

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF EAST KENTUCKY	)	
POWER COOPERATIVE, INC. FOR	)	
A CERTIFICATE OF PUBLIC	)	CASE NO. 2005-00089
CONVENIENCE AND NECESSITY TO	)	
CONSTRUCT A 138 KV TRANSMISSION LINE	)	
IN ROWAN COUNTY, KENTUCKY	)	

O R D E R

This matter is before the Commission on the application of East Kentucky Power Cooperative, Inc. ("East Kentucky Power") for a Certificate of Public Convenience and Necessity ("CPCN") to construct a 6.9 mile 138 kV transmission line connecting the existing Cranston Substation near Triplett, Kentucky with the existing Rowan County Substation near Morehead, Kentucky. The purpose of the line is to alleviate reliability problems in the Goddard-Cranston-Rowan area of Rowan County. The estimated cost of the proposed line is approximately \$4.9 million. The General Assembly amended KRS 278.020 in 2004 to require that a utility obtain a CPCN before constructing any electric transmission line of 138 kilovolts or more and of more than 5,280 feet in length.

PROCEDURAL BACKGROUND

East Kentucky Power submitted its application to the Commission on April 21, 2005. The Commission entered procedural Orders on May 3, 5, and 26, and June 8, 2005, setting, among other deadlines, dates for interventions, filing of testimony, and

hearing dates. The May 5, 2005 Order also extended the time for the Commission to process the case from 90 to 120 days, pursuant to KRS 278.020(8). The Commission's consideration of the need for the proposed transmission line included a review of East Kentucky Power's engineering studies and data and the report of the Commission's consultant for this case, MSB Energy Associates, Inc. ("MSB"). MSB filed its report, an analysis of East Kentucky Power's proposal, on June 10, 2005 ("MSB Report"). The Commission received multiple protest letters, and one individual, Doug Doerrfeld, intervened. The intervenor also filed testimony opposing the application.

The Commission held a local public hearing on June 16, 2005, in Morehead, Kentucky. Twenty-six people, including representatives of East Kentucky Power, attended the hearing. Seven members of the public made oral comments at the hearing, and two people submitted written comments. The Commission held an evidentiary hearing at its offices in Frankfort, Kentucky on July 18, 2005.

Although no party formally raised the issue, numerous members of the public argued at the local hearing that, under KRS 278.020(3), East Kentucky Power was required to obtain the CPCN in this case before seeking approval from the United States Forest Service ("Forest Service") to cross the Daniel Boone National Forest ("Forest"). Because this issue may arise in future cases, we will address it here. This argument was specifically raised and rejected in *Western Kraft Paper v. Department of Natural Resources and Environmental Protection*, 632 S.W.2d 454 (Ky. App. 1981), which held that the provisions of KRS 278.020 are not ambiguous. The Court said,

Subsection 1 applies to certificates of public convenience and necessity for new utility construction. It does not prohibit a utility from applying first to other governmental agencies for other needed authority. Subsection 3 applies to certificates of

convenience and necessity for franchises, licenses or other permits for utility service granted by a municipality or other governmental agency. This subsection prohibits a utility from applying to a city or other agency for authority to serve customers before going to the [PSC] for authority to construct.

*Id.* at 456. The Court explained, “There is clearly a distinction between a [CPCN] and a certificate authorizing service. They are two different subjects, requiring consideration of different standards and different findings and resulting in certificates for different purposes.” *Id.*

The Commission therefore finds that East Kentucky Power did not act unlawfully in requesting Forest Service approval of the route of the proposed line before filing its application here. KRS 278.020(3) does not apply to this case.

On July 20, 2005, the Commission Staff sent letters to both the Forest Service and state and federal highway officials requesting information on the impact of the selection of an alternative route and the feasibility of locating the line on an alternative route. On August 3, 2005, the Forest Service filed its response. As of the date of this decision, the highway officials have not responded.

