

Goss ■ Samford PLLC

       Attorneys at Law

David S. Samford
david@gosssamfordlaw.com
(859) 368-7740

October 10, 2013

Via Hand-Delivery

Mr. Jeffrey Derouen
Executive Director
Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, KY 40602

RECEIVED

OCT 10 2013

PUBLIC SERVICE
COMMISSION

Re: In the Matter of: Harold Barker; Ann Barker and
Brooks Barker v. East Kentucky Power Cooperative, Inc.
PSC Case No. 2013-00291

Dear Mr. Derouen:

Enclosed please find for filing with the Commission in the above-referenced case an original and ten (10) copies of East Kentucky Power Cooperative, Inc.'s Answer and Motion to Dismiss. Please return a file-stamped copy to me.

Do not hesitate to contact me if you have any questions.

Very truly yours,



David S. Samford

Enclosures

M:\Clients\4000 - East Kentucky Power\1350 - Harold Barker Complaint -
PSC Case No. 2013-00291 Correspondence\Ltr. to Jeff Derouen - 131010

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

OCT 10 2013

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

HAROLD BARKER; ANN BARKER)
AND BROOKS BARKER)
)
COMPLAINANTS)
)
V.)
)
EAST KENTUCKY POWER)
COOPERATIVE, INC.)
DEFENDANT)

Case No. 2013-00291

ANSWER AND MOTION TO DISMISS OF
EAST KENTUCKY POWER COOPERATIVE, INC.

Comes now the Defendant, East Kentucky Power Cooperative, Inc. ("EKPC"), by counsel, pursuant to the Commission's September 26, 2013 Order, and other applicable law, and, tenders its Answer to the Formal Complaint filed on or about July 5, 2013 by the Complainants, Harold Barker, Ann Barker and Brooks Barker (the "Barkers") and Motion to Dismiss unjurisdictional claims set forth therein, respectfully stating as follows:

I. BACKGROUND

1. The Kentucky General Assembly enacted legislation in 2004, codified as KRS 278.020(2), to clarify whether electric transmission line projects required a Certificate of Public Convenience and Necessity ("CPCN"), and which stated:

For the purposes of this section, construction of any electric transmission line of one hundred thirty-eight (138) kilovolts or more and of more than five thousand two hundred eighty (5,280)

feet in length shall not be considered an ordinary extension of an existing system in the usual course of business and shall require a certificate of public convenience and necessity. However, ordinary extensions of existing systems in the usual course of business not requiring such a certificate shall include:

- (a) The replacement or upgrading of any existing electric transmission line; or
- (b) The relocation of any existing electric transmission line to accommodate construction or expansion of a roadway or other transportation infrastructure; or
- (c) An electric transmission line that is constructed solely to serve a single customer and that will pass over no property other than that owned by the customer to be served.¹

2. On October 7, 2005, EKPC requested the issuance of a Staff Opinion from the Public Service Commission on the question of whether a proposed EKPC project to replace and upgrade its Smith-Hunt-Sideview 69 kV electric transmission line (the "Project") required a CPCN in light of the recently enacted statute. In support of its request for guidance, EKPC stated:

EKPC's Smith-Hunt-Sideview 69 kV electric transmission line is approximately 18 miles long and is located on a 100-foot wide right of way. It is supported by wooden single pole structures, wooden H-frame structures and some 3-pole wooden angle structures. The line is a single-circuit 69kV electric transmission line and was constructed in the 1950s. EKPC proposes to replace and upgrade this line with a double-circuit 345kV/69kV electric transmission line. The upgraded line will be supported by steel H-frame structures and steel 3-pole angle structures. Because of the line's higher voltage, EKPC will acquire an additional 50 feet of right of way. EKPC intends to place the upgraded line upon the same centerline as the existing line for most of the entire length of existing line with the additional 50 feet of right of way consisting of 25 feet on each side of the existing right of way.

In approximately 6 locations along the existing right of way, however, property owners constructed residences and other structures immediately adjacent to the existing right of way after the construction of the existing transmission line. At these locations, expansion of the existing right of way by 25 feet in the direction of these structures would require the acquisition and

¹ 2004 Ky. Acts. Ch. 75 (2004).

destruction of these structures. To avoid this result, EKPC proposes to acquire the entire 50 feet of additional right of way on the side of the right of way away from these structures and then adjust the centerline accordingly so as to provide adequate clearance from these structures.

