MERGER; ARTICLES OF INCORPORATION;**  
**BY-LAWS; DIRECTORS AND OFFICERS ON THE EFFECTIVE DATE**

- 3.1 At the Effective Time, NEWCO Wheeling shall be merged with and into WPCo (the “Merger”), the separate corporate existence of NEWCO Wheeling shall cease, and WPCo shall be the continuing and Surviving Corporation in the merger and shall continue to exist under the laws of West Virginia.
- 3.2 The Surviving Corporation shall have all the rights, privileges, immunities and powers and shall be subject to all of the duties and liabilities of a corporation organized under the West Virginia Corporation Act. Title to all real estate and other property owned by WPCo and NEWCO Wheeling shall be vested in the Surviving Corporation and the Surviving Corporation shall have all the liabilities of WPCo and NEWCO Wheeling. Any proceeding pending against WPCo or NEWCO Wheeling at the Effective Time may be continued as if the Merger did not occur or the Surviving Corporation may be substituted in such proceeding in the case of any such proceeding against NEWCO Wheeling.
- 3.3 The Restated Articles of Incorporation of WPCo, as in effect immediately prior to the Effective Time, shall be the Restated Articles of Incorporation of the Surviving Corporation until they shall thereafter be duly altered or amended.
- 3.4 The By-Laws of WPCo, as in effect immediately prior to the Effective Time, shall be the By-Laws of the Surviving Corporation until they shall thereafter be duly altered or amended.

- 3.5 The directors and officers of WPCo immediately prior to the Effective Time shall continue to be the directors and officers of the Surviving Corporation until changed in accordance with law.

#### **ARTICLE IV CONVERSION OF SHARES**

The manner of carrying into effect the Merger, and the manner and the basis of converting and canceling the capital stock of the constituent companies, shall be as follows: At the Effective Time, (1) each share of capital stock of WPCo then issued and outstanding shall, by virtue of the Merger and without any action by the holder thereof, constitute one issued and outstanding share of stock of the Surviving Corporation and shall include the same rights, privileges and preferences as appertained to the capital stock of WPCo immediately prior to the merger; (2) each share of capital stock of NEWCO Wheeling then issued and outstanding shall, by virtue of the Merger and without any action by the holder thereof, be canceled and extinguished; and (3) no new or additional stock of the Surviving Corporation shall be issued in consummating the Merger.

#### **ARTICLE V MISCELLANEOUS**

- 5.1 The parties to this Agreement and Plan of Merger shall pay the expenses incurred by each of them, respectively, in connection with the transactions contemplated herein.
- 5.2 The title of this Agreement and Plan of Merger and the headings herein set out are for the convenience of reference only and shall not be deemed to be part of this Agreement and Plan of Merger.

- 5.3 Subject to applicable law, this Agreement and Plan of Merger may be amended by agreement between the parties hereto and approved by their respective Board of Directors.
- 5.4 This Agreement and Plan of Merger and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of West Virginia.
- 5.5 The parties intend that, for United States federal income tax purposes, the merger will qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and that this Agreement and Plan of Merger will be, and is hereby, adopted as a plan of reorganization for purposes of Section 368(a) of the Code.

*Signatures appear on the following page*

**IN WITNESS WHEREOF**, each of WPCo and NEWCO Wheeling has caused this Agreement and Plan of Merger to be executed on its behalf and in its corporate name as of the date first above written.

**WHEELING POWER COMPANY**

By \_\_\_\_\_  
Its \_\_\_\_\_

**NEWCO WHEELING INC.**

By \_\_\_\_\_  
Its \_\_\_\_\_



146 FERC ¶ 61,141  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

AEP Generation Resources Inc.

Docket No. ER14-899-000

ORDER GRANTING AUTHORIZATION TO MAKE AFFILIATE SALES AND  
ACCEPTING TARIFF FILING

(Issued February 28, 2014)

1. In this order, we accept the power supply agreement (Assigned Contract) filed on December 30, 2013 by AEP Generation Resources Inc. (AEP Generation), effective January 1, 2014. In light of the totality of the facts and circumstances of this case, we grant AEP Generation's request for authorization to make wholesale power sales to its affiliate Wheeling Power Company (Wheeling) for an initial term, effective January 1, 2014 and expiring on or before December 31, 2014, as discussed below. We also grant AEP Generation's request for waiver of 18 C.F.R. §§ 35.11, 35.13, and 35.39(b), as discussed below.