#### DISCUSSION

The issues to be decided in an application for a CPCN to construct facilities are (1) whether the facilities are needed and (2) whether the construction will result in a duplication of facilities. *E.g., Kentucky Utilities Company v. Public Service Commission*, 252 S.W.2d 885 (Ky. 1952). The first issue is uncontested. East Kentucky Power’s application and the MSB Report agree that the Goddard-Cranston-Rowan area has local, reliability-driven problems. As stated in the MSB Report, East Kentucky Power’s Goddard-Hilda 69 kV line and Kentucky Utilities Company’s (“KU”) Goddard-Rodburn

138 kV lines are both overloaded, East Kentucky Power's Hilda-Elliottville 69 kV line has a low voltage problem, and supply to the Cranston Substation is at risk because it is supplied by a radial 138 kV feed. These problems will be exacerbated by future load growth, increased generation at East Kentucky Power's Spurlock generating plant, and East Kentucky Power's strategy to rely in part on sizeable purchases of power to serve native load. The Doerrfeld testimony did not contest this need. Based on the undisputed evidence, the Commission therefore finds that there is a need for additional transmission facilities in the area.

The second issue, regarding the potential for duplication of facilities, is significantly more complicated, however, and was fiercely contested. This application raises unique issues because the proposed line would run through the Forest. Public comments at the Morehead hearing and the Doerrfeld testimony focused almost exclusively on this issue.

East Kentucky Power's application discussed alternative routes, and the MSB Report identified two others, some of which avoided the Forest. At the evidentiary hearing, the cross-examination focused on the feasibility of alternative routes that would skirt the Forest from the Cranston Substation across to KU's Goddard-Rodburn line, and then parallel the KU line to Rodburn or continue all the way to the Rowan County Substation. No specific route was identified, but the hearing focused on alternatives that could utilize the existing KU right-of-way and, if possible, use existing gas pipeline or Interstate Highway 64 rights-of-way from the Cranston Substation to the KU Goddard-Rodburn line. East Kentucky Power confirmed that a line running from the Cranston Substation to the Goddard-Rodburn line and then down to the Rowan County

Substation would be electrically equivalent to East Kentucky Power's proposed line. *E.g.*, Transcript, p. 42, lines 4-9; p. 43, lines 9-16.

East Kentucky Power pointed out that such an alternative route would unquestionably cost more than the proposed line, and no party disagreed. In response to post-hearing data requests, East Kentucky Power stated that such an alternative "is electrically equivalent to East Kentucky Power's Proposed [Route], although it is approximately 3.7 miles longer." The additional cost of this alternative over the proposed route would be "slightly more than \$1,000,000 in 2004 dollars." This additional cost could add one cent per month to a typical residential customer's bill. Response of East Kentucky Power to Commission Staff's Third Data Request, July 22, 2005.

In *Kentucky Utilities*, the Court of Appeals, then Kentucky's highest court, defined "duplication of facilities" to mean that the Commission must examine proposed facilities "from the standpoints of excessive investment in relation to efficiency, and an unnecessary multiplicity of physical properties." *Id.* at 891. The Commission in that case had approved a substantial expansion of East Kentucky Power's system, granting CPCNs for both generation and transmission facilities. The Court affirmed the CPCN for the generating plant, but remanded the case to the Commission to decide if the transmission lines proposed by East Kentucky Power would needlessly duplicate existing lines of other utilities, stating:

It is our opinion that the case should be remanded to the Public Service Commission for a further hearing addressed to the question of duplication from the standpoint of an excessive investment in relation to efficiency, and from the standpoint of inconvenience to the public generally, and economic loss through interference with normal uses of the

land, that may result from multiple sets of right of ways [sic], and a cluttering of the land with poles and wires.

*Id.* at 892.

Here, East Kentucky Power has proposed the route that it determined to be the best and lowest cost. The intervenor, however, argues that the proposed route will result in “an unnecessary multiplicity of physical properties, multiple sets of right of ways, and a cluttering of the land with poles and wires.” In considering the differing positions of the parties in this case, the Commission recognizes that proposing to construct a transmission line through a national forest presents a unique circumstance.

East Kentucky Power’s proposed route would cut through a part of the Forest that is not now host to any other lines. In addition, as the witnesses at the Morehead hearing pointed out, the proposed route would also cross the Sheltoewe Trace Trail. These unique characteristics make the Commission especially sensitive to the location of the proposed transmission line.

