

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. 2005-00458  
CONVENIENCE AND NECESSITY TO )  
CONSTRUCT A 138 KV TRANSMISSION )  
LINE IN ROWAN COUNTY, KENTUCKY )

O R D E R

On November 10, 2005, East Kentucky Power Cooperative, Inc. ("East Kentucky") moved for a deviation from the Commission's regulation 807 KAR 5:120, Section 1, requiring at least 30 days between the filing of a Notice of Intent to File an Application ("Notice of Intent") and an Application for a Certificate of Public Convenience and Necessity ("CPCN") to build a transmission line covered by KRS 278.020. Without the deviation, East Kentucky could not file its application until December 12, 2005.

In support of its motion, East Kentucky states that it understands the purpose of the 30-day period is to give the Commission sufficient time to employ a consultant "on the issue of need and necessity for the project, in light of the short time period within which the Commission is required to issue an order in these types of. . .cases." Because the Commission held that the proposed line is needed in the Orders

in Case No. 2005-00089,<sup>1</sup> East Kentucky “would submit that it should be unnecessary for the Commission to hire another consultant to revisit this issue.”

The statute authorizing the Commission to employ a consultant is KRS 278.020(8), which states in pertinent part, “The commission may utilize the provisions of KRS 278.255(3) if, in the exercise of its discretion, it deems it necessary to hire a competent, qualified and independent firm to assist it in reaching its decision.” While the consultants the Commission employs generally do focus on the need issue, the statute does not so limit them. Moreover, in this particular instance, the consultant in Case No. 2005-00089, MSB Energy Associates, Inc. (“MSB”), specifically advised the Commission on alternative routes, and the Commission intends to use the same consultant in deciding the present case.

Nevertheless, the Commission has contacted MSB and determined that MSB’s schedule will allow it to render advice to the Commission without the need for the 30 days. Therefore, under the very special circumstances of this case, the Commission finds that the requested deviation should be granted. Those special circumstances include: (1) the Commission has already employed the services of a consultant, so the usual delays in selecting and contracting with a consultant are not present in this case; (2) MSB has already reviewed the facts of this proposed line, so it will not have to do as much investigation as would be the case in a completely new application; and (3) MSB has specifically told the Commission it is prepared to work on this application under the expedited schedule that East Kentucky has requested. The Commission points out that

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<sup>1</sup> Case No. 2005-00089, Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity to Construct a 138 kV Transmission Line in Rowan County, Kentucky, Orders dated August 19 and November 9, 2005.

these circumstances are quite exceptional, and deviations from the regulation's requirement for the 30-day period are likely to be rare. Here, however, such a deviation is warranted.

IT IS THEREFORE ORDERED that East Kentucky's motion for a deviation from the requirement of 807 KAR 5:120, Section 1, requiring at least 30 days between the filing of a Notice of Intent and an Application for a CPCN to build a transmission line covered by KRS 278.020, is granted.

Done at Frankfort, Kentucky, this 23<sup>rd</sup> day of November, 2005.

By the Commission

ATTEST:

  
Executive Director

Case No. 2005-00458