In two locations, EKPC will locate the 345 kV circuit of the new transmission line on a separate and new centerline. The first of these is required to bypass the existing Hunt Station. The second of these is required to extend the 345 kV circuit beyond the Sideview substation to the point of interconnection with EKPC's existing 345 kV Spurlock-Avon transmission line. The total length of these sections of new centerline will be less than 4,000 feet.²

3. The Commission published a Staff Opinion on October 26, 2005 which determined that a CPCN was not required for the Project, based upon three considerations:

The proposed line and supporting structures generally do not supplement or expand existing electric transmission lines, but rather replaces those transmission lines and supporting structures with higher voltage lines and the required supporting facilities. With minor deviations, the proposed transmission line follows the same route and is situated on the same right of way as the existing transmission line that it will replace. While the proposed upgrade will require the construction in two instances of additional transmission line, the length of this line will not exceed 5,280 feet.³

4. Work on the Project began in March of 2006 and concluded in 2007. The line was upgraded to, and has since operated as, a 345kv/69kV transmission line. Other than “bending” the centerline to accommodate the structures referred to in the Staff Opinion request letter, a total of three adjustments to the centerline of the Project were undertaken through the course of development. First, at the request of one property owner who owned land adjacent to the Hunt substation, EKPC rerouted the portion of the transmission line around the Hunt substation. The new centerline amounted to a deviation of approximately 8,000 feet, but it was contained entirely within the property owned by the requesting landowner. The second and third

² See PSC Staff Opinion (Oct. 26, 2005). A copy is attached hereto and incorporated herein as Exhibit 1.

³ *Id.*

deviations were necessary to bring the 345kV circuit into EKPC's newly constructed North Clark Switching Station while allowing the 69kV circuit to continue along the existing centerline into the nearby and existing Sideview Substation. To accomplish this, EKPC acquired an easement for approximately 2,800 feet from the property owner adjacent to EKPC's North Clark Switching Station property. The remainder of that portion of the line, approximately 2,400 feet, is on the North Clark Switching Station property itself.

5. As part of the development of the Project, EKPC offered to pay the Barkers the sum of \$37,800 to acquire an easement over a small portion of their land. When negotiations proved unsuccessful, EKPC proceeded to file a condemnation proceeding in the Clark Circuit Court on July 7, 2006. The case was styled as *East Kentucky Power Cooperative, Inc. v. Harold Barker, et al.* and docketed as Case No. 06-CI-00419 (the "Civil Action"). In the Commissioners' Report issued on August 1, 2006, the diminution in value of the Barker's land resulting from the expanded easement was determined to be \$12,000, which, in accordance with Kentucky law, EKPC paid into the Court.

6. Over the course of the Civil Action, the Barkers have, with EKPC's consent, withdrawn all but \$500.00 of the proceeds paid by EKPC into the Court. Moreover, the Barkers have yet to file responses to discovery requests that were propounded by EKPC in January of 2007. Shortly before filing the Complaint in this case, the Barkers filed a motion in the Civil Action to assert a counterclaim against EKPC alleging a panoply of claims unrelated to condemnation and generally arising in tort. EKPC opposed this motion, which remains pending. In the absence of relief in the Circuit Court, the Barkers are now seeking to bring many of these same claims before the Commission.

II. ANSWER

7. EKPC denies that it misled Commission Staff when it sought the advisory opinion in 2005. EKPC asserts that the recitation of facts set forth in the 2005 advisory opinion request were true and correct as of the time the request was tendered and are true today, to the best of EKPC's knowledge and belief.

8. EKPC denies that it is required by Kentucky law to move its existing transmission line away from its current location, relative to the Barkers' property. EKPC's transmission line is lawfully sited. Moreover, the easement it acquired from the Barkers' predecessors-in-interest specifically grants to EKPC the right to enter upon the Barkers' property to "...reconstruct, extend, repair, enlarge, operate [and] maintain..." the transmission line in question.⁴

9. All other assertions of the Barkers are hereby generally denied.

III. AFFIRMATIVE DEFENSES AND MOTION TO DISMISS

10. The Commission's jurisdiction extends to "rates" and "services" under KRS 278.040(2). The relief which the Barkers appear to seek resounds in the law of real property and concerns the property rights of EKPC. To the extent that the Complaint seeks to assert claims that do not arise from or relate to the rates and service of EKPC, they are barred and should be dismissed.