**I. Background**

2. Ohio Power Company (Ohio Power), AEP Generation, and Wheeling are subsidiaries of American Electric Power Company, Inc. AEP Generation states that Wheeling serves retail customers in West Virginia but does not own or operate any generating facilities, and that Ohio Power entered into a full requirements contract (Existing Contract) with Wheeling on November 29, 2009. The Existing Contract was accepted on January 8, 2010.<sup>1</sup>

3. AEP Generation states that the Existing Contract was to terminate upon the merger of Wheeling into Appalachian Power Company (Appalachian) (Wheeling-Appalachian merger), which was expected to take place on or about December 31, 2013. AEP Generation states, however, that the Public Service Commission of West Virginia (West Virginia Commission) issued an order on December 13, 2013 deferring its ruling on the

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<sup>1</sup> *Ohio Power Co.*, Docket No. ER10-275-000 (Jan. 8, 2010) (delegated letter order). See *Ohio Power Company First Revised Rate Schedule* FERC No. 18.

merger subject to further evaluation of alternatives to serve Wheeling's load.<sup>2</sup> As a result of the West Virginia Commission's deferral, the Wheeling-Appalachian merger was not consummated by December 31, 2013.

4. AEP Generation states that it was formed to take ownership of and operate generation resources previously owned by Ohio Power. AEP Generation explains that those generation resources were transferred to AEP Generation on or about December 31, 2013 as part of Ohio Power's state-mandated corporate reorganization approved by the Commission on April 29, 2013<sup>3</sup> under section 203 of the Federal Power Act.<sup>4</sup> AEP Generation states that because the Wheeling-Appalachian merger did not close as originally proposed, Wheeling needs the power provided under the Existing Contract to serve its retail customers on and after January 1, 2014. Accordingly, AEP Generation states that the Existing Contract was assigned to AEP Generation who would begin serving Wheeling on January 1, 2014 under the Assigned Contract. As a result of the assignment of the Existing Contract from Ohio Power Company to AEP Generation, AEP Generation has requested authority to make sales to its affiliate, Wheeling (Proposed Transaction), as well as acceptance of the Assigned Contract.

## **II. Request for Waiver and Authorization to Make Affiliate Sales**

5. AEP Generation notes that section 35.39(b) of the Commission's regulations<sup>5</sup> provides that sales of electric energy and capacity between a franchised public utility with captive customers and a market-regulated power sales affiliate must receive prior Commission approval. AEP Generation submits that good cause exists for the Commission to waive the requirements under section 35.39(b) of its regulations. AEP Generation states that it did not know with certainty until mid-December that the Wheeling-Appalachian Merger would not close on December 31, 2013 as originally proposed and that Ohio Power would thus need to transfer the Existing Contract to AEP

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<sup>2</sup> See *Appalachian Power Co. and Wheeling Power Co.*, Docket No. 11-1775-E-P (Public Service Commission of West Virginia, Dec. 13, 2013). AEP Generation notes that the Virginia State Corporation Commission approved the Wheeling-Appalachian merger, subject to certain conditions, and that the transaction was submitted to the Commission and approved in *Appalachian Power Co. and Wheeling Power Co.*, 143 FERC ¶ 62,072 (2013).

<sup>33</sup> *Ohio Power Co. and AEP Generation Resources, Inc.*, 143 FERC ¶ 61,075 (2013) (*Ohio Power*), order on reh'g, 146 FERC ¶ 61,016 (2014).

<sup>4</sup> 16 U.S.C. § 824b (2012).

<sup>5</sup> 18 C.F.R. § 35.39(b) (2013).

Generation. Therefore, AEP Generation states that it could not submit the Assigned Contract for prior approval 60 days before January 1, 2014. AEP Generation submits that by granting the waiver, the Commission will promote a seamless transition under the reorganization and enable Wheeling's load requirements to continue to be met under the same rates, terms, and conditions that have been accepted by the Commission.

6. AEP Generation further notes that parties to such transactions must demonstrate that their agreement does not show evidence of affiliate abuse such that the traditional franchised utility provided an undue preference (i.e., agreed to sell power at a price below-market or to purchase power at a price above-market) to its market-regulated power sales affiliate.<sup>6</sup> AEP Generation states that this concern is not present here for the following reasons. AEP Generation states that it had no role in drafting the Existing Contract, because AEP Generation did not exist and there were no plans for corporate reorganization at the time. Additionally, AEP Generation states that the Existing Contract was negotiated between two franchised public utilities (Wheeling and Ohio Power). Moreover, AEP Generation represents that the Existing Contract was the result of a Joint Stipulation entered into by Wheeling, the West Virginia Commission staff and the Consumer Advocate Division of the West Virginia Commission.

7. AEP Generation notes that the Commission recognized in *Ohio Power* that if the Wheeling-Appalachian merger did not close by December 31, 2013, AEP Generation would assume Ohio Power's obligations under the Existing Contract. Further, AEP Generation explained in its section 203 application that "if the [Existing] Contract were assigned to AEP Generation Resources, there would be no adverse impact on Wheeling and its retail customers because the non-fuel components of the contract are fixed and the fuel charges will reflect the actual cost of the fuel consumed to serve Wheeling's load."<sup>7</sup>

### **III. Notice of Filing and Responsive Pleadings**

8. Notice of AEP Generation's filing was published in the *Federal Register*, 79 Fed. Reg. 1374 (2014), with motions to intervene and protests due on or before January 21, 2014. None was filed.

