

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY POWER	)	
COOPERATIVE, INC. FOR AN ORDER	)	
DECLARING THE EXPANSION OF THE	)	CASE NO.
BAVARIAN LANDFILL GAS TO ENERGY	)	2015-00284
PROJECT TO BE AN ORDINARY EXTENSION	)	
OF EXISTING SYSTEMS IN THE USUAL	)	
COURSE OF BUSINESS	)	

ORDER

On August 14, 2015, East Kentucky Power Cooperative, Inc. ("EKPC") filed an application requesting an expedited determination that an expansion of EKPC's landfill gas-to-energy ("LFGTE") generating facility at the Bavarian Landfill in Boone County, Kentucky, ("Bavarian LFGTE expansion") is an ordinary extension of an existing system in the usual course of business and that a Certificate of Public Convenience and Necessity ("CPCN") would not be required to construct the proposed project, pursuant to KRS 278.020(1). EKPC also requested to be relieved from the requirement to file CPCN applications for future LFGTE projects, so long as the LFGTE facility to be developed is a system resource that benefits EKPC's members. In light of EKPC's request for an expedited decision, on November 20, 2015, the Commission issued an Order that addressed only the Bavarian LFGTE expansion and found that additional time was required to review EKPC's request for a blanket declaration regarding whether future LFGTE projects were ordinary extensions in the usual course of business, and thus exempt from the CPCN requirements set forth in KRS 278.020(1).

## DISCUSSION

KRS 278.020(1) requires a utility to obtain a CPCN prior to constructing any new facility that is intended to furnish regulated utility services to the public. However, this statute also provides an exemption from the certificate requirement if the new facility is an ordinary extension of existing systems in the usual course of business. Commission regulation 807 KAR 5:001, Section 15(3), defines that exemption as follows:

Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

On five prior occasions, the Commission found that relatively small-sized LFGTE projects proposed by EKPC as system resources that benefit EKPC's members were exempted from the CPCN requirements under KRS 278.020(1). In Case No. 2002-00352, the Commission approved an LFGTE project in Boone County, Kentucky, with an installed capacity of 3.2 megawatts ("MW") and a cost of \$4.7 million.<sup>1</sup> In Case No. 2002-00474, the Commission approved two LFGTE projects with a total cost of \$5 million, one in Carter County, Kentucky, with an installed capacity of 2.4 MW and

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<sup>1</sup> Case No.2002-00352, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring Landfill Gas to Energy Projects to be Ordinary Extensions of Existing Systems in the Usual Course of Business* (Ky. PSC Dec. 18, 2002).

another in Laurel County, Kentucky, with an installed capacity of 4.0 MW.<sup>2</sup> In Case No. 2005-00164, the Commission approved an LFGTE project in Hardin County, Kentucky, with an installed capacity of 2.4 MW and a cost of \$4.7 million.<sup>3</sup> In Case No. 2006-00033, the Commission approved an LFGTE project in Pendleton County, Kentucky, with an installed capacity of 3.2 MW and a cost of \$5 million.<sup>4</sup> In Case No. 2007-00509, the Commission approved an LFGTE project in Mason County, Kentucky, with an installed capacity of 1.6 MW and a cost of \$2.5 million.<sup>5</sup> In the instant case, the Commission approved the expansion of the Bavarian LFGTE project in Boone County, Kentucky, at a cost of \$2.26 million with an installed capacity for the expansion of 1.6 MW, which will bring the total installed capacity for the Bavarian LFGTE facility to 4.8 MW once the expansion is completed.

The Commission also approved a relatively small-sized LFGTE project proposed by EKPC for the benefit of one EKPC member as being exempt from the CPCN requirements under KRS 278.020(1). In Case No. 2014-00292, the Commission approved an LFGTE project in Barren County, Kentucky, with an installed capacity of 1.0 MW and a cost of \$2.9 million.

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<sup>2</sup> Case No. 2002-00474, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Green Valley and Laurel Ridge Landfill Gas to Energy Projects to be Ordinary Extensions of Existing Systems in the Usual Course of Business* (Ky. PSC Mar. 3, 2003).

<sup>3</sup> Case No. 2005-00164, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Hardin County Landfill Gas to Energy Project to be an Ordinary Extension of the Existing Systems in the Usual Course of Business* (Ky. PSC July 8, 2005).