11. The dispute between the Barkers and EKPC is the subject of the Civil Action before the Clark Circuit Court and the Barkers cannot seek to pre-empt the jurisdiction of the Clark Circuit Court by filing this ancillary action. To the extent that the Complaint seeks to assert claims that are currently pending before the Clark Circuit Court, they are barred and should be dismissed.

⁴ Copies of the two Transmission Line Right of Way Easements are attached hereto collectively as Exhibit 2.

12. The Complaint requests that the Barkers “be reimbursed for damages caused by EKPC's construction of this line.” The Commission is without statutory authority to award unliquidated damages and this portion of the Complaint should be dismissed. *See Carr v. Cincinnati Bell, Inc.*, 651 S.W.2d 126, 128 (Ky. App. 1983). In any event, the Barkers have already sought to assert a claim for damages in the Civil Action.

13. The Barkers’ claim that they were unaware of the Project in time to object to it or to request an accommodation from EKPC is incorrect. EKPC’s records demonstrated that the Barkers attended an open house held by EKPC in November 2005, which was for the express purpose of discussing the details of the contemplated Project. Moreover, the Barkers made a specific request regarding the placement of one of the pole structures that would be located on their property and EKPC accommodated the request by adjusting the placement of the structure.

14. On information and belief, the residence and carport which are referenced in the Complaint were constructed after the Smith-Hunt-Sideview transmission line – an overhead structure that would be plainly visible to all – was constructed in the 1950s. EKPC’s easement for this transmission line was also filed of record in the Office of the Clark County Clerk. Accordingly, the Barkers had both actual and constructive knowledge of the existence of EKPC’s easement and the presence of the Smith-Hunt-Sideview transmission line when they constructed these structures or acquired them. They are thus estopped from asserting any claim for damages. They willingly and voluntarily assumed any risk that the Smith-Hunt-Sideview transmission line may ever be replaced or upgraded. They have waived any claims, which EKPC denies exist, by failing to wait until now to assert a complaint.

WHEREFORE, on the basis of the foregoing, EKPC respectfully requests that the Commission:

- 1) Dismiss the Complaint; and
- 2) Award EKPC all such relief to which it may be entitled.

This 10th day of October, 2013.

Respectfully submitted,



David S. Samford
GOSS SAMFORD, PLLC
2365 Harrodsburg Road, Suite B235
Lexington, KY 40504
david@gosssamfordlaw.com
(859) 368-7740

and

Sherman Goodpaster
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P.O. Box 707
Winchester, KY 40392-0707

*Counsel for East Kentucky Power
Cooperative, Inc.*

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served, by delivering same to the custody and care of the U.S. Postal Service, postage pre-paid, this 10th day of October, 2013, addressed to the following:

Harold, Ann & Brooks Barker
5450 Mt. Sterling Road
Winchester, KY 40391

Mr. Alex Rowady, Esq.
212 South Maple Street
Winchester, KY 40391



*Counsel for East Kentucky Power
Cooperative, Inc.*



Ernie Fletcher
Governor

Mark David Goss
Chairman

LaJuana S. Wilcher, Secretary
Environmental and Public
Protection Cabinet

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

Teresa J. Hill
Vice Chairman

Christopher L. Lilly
Commissioner
Department of Public Protection

Gregory Coker
Commissioner

October 26, 2005

Sherman Goodpaster III, Esq.
East Kentucky Power Cooperative
Post Office Box 707
Winchester, Kentucky 40392-0707

Re: Replacement-Upgrading of Smith-Hunt-Sideview Line

Dear Mr. Goodpaster:

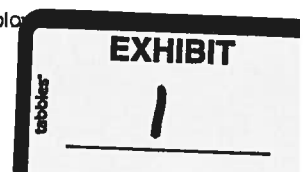
Commission Staff acknowledges receipt of your letter of October 7, 2005, in which you request an opinion on whether East Kentucky Power Cooperative's ("EKPC") proposed replacement and upgrading of its Smith-Hunt-Sideview 69 kV electric transmission line requires the issuance of a certificate of public convenience and necessity.