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<sup>6</sup> See *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991) (*Edgar*).

<sup>7</sup> Application at 2 (citing Application for Authorization to Transfer Jurisdictional Assets under section 203 of the Federal Power Act, Docket No. EC13-26 (Oct. 31, 2012) at 24).

#### IV. Discussion

##### A. Affiliate Sales Analysis

9. In *Edgar*, the Commission stated that, in cases where affiliates are entering into market-based rate sales agreements, it is essential that ratepayers be protected and that transactions be above suspicion in order to ensure that the market is not distorted.<sup>8</sup> According to *Edgar*, parties to such transactions must demonstrate that their agreement does not evidence affiliate abuse (i.e., that the traditional franchised utility did not provide an undue preference to its market-regulated power sales affiliate). The Commission extended the *Edgar* criteria in *Southern California Edison Company, On behalf of Mountainview Power Company, LLC*<sup>9</sup> to apply to all affiliate long-term (one year or longer) power purchase agreements, whether cost-based or market-based.<sup>10</sup>

10. In *Edgar*, the Commission further provided “[t]he following examples of ways to demonstrate lack of affiliate abuse,” noting that the list was not necessarily all-inclusive: (1) evidence of head-to-head competition; (2) evidence of prices which non-affiliated buyers were willing to pay for similar services from the project; and (3) benchmark evidence that shows the prices, and terms and conditions of sales made by nonaffiliated sellers, which could include purchases made by the utility itself or by other buyers in the relevant market.<sup>11</sup>

11. We do not agree with AEP Generation that the affiliate abuse concern is not an issue in this case. However, under the totality of the facts and circumstances of this particular case, we will grant AEP Generation’s request for waiver of section 35.39(b) of the Commission’s regulations and grant AEP Generation limited authorization to make

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<sup>8</sup> *Edgar*, 55 FERC at 62,167.

<sup>9</sup> *Southern California Edison Company, On behalf of Mountainview Power Company, LLC*, 106 FERC ¶ 61,183, order on reh’g, 109 FERC ¶ 61,086 (2004), order on reh’g, 110 FERC ¶ 61,319 (2005).

<sup>10</sup> *Id.* P 58.

<sup>11</sup> *Edgar*, 55 FERC at 62,168. See also *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 540, *clarified*, 121 FERC ¶ 61,260 (2007), order on reh’g, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, order on reh’g, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), order on reh’g, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), order on reh’g, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff’d sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

sales to Wheeling under the terms of the Assigned Contract for the initial Assigned Contract term, i.e., from January 1, 2014 through December 31, 2014.

12. We find that the following unique facts and circumstances in the totality warrant a waiver of section 35.39(b) of the Commission's regulations and limited authorization for the affiliate transaction: (1) the Proposed Transaction and related affiliate sale are the result of Ohio's state-mandated restructuring; (2) the affiliate sales authorization will be for a limited term (through no later than December 31, 2014), as noted below; (3) the rates, terms and conditions of the Assigned Contract have not changed from those in the Existing Contract; (4) the Existing Contract was the result of a Joint Stipulation involving, among others, the West Virginia Commission staff and the Consumer Advocate Division of the West Virginia Commission; (5) as stipulated in section 19.2 of the Assigned Contract, the West Virginia Commission is exploring options for meeting the future power supply requirements of Wheeling, and the Assigned Contract will terminate if some alternative supply mechanism is implemented for Wheeling, thus providing additional protection for captive retail customers; (6) Wheeling has an immediate requirement to supply power to its retail customers as of January 1, 2014; and (7) the parties did not know until mid-December that the Wheeling-Appalachian merger would not occur and that the Existing Contract would have to be assigned due to the actions of a third party, the West Virginia Commission.

13. As such, we will grant limited authorization for AEP Generation to make affiliate sales under the Assigned Contract until the earlier of: (1) the termination of the Assigned Contract upon consummation of the Wheeling-Appalachian merger; (2) the termination of the Assigned Contract upon the implementation of an alternative supply mechanism for the Wheeling load in accordance with section 19.2 of the Assigned Contract; or (3) the end of the initial term of the Assigned Contract on December 31, 2014.

14. In addition, we will require that if the Assigned Contract does not terminate prior to December 31, 2014 and AEP Generation intends to continue to make sales under the Assigned Contract to its affiliate, Wheeling, AEP Generation must request Commission authorization to continue performance under the Assigned Contract. Such request must be filed at least 60 days prior to December 31, 2014, and must include a traditional *Edgar* demonstration regarding affiliate abuse concerns as required by 18 C.F.R § 35.39 of the Commission's regulations.