<sup>4</sup> Case No. 2006-00033, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Pendleton County Landfill Gas to Energy Project to be an Ordinary Extension of Existing Systems in the Usual Course of Business* (Ky. PSC Mar. 10, 2006).

<sup>5</sup> Case No. 2007-00509, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Maysville-Mason County Landfill Gas to Energy Project to be an Ordinary Extension of Existing Systems in the Usual Course of Business* (Ky. PSC Mar. 26, 2008).

In each of these cases, the Commission conducted an in-depth, fact specific examination of the costs and benefits associated with the proposed LFGTE project. And in each case, the Commission ultimately found that the cost to construct and operate the facilities would not materially affect EKPC's financial condition or result in an increase in EKPC's wholesale power rates; would not conflict with existing certificates or service of other utilities under Commission jurisdiction; and, because the facilities were constructed on leased portions of landfills and connected to EKPC's transmission facilities, the LFGTE facilities did not create wasteful duplication of plant, equipment, property, or facilities.

The Commission notes that, in the Barren County landfill case, EKPC stated that the largest risk associated with development of an LFGTE facility is long-term fuel supply quality and quantity.<sup>6</sup> For example, EKPC notified the Commission in February 2015 that it had closed the Mason County LFGTE facility due to "an unsustainable flow of landfill gas."<sup>7</sup> For this reason, landfill gas purchase agreements between EKPC and landfill owners contain a provision for a "gas proofing period" to prove the quantity and quality of the fuel supply before EKPC commits to the development of the LFGTE project.

### FINDINGS

The Commission, having reviewed the evidence of record and being sufficiently advised, finds that due to the fact specific nature of each LFGTE project, a binding

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<sup>6</sup> Case No. 2014-00292, EKPC Responses to Staff's First Request for Information, Item 13 (filed Oct. 27, 2014).

<sup>7</sup> Case No. 2007-00509, Correspondence from Patrick C. Woods, EKPC Director of Regulatory and Compliance Services, dated Feb. 4, 2015.

determination cannot now be made that each future LFGTE project is an ordinary extension of an existing system in the usual course of business and that no CPCN is required under KRS 278.020(1) prior to constructing a LFGTE project. However, the Commission well recognizes that filing an application for a declaratory order that no CPCN is required pursuant to KRS 278.020(1) can sometimes be a lengthy and resource intense process, and EKPC's filing of previous LFGTE projects has allowed us to sharpen our focus on specific issues relevant to those projects. Thus, for future LFGTE projects, the Commission encourages EKPC to file a request for a Staff legal opinion rather than filing an application for a declaratory order. Commission Staff will endeavor to respond to the request for a staff legal opinion within 30 days of receipt of the request. To properly support a request for a staff opinion that an LFGTE project falls within the ordinary course of business exemption under KRS 278.020(1) and is exempt from the requirements for a CPCN, EKPC should provide sufficient written documentation about the proposed LFGTE project to demonstrate the following:

1. The LFGTE facility is developed as a system resource for all EKPC members;
2. The fuel source for the LFGTE facility is methane gas collected from a landfill;
3. The LFGTE facility has an installed capacity of 5 MW or less for new construction or, for an expansion of an existing LFGTE facility, a total installed capacity of 5 MW or less;
4. The projected cost to construct the LFGTE facility and the manner in which the construction cost will be financed;

5. The annual cost to operate the LFGTE facility over a six-year period and that the annual operating and capital costs will not increase EKPC's wholesale power rates;

6. The LFGTE facility will not conflict with existing certificates or service of other utilities under Commission jurisdiction;

7. The LFGTE facilities be constructed on leased portions of landfills and connected to EKPC's transmission facilities, and will not create wasteful duplication of plant, equipment, property, or facilities; and,

8. For LFGTE facilities to be sited at landfills where there are no existing LFGTE facilities, an executed landfill gas purchase agreement that contains a provision for a gas proofing period in which the landfill owner proves fuel supply quantity and quality at minimum levels established by EKPC.

IT IS THEREFORE ORDERED that:

1. EKPC's request for a determination that all future LFGTE projects are exempt from the requirements for a CPCN under KRS 278.020(1) is denied.

2. In lieu of filing an application for a declaratory order, EKPC is authorized to request a Staff legal opinion as to whether a future LFGTE project falls within the ordinary course of business exemption pursuant to KRS 278.020(1) or requires a CPCN based on a demonstration of the information discussed in the findings above.

By the Commission

ENTERED   
JAN 13 2016  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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Executive Director

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