The Commission finds no fault with East Kentucky Power’s transmission least-cost planning, which it performs to minimize utility investment that will ultimately be borne by ratepayers. East Kentucky Power has properly performed its duty in this regard. In a CPCN proceeding filed pursuant to KRS 278.020, however, the Commission can only review the proposal set forth by the utility in its application and determine whether there is a need for the new facility and whether that new facility would result in wasteful duplication. In performing its obligation under KRS 278.020(1), the Commission must balance all relevant factors, which in this case include the unique characteristics of the Forest, the availability of an alternative route, and the magnitude of the increased cost of that alternative route.

In considering the evidence in this case, the Commission fully recognizes that the Forest Service has approved East Kentucky Power's proposed route through the Forest. Furthermore, the Commission has reviewed the letter from the Forest Service dated August 3, 2005, in which it concludes that a line along I-64 that infringes on Forest land "would involve preparing a new Environmental Assessment or Environmental Impact Statement." In addition, the Commission recognizes the limits of its jurisdiction over environmental issues. Nevertheless, it is the Commission's obligation to consider and make findings on the issue of the "cluttering of the land with poles and wires." Here, the Commission finds that creating a new corridor through the Forest for the construction of a transmission line would result in a wasteful duplication of facilities due to the existence of an alternative route that is slightly more costly but would utilize existing rights-of-way.

### CONCLUSIONS

Unlike some other utility regulatory agencies, this Commission has not previously attempted to quantify "externalities," nor does it intend to, and this Order should not be interpreted as a reversal or compromise of that firmly held position. Nevertheless, in this instance, we must recognize the impact to the Forest that this application presents and weigh that impact against the minimally increased cost of an alternative line that would avoid all or most of the Forest and the Sheltopee Trace Trail. In consideration of these factors and all the other factors discussed in this Order, the Commission concludes that the new transmission corridor through the Forest as proposed by East Kentucky Power in this case would result in the "multiple sets of right of ways, and a

cluttering of the land with poles and wires” that the Commission was warned to avoid in *Kentucky Utilities*.

The Commission recognizes the “Catch-22” in which East Kentucky Power may believe it is now caught. East Kentucky Power began planning this line well before the amendments to KRS 278.020 gave the Commission jurisdiction over this type of case. Operating under the guidelines of “least cost,” East Kentucky Power may have chosen the proposed route so it could be assured that it could recover the costs of the line. It may have thought that, if the Forest Service approved the line through the Forest, it would be allowed to recover the cost of that line; and if the Forest Service turned down the application to go through the Forest, East Kentucky Power could propose a more expensive line, the cost of which it would be allowed to recover in rates given that it could not build the cheaper line. Then, after having sought approval for the less expensive route, East Kentucky Power now learns that it must propose a different route. Unfortunately, this type of dilemma is often unavoidable when legislation changes the rules of regulation; and while the Commission sympathizes with East Kentucky Power’s challenge in dealing with the “Catch-22,” that sympathy does not change our opinion that the law requires the action we take here.

The Commission has no authority to require East Kentucky Power to file its next application for any specific alternative route. Moreover, the Commission will not prohibit a new application for this same route, if further study of alternatives shows all of them to be infeasible. The Commission does caution East Kentucky Power and all other electric



utilities, however, that future applications should comprehensively consider the use of existing corridors in planning future transmission.<sup>1</sup>

The Commission finds that additional transmission facilities are required to assure the reliability of electric service in the Goddard-Cranston-Rowan area. We further find that East Kentucky Power has established a need for such a project. Nevertheless, the Commission also finds that the proposed line would result in a wasteful duplication of facilities. Specifically, the Commission finds that East Kentucky Power's proposed route does not adequately consider the use of existing rights-of-way and transmission lines and corridors. As such, approval of it would violate the standards set out in the *Kentucky Utilities* case.

The Commission, having considered the evidence and testimony offered in this proceeding and being otherwise sufficiently advised, holds and concludes that East Kentucky Power's application for a CPCN to construct the proposed transmission line should be denied.

IT IS THEREFORE ORDERED that East Kentucky Power's application in this case is denied.

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<sup>1</sup> As the statute and regulations now read, our only choice in this case is to approve or disapprove the route for which East Kentucky Power applied.

Done at Frankfort, Kentucky, this 19<sup>th</sup> day of August, 2005.

By the Commission.

ATTEST:



Executive Director