#### **B. Power Supply Agreement**

15. The terms of the Assigned Contract provide that AEP Generation will serve Wheeling's full load requirements under fixed terms including firm power, surplus power, curtailable service, back-up service, and maintenance service. The contract includes a fuel clause that reflects fuel costs associated with the energy delivered to Wheeling. Changes from the Existing Contract have been made to reflect the change in name of the seller, and the fact that AEP Generation does not have a service territory,

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franchised retail customers, or own or operate transmission facilities. There are no changes to the provisions setting out the non-fuel and fuel charge provisions, or the terms and charges for other various services from when the Existing Contract was accepted by the Commission on January 8, 2010.

16. We grant AEP Generation's request for waiver of the 60-day notice requirements to allow the Assigned Contract to become effective January 1, 2014.<sup>12</sup> Moreover, because the filing does not constitute a change in rates and there will be no impact on Wheeling's customers, to the extent 18 C.F.R. § 35.13(c) requires comparisons of "sales and services and revenues from sales and services under the rate schedule, tariff, or service agreement to be superseded," good cause exists to waive these requirements. We therefore grant AEP Generation's request for waiver of the provisions of 18 C.F.R. § 35.13 that would require it to provide cost-of-service information for this initial term ending on or before December 31, 2014, and 18 C.F.R. § 35.11 to the extent necessary to allow a January 1, 2014 effective date.

17. On the basis of the totality of the facts and circumstances of this case, as discussed above, we accept the Assigned Contract for filing effective January 1, 2014. We remind AEP Generation's affiliate, Ohio Power, that, pursuant to 18 C.F.R. § 35.15, it needs to make a filing to cancel the Existing Contract.<sup>13</sup>

The Commission orders:

(A) AEP Generation's request for waiver of sections 35.11, 35.13, and 35.39(b) is granted, as discussed in the body of this order.

(B) AEP Generation's request for authorization to make power sales to Wheeling under the Assigned Contract is granted effective January 1, 2014 until the earlier of: (1) the termination of the Assigned Contract upon consummation of the Wheeling-Appalachian Merger; (2) the termination of the Assigned Contract upon the implementation of an alternative supply mechanism for the Wheeling load in accordance with section 19.2 of the Assigned Contract; or (3) the end of the initial term of the Assigned Contract on December 31, 2014, as discussed in the body of this order.

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<sup>12</sup> See *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,338 (1992).

<sup>13</sup> Ohio Power Company First Revised Rate Schedule FERC No. 18.

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(C) The Assigned Contract is accepted for filing effective January 1, 2014, as discussed in the body of this order.

By the Commission.

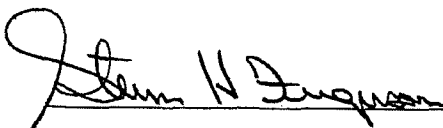
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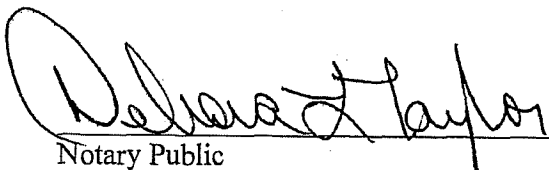
Nathaniel J. Davis, Sr.,  
Deputy Secretary.

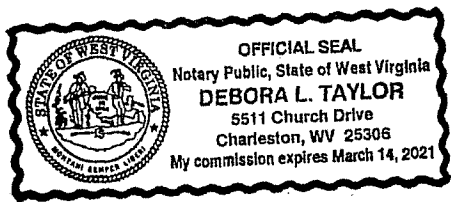
VERIFICATION

STATE OF WEST VIRGINIA     )  
  )     to-wit:  
COUNTY OF KANAWHA        )

Before me, a Notary Public in and for the aforesaid jurisdiction, personally appeared Steven H. Ferguson, who, being by me first duly sworn, did depose and say that he is Vice President – Regulatory and Finance for Appalachian Power Company, that he has reviewed the foregoing filing and knows the contents thereof, and that the facts therein stated are true to the best of his information and belief. Subscribed and sworn to before me this 3<sup>rd</sup> day of March, 2014.

  
\_\_\_\_\_

  
\_\_\_\_\_  
Notary Public



(SEAL)



**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**CASE NO. 11-1775-E-P**

**APPALACHIAN POWER COMPANY and  
WHEELING POWER COMPANY,**  
public utilities.

Joint Petition for Evaluation of a Possible  
Merger of Appalachian Power Company  
and Wheeling Power Company.

**CERTIFICATE OF SERVICE**

I, William C. Porth, counsel for Appalachian Power Company and Wheeling Power Company, do hereby certify that true copies of the foregoing filing were served by hand delivery or first-class U.S. Mail this 4<sup>th</sup> day of March, 2014, addressed to the following:

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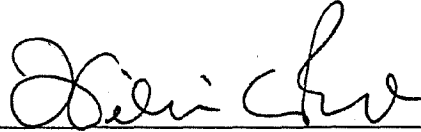
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*Steel of West Virginia, Inc.*



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William C. Porth (WV State Bar ID No. 2943)

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 8<sup>th</sup> day of April 2014.