In your letter, you present the following facts:

EKPC's Smith-Hunt-Sideview 69 kV electric transmission line is approximately 18 miles long and is located on a 100-foot wide right of way. It is supported by wooden single pole structures, wooden H-frame structures and some 3-pole wooden angle structures. The line is a single-circuit 69kV electric transmission line and was constructed in the 1950s.

EKPC proposes to replace and upgrade this line with a double-circuit 345kV/69kV electric transmission line. The upgraded line will be supported by steel H-frame structures and steel 3-pole angle structures. Because of the line's higher voltage, EKPC will acquire an additional 50 feet of right of way. EPPC intends to place the upgraded line upon the same centerline as the existing line for most of the entire length of existing line with the additional 50 feet of right of way consisting of 25 feet on each side of the existing right of way.

In approximately 6 locations along the existing right of way, however, property owners constructed residences and other structures immediately adjacent to the existing right of way after the construction of the existing transmission line. At these locations, expansion of the



existing right of way by 25 feet in the direction of these structures would require the acquisition and destruction of these structures. To avoid this result, EKPC proposes to acquire the entire 50 feet of additional right of way on the side of the right of way away from these structures and then adjust the centerline accordingly so as to provide adequate clearance from these structures.

In two locations, EKPC will locate the 345 kV circuit of the new transmission line on a separate and new centerline. The first of these is required to bypass the existing Hunt Station. The second of these is required to extend the 345 kV circuit beyond the Sideview substation to the point of interconnection with EKPC's existing 345 kV Spurlock-Avon transmission line. The total length of these sections of new centerline will be less than 4,000 feet.

Your letter presents the following issue: Does the proposed construction require a certificate of public convenience and necessity?

KRS 278.020(1) provides in pertinent part:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

KRS 278.020(2) provides:

For the purposes of this section, construction of any electric transmission line of one hundred thirty-eight (138) kilovolts or more and of more than five thousand two hundred eighty (5,280) feet in length shall not be considered an ordinary extension of an existing system in the usual course of business and shall require a certificate of public convenience and necessity. However, ordinary extensions of existing systems in the usual course of business not requiring such a certificate shall include . . . [t]he replacement or upgrading of any existing electric transmission line;

Based upon its review of these statutes, Commission Staff is of the opinion that the proposed construction is a replacement and upgrading of an existing transmission

Sherman Goodpaster III, Esq.

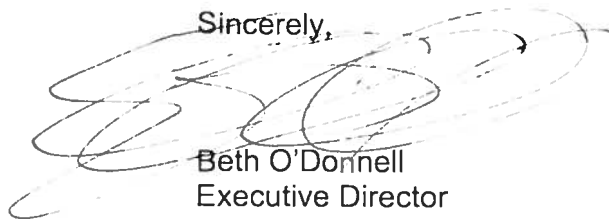
October 26, 2005

Page 3

line and will not require a certificate of public convenience and necessity. The proposed line and supporting structures generally do not supplement or expand existing electric transmission lines, but rather replaces those transmission lines and supporting structures with higher voltage lines and the required supporting facilities. With minor deviations, the proposed transmission line follows the same route and is situated on the same right of way as the existing transmission line that it will replace. While the proposed upgrade will require the construction in two instances of additional transmission line, the length of this line will not exceed 5,280 feet.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues be formally presented for Commission resolution. Questions concerning this opinion should be directed to Gerald Wuetcher, Assistant General Counsel, at (502) 564-3940, Extension 259.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth O'Donnell", is written over a large, faint, circular watermark or stamp. The signature is fluid and cursive.

Beth O'Donnell
Executive Director

E031

15-39

TRANSMISSION LINE RIGHT OF WAY EASEMENT

MICROFILMED

We the undersigned Griggs Lewis and Frances Lewis, Bessie Margaret Quisenberry
and Thomas Quisenberry

(unmarried) (husband and wife) for and in consideration of the sum of One Dollar (\$1.00) cash in hand paid, receipt of which is hereby acknowledged, do hereby grant unto East Kentucky Rural Electric Cooperative Corporation, Winchester, Kentucky, herein called the Cooperative, its successors and assigns, the perpetual right to enter upon the lands of the undersigned, situated in the County of Clark, State of Kentucky, and more particularly described as follows:

A tract of land approximately 50 acres, located on U. S. Highway #60 road, 5 miles from the town of Winchester, being George Lewis the same land conveyed by George Lewis Franker Lewis & as his Will dated 15th day of August, 1935, recorded in Book 113, pg. 279, Office of the Clark County Clerk.

