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January 4, 2010

**PSC STAFF OPINION NO. 2010-001**

Mr. Jason R. Bentley  
McBrayer, McGinnis, Leslie & Kirkland, PLLC  
305 Ann Street, Suite 308  
Frankfort, Kentucky 40601

**Re: Vectren South Staff Opinion Request –  
Is Siting Board approval required when relocating transmission towers?**

Dear Mr. Bentley:

Commission Staff<sup>1</sup> is in receipt of your letter of November 20, 2009, regarding the need for a construction certificate from the Kentucky State Board on Electric Generation and Transmission Siting ("Siting Board") prior to the relocation of two transmission poles supporting an existing nonregulated 138 kV transmission line in Kentucky.

In your letter and subsequent telephone conversation and e-mail with Commission Staff, you present the following facts: Southern Indiana Gas & Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren South") is a regulated utility in Indiana but is not a utility regulated by the Kentucky Public Service Commission. As a utility not regulated by the Commission, Vectren South recognizes that it would be required to obtain a construction certificate issued by the Siting Board before beginning construction of any new, nonregulated transmission line in Kentucky.

Vectren South owns and operates a 138 kV transmission line, constructed between 1958 and 1960, which crosses the Ohio River from Indiana into Hancock County, Kentucky. At the request of AMP-Ohio, which owns property in Hancock County through which the transmission line is routed, Vectren South wants to relocate two of the transmission poles. The transmission poles would each be relocated approximately 500 feet from their current locations. The transmission poles will remain within the right-of-way as it existed when the transmission line was originally constructed on property wholly owned and occupied by AMP-Ohio. The movement of the poles would not affect the neighboring property owners or any existing structures on the AMP-Ohio property.

<sup>1</sup> Pursuant to KRS 278.702(4), Commission Staff serves as permanent administrative staff for the Siting Board.

The new transmission poles would not be visible to any adjacent property owners. Moving the transmission poles would not bring the transmission line within one mile of any residential neighborhood, school, or public or private park. You further state that the relocation of the poles would be done in accordance with accepted engineering practices and the National Electric Safety Code. A map showing the transmission line with the location of the existing towers and their relocated positions was also included with your request.

Your letter poses the following issue: Does the proposed relocation of the two transmission poles fall within the meaning of "commence to construct" pursuant to KRS 278.714 and, as such, is Vectren South required to obtain a construction certificate from the Siting Board prior to relocating the transmission poles?

KRS 278.714(1) provides, in pertinent part:

No person shall commence to construct a nonregulated electric transmission line without a construction certificate issued by the board.

KRS 278.700(4) provides:

"Commence to construct" means physical on-site placement, assembly, or installation of materials or equipment which will make up part of the ultimate structure of the facility. In order to qualify, these activities must take place at the site of the proposed facility or must be site-specific. Activities such as site clearing and excavation work will not satisfy the commence to construct requirements....

KRS 278.700(5) further provides:

"Nonregulated electric transmission line" means an electric transmission line and related appurtenances for which no certificate of public convenience and necessity is required; which is not operated as an activity regulated by the Public Service Commission; and which is capable of operating at or above sixty-nine thousand (69,000) volts....

Based upon the facts you presented, Commission Staff is of the opinion that the proposed relocation of the two transmission poles within the existing right-of-way does not require a construction certificate from the Siting Board.

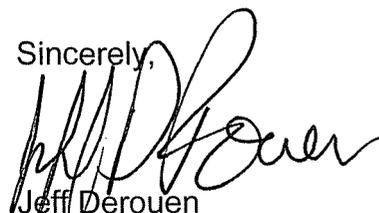
The regulation of transmission line siting includes the determination of the appropriate route for the transmission conductors and poles. This determination requires the Siting Board to examine the "location of the proposed line and all proposed structures that will support it" and "[t]he proposed right-of-way." KRS 278.714(2)(b).

The owner/operator of a transmission line must undertake repair and maintenance over the life of the line in order to ensure that the transmission line continues to provide adequate electric service to the customers it serves and to protect public safety. Such routine maintenance and repair may include the need to relocate transmission poles (and, if necessary, the line route) within the established right-of-way in order to accommodate the construction of new buildings, provide service connections to new customers, etc. The right-of-way for a transmission line is much wider than the transmission line and its supporting structures alone. This is primarily to ensure that vegetation beneath and surrounding the line can be clear cut in order to keep trees and other plants from falling onto the lines and causing outages. However, it is also to accommodate the occasional necessary re-routing of a transmission line from its as-built location, for the various reasons discussed above.

As the owner/operator of an established transmission line must undertake routine maintenance and repair of its line throughout its useable life (including the occasional need to re-route the line within the right-of-way), and, absent other factors which might implicate the Siting Board's jurisdiction under KRS 278.714, the owner/operator of a nonregulated transmission line is not required to seek a construction certificate from the Siting Board prior to moving transmission poles within the established right-of-way for purposes of routine maintenance and repair. While there may be cases in which the re-routing of an existing transmission line might implicate the Siting Board's jurisdiction, under the facts as you have presented them, this is not such a case.

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 Siting Board should the issues herein be formally presented for resolution by the Board. Questions concerning this opinion should be directed to Rick Bertelson, Staff Attorney, at (502) 564-3940, Extension 260.

Sincerely,



Jeff Derouen  
Executive Director

RB:v