CASE NO. 14-0546-E-PC

APPALACHIAN POWER COMPANY and  
WHEELING POWER COMPANY both dba  
AMERICAN ELECTRIC POWER,  
Petition for acquisition of Mitchell plant by  
Wheeling Power Company.

**COMMISSION ORDER**

The Commission (i) sets a procedural schedule, (ii) opens a new docket for processing the request to purchase interest in the Mitchell plant, (iii) requires filing of a proposed notice, and (iv) addresses use of evidence entered in Case Nos. 11-1775-E-P and 12-1655-E-PC.

**BACKGROUND**<sup>1</sup>

**History of Case Nos. 11-1775-E-P and 12-1655-E-PC**

On December 16, 2011, Appalachian Power Company (APCo) and Wheeling Power Company (WPCo) (collectively, Companies), filed a petition for a further evaluation of a possible merger of the two utilities. That filing was docketed as Case No. 11-1775-E-P (Merger Case).

On December 18, 2012, APCo filed a Petition for Commission consent in advance, pursuant to W.Va. Code §24-2-12, of (i) an arrangement for the transfer to APCo of 1,647 MW of generating capacity (specifically, a two-thirds interest in Unit No. 3 of the John E. Amos Plant (Amos 3) and one-half interest in the Mitchell Plant) owned by affiliate Ohio Power Company (OPCo) and (ii) associated affiliated agreements. The Commission docketed that filing as Case No. 12-1655-E-PC (Transfer Case).

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<sup>1</sup> For greater detail regarding the procedural backgrounds of these cases, please see the December 13 and 30, 2013 Commission Orders in Case Nos. 11-1775-E-P and 12-1655-E-PC.

On March 7, 2013, the Commission required APCo to publish notice that the transactions proposed in the Transfer Case could result in a net increase in West Virginia retail rates on the order of two to four percent. Affidavits of publication filed June 18, 2013.

The Commission consolidated the cases and held several days of hearing to receive evidence regarding the two petitions. Order of June 6, 2013 and hearings July 16-18, 2013.

On December 13, 2013, the Commission issued an Order (i) approving acquisition by APCo of two-thirds of the Amos 3 generating unit, (ii) deferring ruling on the acquisition by APCo of one-half of the Mitchell Power Plant (Mitchell), and (iii) deferring ruling on the Merger Case pending APCo filing and receiving approval from this Commission of a capacity resource plan to include sufficient capacity to serve the WPCo load. In regards to acquisition of Amos 3, the Commission stated that although Companies did not file a specific rate increment in these proceedings to reflect the non-expanded net energy cost revenue requirements (non-ENEC revenue requirements) for the Amos 3 or Mitchell acquisitions, Companies did indicate that an immediate rate increment was needed. In their 2013 ENEC case, Companies described a methodology and approach for recovering the non-ENEC revenue requirements (Base Rate Surcharge). Under the Base Rate Surcharge approach, Companies would receive revenue in the form of a surcharge that would continue until the non-ENEC revenue requirements of the Amos 3 and/or Mitchell acquisitions are rolled into base rates in a full base rate case.

For reasons stated in the December 13, 2013 Order, the Commission authorized a Base Rate Surcharge to be effective on the finalization of the transfer of the Amos capacity to APCo, subject to certain conditions. The Commission required the parties to submit Base Rate Surcharge calculations and comments. The December 13, 2013 Order closed Case No. 12-1655-E-PC but allowed Case No. 11-1775-E-P to remain open.

On December 30, 2013, after receiving filings regarding the Base Rate Surcharge from the Companies, Commission Staff, and the Consumer Advocate Division (CAD), the Commission approved the Base Rate Surcharge in Case No. 12-1655-E-PC, and then reclosed that docket.

#### Current Proceedings

The December 13, 2013 Order in the Transfer and Merger cases, in addressing transfer of the Mitchell plant, stated:

Under these circumstances, an approval of the Mitchell acquisition by this Commission would not give us the necessary known and achievable

long-term capacity plan that we believe is necessary before creating a capacity deficiency by rolling the WPCo load into the APCo capacity requirements. At the same time, we believe that an absolute denial of the Mitchell acquisition is not the wisest course of action; instead, we will not, at this time, approve the Mitchell portion of the Transaction. This non-approval is based on the [Virginia State Corporation Commission] denial, which places APCo in a position where it is not able immediately to proceed with the Mitchell acquisition. Normally, not granting Commission approval under W.Va. Code §24-2-12 is based on a finding that the action for which approval is sought would be contrary to the public interest. We do not make that finding with regard to the Mitchell acquisition at this time. We do, however, find that reliance on a transaction that is critical to an overall long-term capacity plan but which cannot go forward because of regulatory roadblocks in other jurisdictions, is not realistic or reasonable at this time.