SCANNED
EKPC

The specific right of way upon which said transmission and/or distribution line or system shall be located is one hundred (100') feet wide and the center line thereof is described as follows: Beginning at a

point in the line between the lands of the undersigned's above described and the land

land/of Herbert Hefflin at U. S. Highway 60 at Station No. 519492

and running thence 16° 15' E a distance of 1380 feet

to a point in the line between the lands of the undersigned above described

land and the land of Brooks Barnes at Station No. 533472

and to survey, construct, reconstruct, extend, repair, enlarge, operate, maintain, and inspect on the above described lands and/or in or upon all streets, roads or highways abutting said lands, an electric transmission and/or distribution line or system; together with the right of ingress and egress over the lands of the undersigned to and from said lines in the exercise of the rights and privileges herein granted, provided however, that in exercising such rights of ingress and egress the Cooperative will, whenever practicable to do so, use regularly established highways or farm roads; to cut down and trim any and all trees and shrubbery located within fifty (50') feet of the center line of said line or system; and cut and trim any and all other trees which are of such height that in falling they would come in contact with said line or system; and also the right to remove brush and all other obstructions and obstacles from the right of way which would create a fire hazard to the lines or systems of the Cooperative.

The undersigned, their successors, heirs, or assigns, are fully to use and enjoy the lands crossed by this easement except, however, that such use shall not conflict with any rights and privileges herein granted.

The undersigned agree that all poles, wires and other facilities, installed on the above described lands at the Cooperative's expense, shall remain the property of the Cooperative, removable at the option of the Cooperative.

It is further expressly understood and agreed that the Cooperative will pay to the undersigned any and all damage that may be caused by the Cooperative in going upon said lands and right of way except that the Cooperative will not be liable for any damage for cutting down and trimming trees in the manner and to the extent herein above specified.

All trees cut down shall be cut in such length as the owner may desire, and limbs removed so as to make same into merchantable timber, and brush and unmerchantable trees and limbs should be removed at the Company's expense to place where same

EXHIBIT
2

shall not interfere with cultivation.

Owner shall have use of right of way strip for all farm purposes and the planting, growing and harvesting of all kinds of crops.

The Company shall not fence any part of said right of way, but owner can put any fences or other structures on same that do not interfere with the maintenance and operation of its lines.

The Company shall pay damages for all injury done to said lands and crops of owner at any time caused by the construction, maintenance or operation of said line.

It is understood that the structures on said land shall be poles placed as indicated on the plat filed with the petition in the condemnation proceedings for this right of way; and if any change causing an increased amount of damage is made in the supporting structures for said electric wires at any time by the Company, additional damage shall be paid for such change. The Company shall be liable for any injury to persons, animals or property occasioned on owner's farm, including right of way, caused by any electric current coming from Company's line occasioned by the negligence of the Cooperative in the construction, operation or maintenance of its said line.

The Company shall pay to the owner any damage or injury done to the Owner's fencing or other structures in the construction, maintenance and operation of said lines and in the exercise of right of ingress and egress over said farm to and from said right of way.

The Company shall restore in as good condition as the same was before the construction of said line the surface of the land, including the removal of all rocks from the surface caused to be there by the construction of said line, and shall cover all guy wires so as to protect stock and persons from injury thereby.

The Company is to restore all roads, bridges and culverts of owner injured by the Company at any time in the construction, maintenance and operation of said line.

The Company shall be responsible for any injury or loss caused by Company, its agents, servants or employees allowing stock to get out of the enclosures.

Wires to be maintained at all times by the Company at a height of not less than eighteen (18) feet above the ground.

The undersigned covenant that they are the owners of the above described lands and that the said lands are free and clear of encumbrances and liens of whatsoever character except those held by the following persons:

In witness thereof the undersigned have set their hands this the 28th day of October, 1952.

Witnesses:

Griggs Lewis

Francis Lewis

Bennie Raymond Quinby

Thomas Quinby

STATE OF KENTUCKY

SCT

COUNTY OF _____

I, _____, Clerk of the county and state aforesaid hereby certify that the foregoing instrument of writing was on this day produced to me in my office, by _____ one of the subscribing witnesses thereto who also proved the signature of _____ the other subscribing witness and on oath testified that _____ did sign the foregoing instrument in their presence and acknowledged the same to be their act and deed.

