

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF KENERGY CORP. FOR APPROVAL OF TEMPORARY ELECTRIC SERVICE TO CONSTRUCTION SITE OF HOPKINS COUNTY COAL, LLC)))	CASE NO. 2006-00075
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O R D E R

Kenergy Corporation (“Kenergy”) filed an application on February 17, 2006 for approval of a temporary service agreement at 1057 Frank Cox Road, Madisonville, Kentucky. On March 2, 2006, Kentucky Utilities, Inc. (“KU”) filed a response questioning the Commission’s jurisdiction in this matter but otherwise not opposing the application. On March 8, 2006, Salmon Family Farms, LLC (“Salmon Farms”) filed an objection to the application, asking the Commission to assert jurisdiction and deny the application. Kenergy responded to that objection in a letter dated March 9, 2006.

Hopkins County Coal, LLC (“Hopkins County Coal”) is having a fan installed to provide ventilation to its underground mines. Installation of the fan requires the use of a 1,200 horsepower motor, which is causing disturbance on Kenergy’s distribution system in the nearby area. Hopkins County Coal is located entirely in Kenergy's certified territory, and Kenergy presently is providing service for the construction. Hopkins County Coal has a substation in the vicinity of the construction site that is located in the certified territory of and energized by KU. There is also an unused pole line that runs

from the substation to the construction site, which Kenergy and KU claim is owned by KU.

Hopkins County Coal proposes to purchase the pole line,¹ energize it with power from the substation, and provide temporary power to the construction site for approximately 50 percent of the power requirements. This proposal is outlined in the application in an attached Letter of Agreement. Kenergy will provide the remaining temporary power requirements and will be the sole power provider at this site for the fan and accessories after the construction is complete. Kenergy anticipates that the construction will be completed by the end of August 2006, at which time the temporary power arrangement will cease.

From the undisputed pleadings, the Commission finds that the proposed temporary power arrangement will assist Kenergy in eliminating the disturbance on its system. In addition, it will enable Kenergy to continue to provide adequate and dependable electric service to its other customers in the immediate area.

KU's response and Salmon Farms' objection raise two issues the Commission need not decide. First, KU argues that the proposed letter agreement between Kenergy and Hopkins County Coal "does not conflict with Kentucky's Certified Territory Act," and therefore "the Commission should not exercise jurisdiction in this matter."² The Commission finds that resolution of this jurisdictional issue is not necessary to a decision in this case. KU and Kenergy are in agreement on how to resolve the application, which is to approve the letter of agreement attached to the application. The

¹ Salmon Farms alleges in its objection that KU has abandoned the easement for this line, so KU cannot convey the use of it to Kenergy.

Commission may approve this agreement, which is uncontested between Kenergy, KU, and Hopkins County Coal, without having to decide the jurisdictional issue.

Second, Salmon Farms has objected to the application because “there is no longer a valid transmission line easement which would allow for the assignment of any right by . . . KU . . . to Kenergy . . . to . . . use . . . the former abandoned transmission line.”³ The Commission has no jurisdiction over factual disputes regarding property law, and the Commission may approve the application and Letter of Agreement without deciding this issue. If the ultimate resolution of this factual issue is that KU still has a valid easement, the Order in this case approving the proposed arrangement among Kenergy, KU, and Hopkins County Coal will allow that agreement to go forward; and if the decision is that KU no longer has such an easement, this Order will be of no effect. Therefore, the Commission cannot and should not decide this issue.

The Commission therefore finds that the application should be approved, subject to any order from a court of competent jurisdiction with regard to Salmon Farms’ property issue. Our Order assumes the Commission has jurisdiction over the territorial issue, but parties may raise that issue in a subsequent case when there is a valid dispute between utilities.

Having reviewed the application and being otherwise sufficiently advised, the Commission HEREBY ORDERS that the Letter of Agreement attached to the application in this case and the temporary service arrangement outlined in that letter are approved.

² March 2, 2006 letter response from KU at 1.

³ March 7, 2006 letter response from Salmon Farms at 1.

Done at Frankfort, Kentucky, this 10th day of March, 2006.

By the Commission

ATTEST:



Executive Director

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