Order at 30-31. Regarding the Merger Case, the Order states,

The purpose of our discussion of contract alternatives is not to indicate a preference for a contractual solution to the insufficiency of APCo capacity to serve the WPCo load. We are merely pointing out that APCo must develop a plan to serve the WPCo load after a merger. The plan might include ownership of the Mitchell plant or another generation plant, a unit contract based on the Mitchell or other plants, or long term full-requirements contracts with affiliates or non-affiliates. We withhold judgment on the sufficiency, economy, and achievability of a long-term capacity plan to serve the WPCo load after a merger until APCo has filed such a plan. The Commission directs APCo to file, on or before March 3, 2014, an updated plan to serve the WPCo load after a merger.

Order at 35.

On March 4, 2014, Companies filed a plan to serve the WPCo load by transferring a one-half interest in Mitchell from AEP Generation Resources Inc. (Generation Resources) to WPCo at net book value. According to the March 4, 2014 filing (i) coincident with the transfer the WPCo supply contract with Generation Resources will terminate, (ii) substitution of the Mitchell Asset for the WPCo supply contract would move costs from ENEC rates to base rates and conceivably not result in an increase in excess of the ENEC decrease, (iii) the merger of APCo and WPCo should await determination of the WPCo power supply plan, and (iv) the transfer fulfills the requirements of W.Va. Code §24-2-12. Companies asserted that the sole issue in this case is the suitability of WPCo as the ultimate transferee of the Mitchell Asset.

Companies requested that (i) the Commission procedural order clarify the scope of the Commission's consideration of the WPCo Mitchell Transfer by noting that the evidentiary record in the formerly consolidated Asset Transfer and Merger Proceedings constitutes part of the evidentiary record in the Commission's consideration of the WPCo Mitchell Transfer, that the issues resolved by the December 13, 2013 Order are not subject to de novo re-litigation, and that the only issue to be ruled on is the suitability of WPCo as the ultimate transferee of the Mitchell Asset, (ii) the Commission grant a waiver of any requirement to file certificates of existence or financial data, and (iii) the Commission issue an order by June 13, 2014.

On March 7, 2014, CAD filed a response to the Companies filing. CAD detailed the complexities inherent in this filing and asserted that the June 13, 2014 decision deadline does not take into consideration the complexity of the issues presented by the proposal nor the time required to engage a consultant. CAD proposed to work with the parties to this case to determine an appropriate procedural schedule given the correct scope of the questions before the Commission and the fact that the CAD will be required to engage expert testimony through the state process.

On March 10, 2014, the West Virginia Energy Users Group (WVEUG) filed a response to the Companies filing. WVEUG asserted that (i) Companies have proposed that a transaction with a cost well in excess of half a billion dollars and a proposed annual rate impact of \$118 million be approved without providing any evidentiary support for this figure or the mechanics of proposed cost recovery, (ii) incurrence by ratepayers of this level of expense is an issue of great significance to ratepayers that transcends the blanket question of whether WPCo is fit to make this acquisition, (iii) offsetting the \$118 million rate increase cost by an equal decrease to ENEC rates is fraught with significant questions, and (iv) considering the issues presented by the Companies filing, including those attendant to cost recovery, the Companies' request for a June 13, 2014 Final Order from the Commission is unreasonable. WVEUG requested that the Commission direct the parties to confer and establish a full and fair procedural schedule that allows for the development of a record that addresses all issues attendant to the Companies' filing, or establish a procedural schedule to take into account the need for discovery, filing direct testimony, and full hearing and briefs.

On March 12, 2014, Companies filed a reply to the CAD and WVEUG filings asking that the Commission issue an order limiting the scope of the instant proceeding as proposed in its March 4, 2014 filing and consider the joint or individual procedural schedules as the parties may propose and adopt the schedule best suited to producing a fair, equitable, and expeditious resolution of this proceeding.

On March 13, 2014, the West Virginia Consumer Advocate Group (WVCAG) filed an objection to the Companies proposal to limit the scope of this proceeding noting changes in the market occurring subsequent to submission of testimony on Mitchell.

WVCAG requested that the Commission reject the proposal to limit the scope of this proceeding and asked that the Commission set a procedural schedule that will allow sufficient time for other parties to prepare and file discovery and testimony on the full scope of issues raised by the Companies.

On March 14, 2014, CAD urged the Commission not to limit the scope of this proceeding without additional information.

On March 27, 2014, Companies filed a proposed procedural schedule containing a hearing beginning July 9, 2014 and final briefs due August 8, 2014, to effectuate a September 30, 2014 closing on the Mitchell transfer. Companies noted that the parties had discussed scheduling but were unable to agree.