Witness my hand this _____ day of _____, 19_____.

Clerk

By _____ D.C.

STATE OF KENTUCKY

SCT

COUNTY OF _____

I, _____, a Notary Public in and for the State and County aforesaid do hereby certify that the foregoing instrument of writing to the East Kentucky Rural Electric Cooperative Corporation was this day produced to me in said State and County aforesaid, and was signed and acknowledged by _____ and _____ to be their free act and deed and the same together with this certificate is hereby certified to the proper office for record.

Witness my hand this the _____ day of _____, 19____.

Notary Public

My commission expires _____

STATE OF KENTUCKY

SCT

COUNTY OF _____

I, _____, County Court Clerk of the State and County aforesaid certify that the foregoing instrument of writing from _____ and _____ to the East Kentucky Rural Electric Cooperative Corporation was this day lodged for record in my office whereupon the same, with the foregoing and this my certificate, have been duly recorded in my office.

Witness my hand this _____ day of _____, 19____.

Clerk

By _____ D.C.

B-145-

P. 403

Miss Lewis's sister

20 Right of Way agreement

East of Round Lake Camp Camp

LODGED FOR RECORD
 FEB 12 1953
 CLYDE GRAVETT, Clerk

Ad. before me by Eugene
 Lewis and Frances Lewis
 his wife, Bonnie Margaret
 Lewis, and Thomas
 Lewis, her husband
 this Oct 28, 1952

Clyde Gravett
 Clerk

STATE OF KENTUCKY }
 COUNTY OF CLARK } ss.

I, Clyde Gravett, Clerk of the Clark County Court, do certify that the foregoing
 instrument in Right of Way to East Kentucky Rural Electric Cooperative Corporation
 was on the 28 day of October, 1952, produced to me in said
 County, and acknowledged before me by Eugene Lewis, Frances Lewis, his wife,
Bonnie Margaret Lewis, and Thomas Lewis, her husband,
 parties thereto to the act and deed and was lodged for record February
12, 1953. Whereupon the same and this

certificate have been recorded in my office.
 Given under my hand this, the 13th day of February, 1953

By Clyde Gravett, Clerk
Bonnie Lewis

TRANSMISSION LINE RIGHT OF WAY EASEMENT

E 32
 We the undersigned Brooks Barnes and Elizabeth Barnes, his wife

~~(husband and wife)~~ (husband and wife) for and in consideration of the sum of One Dollar (\$1.00) cash in hand paid, receipt of which is hereby acknowledged, do hereby grant unto East Kentucky Rural Electric Cooperative Corporation, Winchester, Kentucky, herein called the Cooperative, its successors and assigns, the perpetual right to enter upon the lands of the undersigned, situated in the County of Clark, State of Kentucky, and more particularly described as follows:

A tract of land approximately 150 acres, located on Highway 60 road, 6 miles from the town of Winchester, being the same land conveyed by Rodney Haggard to the undersigned by deed dated 13 day of January, 1951, recorded in Deed Book 140, PG. 539, Office of the Clark County Clerk.

The specific right of way upon which said transmission and/or distribution line or system shall be located is one hundred (100') feet wide and the center line thereof is described as follows: Beginning at a

point in the line between the lands of the undersigned's above described and the land of R. H. Lewis at Station No. 533+72

and running thence N 18° 44' E for a distance of 1513 feet; thence N 15° 30' E for a distance of 1224 feet.

to a point in the line between the lands of the undersigned above described land and the land of Mrs. Walter Cline at Station No. 561+09

and to survey, construct, reconstruct, extend, repair, enlarge, operate, maintain, and inspect on the above described lands and/or in or upon all streets, roads or highways abutting said lands, an electric transmission and/or distribution line or system; together with the right of ingress and egress over the lands of the undersigned to and from said lines in the exercise of the rights and privileges herein granted, provided however, that in exercising such rights of ingress and egress the Cooperative will, whenever practicable to do so, use regularly established highways or farm roads; to cut down and trim any and all trees and shrubbery located within fifty (50') feet of the center line of said line or system; and cut and trim any and all other trees which are of such height that in falling they would come in contact with said line or system; and also the right to remove brush and all other obstructions and obstacles from the right of way which would create a fire hazard to the lines or systems of the Cooperative.