Also on March 27, 2014, CAD filed a proposed procedural schedule containing a hearing beginning August 20, 2014 and final briefs due September 17, 2014. CAD stated that WVCAG and WVEUG concurred in its schedule and that Staff did not object to it.

### DISCUSSION

The Commission notes that the parties attempted to negotiate a procedural schedule but have not yet been able to do so. The Commission appreciates the reasons behind the Companies request for an expedited schedule but the Commission is not prepared to limit discovery and hearing-preparation time needed by the parties, or the time necessary for Commission deliberation. The Commission will adopt the CAD proposed schedule.

The parties and the Commission spent considerable time and effort to develop a record regarding Mitchell. While some of that information may be slightly aged, portions likely remain valid. The Commission is not interested in duplicating past efforts and to that end will take notice of filings and evidence in Case Nos. 11-1775-E-P and 12-1655-E-PC, subject to objection by the parties, to the extent doing so will economize the time and effort of the Commission and the parties

Finally, the Commission notes that the Transfer Case was closed by the December 13 and 30, 2013 Orders while the Merger Case remained open for the purpose of processing the APCo/WPCo merger and updated capacity plan. The present filing, however, introduces a request that is part Transfer Case (the acquisition of Mitchell) and part Merger Case (a plan to serve the WPCo load), but the entirety of neither. Because the possibility of a merger remains, and to achieve finality in the present request for WPCo to acquire Mitchell, the Commission will open a new docket (Case No.-14-0546-E-PC) to process the acquisition request. The Commission will require its Executive Secretary to copy the March 4, 2014 Updated Plan to Serve the Load of Wheeling Power Company and Petition for the Commission's Consent and Approval to

Implement the Update Plan, and all subsequent filings, into the new docket. Parties should hereafter direct their filings regarding the WPCo/Mitchell acquisition to the new docket number. All parties to Case Nos. 11-1775-E-P and 12-1655-E-PC will be made parties to Case No. 14-0546-E-PC.

The March 4, 2014 filing by the Companies describes a rate impact of the proposed transaction. The Commission understands that calculating the rate impact in this case will require certain assumptions and estimates. Nevertheless, it is appropriate that customers receive a reasonable estimate of that potential rate impact, including a plain language explanation of any assumptions and estimations necessary to the rate calculation. The Commission will require Companies to submit for Commission review a proposed public notice of this filing and the potential rate impact, within ten days of the date of this Order.

### **FINDINGS OF FACT**

1. The parties attempted but were unable to agree on a procedural schedule.
2. The Transfer Case was closed by the December 13 and 30, 2013 Orders while the Merger Case remained open for the purpose of processing the proposed APCo/WPCo merger.
3. The acquisition of Mitchell by WPCo would impact customer rates.

### **CONCLUSIONS OF LAW**

1. The CAD-proposed procedural schedule balances the need for discovery, hearing preparation, and Commission deliberation, with the Companies request for an expedited schedule, and should be adopted.
2. It is reasonable for the Commission to take notice of filings and evidence in Case Nos. 11-1775-E-P and 12-1655-E-PC, subject to objection by the parties, to avoid duplication of past efforts by the parties and the Commission.
3. Because the possibility of a merger remains, and to achieve finality in the present request for WPCo to acquire Mitchell, the Commission should open a new docket to process the acquisition request. All parties to Case Nos. 11-1775-E-P and 12-1655-E-PC should be made parties to Case No. 14-0546-E-PC.
4. Because approval of the petition filed in this case would likely result in a rate impact to customers, it is reasonable to require that Companies develop and submit for Commission approval a proposed public notice of this filing and the potential rate



impact thereof, including a plain-language explanation of any assumptions and estimations necessary to the rate calculation.

**ORDER**

IT IS THEREFORE ORDERED that the following procedural schedule is adopted for use in this matter:

Other parties' direct testimony	Friday, July 25, 2014, 4:00 p.m.
Rebuttal testimony from all parties	Friday, August 8, 2014, 4:00 p.m.
Hearing	Beginning Wednesday August 20, 21, and 22, 2014 at 9:30 a.m., in the Howard M. Cunningham Hearing Room, 201 Brooks Street, Charleston, West Virginia
Expedited transcript	Friday, August 29, 2014
Initial briefs	Wednesday, September 10, 2014, 4:00 p.m.
Reply briefs	Wednesday, September 17, 2014, 4:00 p.m.

IT IS FURTHER ORDERED that the request by Appalachian Power Company and Wheeling Power Company for Wheeling Power Company to acquire a one-half interest in Mitchell shall be processed under Case No. 14-0546-E-PC. The Commission Executive Secretary shall copy the March 4, 2014 Updated Plan to Serve the Load of Wheeling Power Company and Petition for the Commission's Consent and Approval to Implement the Update Plan, and all subsequent filings, into the new docket. Parties shall hereafter direct their filings regarding the WPCo/Mitchell acquisition to the new docket number.