The undersigned, their successors, heirs, or assigns, are fully to use and enjoy the lands crossed by this easement except, however, that such use shall not conflict with any rights and privileges herein granted.

The undersigned agree that all poles, wires and other facilities, installed on the above described lands at the Cooperative's expense, shall remain the property of the Cooperative, removable at the option of the Cooperative.

It is further expressly understood and agreed that the Cooperative will pay to the undersigned any and all damage that may be caused by the Cooperative in going upon said lands and right of way except that the Cooperative will not be liable for any damage for cutting down and trimming trees in the manner and to the extent herein above specified.

All trees cut down shall be cut in such length as the owner may desire, and limbs removed so as to make same into merchantable timber, and brush and unmerchantable trees and limbs should be removed at the Company's expense to place where same

SCANNED

EKPC

will not interfere with cultivation.

Owner shall have use of right of way strip for all farm purposes and the planting, growing and harvesting of all kinds of crops.

The Company shall not fence any part of said right of way, but owner can put any fences or other structures on same that do not interfere with the maintenance and operation of its lines.

The Company shall pay damages for all injury done to said lands and crops of owner at any time caused by the construction, maintenance or operation of said line.

It is understood that the structures on said land shall be poles placed as indicated on the plat filed with the petition in the condemnation proceedings for this right of way; and if any change causing an increased amount of damage is made in the supporting structures for said electric wires at any time by the Company, additional damage shall be paid for such change. The Company shall be liable for any injury to persons, animals or property occasioned on owner's farm, including right of way, caused by any electric current coming from Company's line occasioned by the negligence of the Cooperative in the construction, operation or maintenance of its said line.

The Company shall pay to the owner any damage or injury done to the Owner's fencing or other structures in the construction, maintenance and operation of said lines and in the exercise of right of ingress and egress over said farm to and from said right of way.

The Company shall restore in as good condition as the same was before the construction of said line the surface of the land, including the removal of all rocks from the surface caused to be there by the construction of said line, and shall cover all guy wires so as to protect stock and persons from injury thereby.

The Company is to restore all roads, bridges and culverts of owner injured by the Company at any time in the construction, maintenance and operation of said line.

The Company shall be responsible for any injury or loss caused by Company, its agents, servants or employees allowing stock to get out of the enclosures.

Wires to be maintained at all times by the Company at a height of not less than eighteen (18) feet above the ground.

The undersigned covenant that they are the owners of the above described lands and that the said lands are free and clear of encumbrances and liens of whatsoever character except those held by the following persons:

In witness thereof the undersigned have set their hands this the 13th day of June, 1952.

Brook Barnes
Elizabeth Barnes

Witnesses:

STATE OF KENTUCKY
SCT
COUNTY OF _____

I, _____, Clerk of the county and state aforesaid hereby certify that the foregoing instrument of writing was on this day produced to me in my office, by _____ one of the subscribing witnesses thereto who also proved the signature of _____ the other subscribing witness and on oath testified that _____ did sign the foregoing instrument in their presence and acknowledged the same to be their act and deed. Witness my hand this _____ day of _____, 19_____.

Clerk

By _____ D.C.

STATE OF KENTUCKY

COUNTY OF Clark

I, Kathleen Ecton, a Notary Public in and for the State and County aforesaid do hereby certify that the foregoing instrument of writing to the East Kentucky Rural Electric Cooperative Corporation was this day produced to me in said State and County aforesaid, and was signed and acknowledged by Brooks Barnes and Elizabeth Barnes to be their free act and deed and the same together with this certificate is hereby certified to the proper office for record.

Witness my hand this the 13th day of June, 1952

Kathleen Ecton
Notary Public

My commission expires May 27 1954

STATE OF KENTUCKY

SCJ

COUNTY OF Clark

I, Chas. Grant, County Court Clerk of the State and County aforesaid certify that the foregoing instrument of writing from Brooks Barnes and Elizabeth Barnes to the East Kentucky Rural Electric Cooperative Corporation was this day lodged for record in my office whereupon the same, with the foregoing and this my certificate, have been duly recorded in my office.

Witness my hand this 21st day of July, 1952.

Chas. Grant Clerk
By Mildred Robinson D.C.