IT IS FURTHER ORDERED that all parties to Case Nos. 11-1775-E-P and 12-1655-E-PC are parties to Case No. 14-0546-E-PC.

IT IS FURTHER ORDERED that within ten days of the date of this Order, Appalachian Power Company and Wheeling Power Company file a proposed public notice, for review by the Commission, describing this filing and the potential rate impact thereof, including a plain-language explanation of any assumptions and estimations necessary to the rate calculation.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this order by electronic service on all parties of record who have filed an e-service agreement, by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Staff by hand delivery.

A True Copy, Teste,

A handwritten signature in cursive script that reads "Ingrid Ferrell".

Ingrid Ferrell  
Executive Secretary

JJW/s  
140546c.doc

**Attachment A**

**Proposed Accounting Entries (18 C.F.R. § 33.5)**

## **WHEELING POWER COMPANY PROPOSED ACCOUNTING ENTRIES**

Wheeling Power Company is providing proposed accounting entries reflecting the proposed transfer of AEP Generation Resources' generation assets and related liabilities to Wheeling Power Company.

The proposed accounting entries in this filing are based on account balances as of December 31, 2013. While these balances reasonably represent the expected assets, liabilities and total capitalization to be transferred, the actual account balances at the time of transfer will be different and the methods employed will be more detailed and precise. The transfer of assets constituting an operating unit or system will be recorded through Account 102 consistent with the instructions of Electric Plant Instruction No. 5 of the Federal Energy Regulatory Commission's Uniform System of Accounts.

Wheeling Power Company will submit proposed final accounting entries within six months of the consummation of the transaction reflecting all entries made on the books and records of Wheeling Power Company pursuant to the Federal Energy Regulatory Commission's Uniform System of Accounts, along with appropriate narrative explanations describing the basis for the entries.

**A. TO BE RECORDED ON THE BOOKS OF WHEELING POWER COMPANY (WPCO):**

**ENTRY 1: TO RECORD THE TRANSFER OF CERTAIN GENERATION ASSETS & RELATED LIABILITIES TO WPCO (Based on 12/31/13 Balances)**

		(in thousands)	
<u>Account</u>	<u>Account Description</u>	<u>Debit</u>	<u>Credit</u>
102	Electric Plant Purchased or Sold	682,308	
124	Other Investments	2,634	
151	Fuel Stock	32,979	
152	Fuel Stock Expenses Undistributed	1,041	
154	Plant Materials and Operating Supplies	10,533	
158.1, 158.2	Allowances	3,159	
182.3	Regulatory Assets	28,835	
186	Miscellaneous Deferred Debits	4,474	
190	Accumulated Deferred Income Tax	21,033	
201-226	Proprietary Capital & Long-term Debt		556,871
230	Asset Retirement Obligations		16,421
236	Taxes Accrued		4,175
242	Miscellaneous Current and Accrued Liabilities		267
253	Other Deferred Credits		356
281	Accum. Deferred Income Taxes-Accelerated Amort Property		61,534
282	Accum. Deferred Income Taxes-Other Property		93,124
283	Accum. Deferred Income Taxes-Other		54,248
	<b>Total</b>	<b>786,996</b>	<b>786,996</b>

**ENTRY 2: TO CLEAR THE BALANCE IN ACCOUNT 102 TO THE APPROPRIATE ELECTRIC PLANT ACCOUNTS, IN ACCORDANCE WITH CFR 18 PART 101, ELECTRIC PLANT INSTRUCTIONS 5(B).**

		(in thousands)	
<u>Account</u>	<u>Account Description</u>	<u>Debit</u>	<u>Credit</u>
101-106	Utility Plant	917,142	
107	Construction Work in Progress	75,253	
102	Electric Plant Purchased or Sold		682,308
108, 111, 115	Accum Prov for Depreciation & Depletion - Utility		310,087
	<b>Total</b>	<b>992,395</b>	<b>992,395</b>

**Verifications**  
**(18 C.F.R. § 33.7)**

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Wheeling Power Company )  
AEP Generation Resources Inc. ) Docket No. EC14-\_\_-000  
)

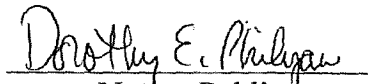
Verification of  
Wheeling Power Company

County of Kanawha )  
)  
State of West Virginia )

Charles R. Patton, being duly sworn, deposes and says: That he is the President and Chief Operating Officer of Wheeling Power Company, an Applicant in the above-referenced proceeding, and has the authority to verify the foregoing Application on behalf of Wheeling Power Company, that he has read said Application, and that, to the best of his knowledge, information and belief, all of the statements contained therein are true and correct.



SUBSCRIBED AND SWORN to before me  
on this 11<sup>th</sup> day of April, 2014.

  
Notary Public

My commission expires: October 2, 2019

