

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 that the Commission declare that an expansion of EKPC’s landfill gas-to-energy (“LFGTE”) 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”) will not be required to construct the proposed project (“Project”). EKPC also requested to be relieved from any requirement to file such applications for future LFGTE projects, so long as the LFGTE facility to be developed is a system resource that benefits EKPC’s members. EKPC requested that the Commission expedite its decision and issue an Order on or before November 1, 2015, on the basis that “prompt approval of this Application is critical to Applicant’s efforts to develop the Project.”<sup>1</sup>

One round of discovery was conducted. The procedural schedule established October 30, 2015, as the last date for EKPC to request either a hearing or that the case

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<sup>1</sup> Application at 3–4.

be submitted for a decision based on the written record. On October 30, 2015, EKPC filed notice of waiver of a hearing in this matter, and the case was submitted to the Commission for a decision based on the existing evidentiary record.

### BACKGROUND

EKPC proposes to expand the existing Bavarian LFGTE facility<sup>2</sup> by increasing its generation output by 1.6 megawatts ("MW"). EKPC states that the growth of the Bavarian Landfill and the increased capacity of the gas collection system, along with the continuing need to provide economical electric energy through the use of renewable resources, led EKPC to investigate expanding the Bavarian LFGTE facility. The energy generated by the Project will be sold to EKPC members for electric service to EKPC members' end-use consumers.

The existing facility has an installed capacity of 3.2 MW and consists of four Caterpillar 3516 800-kilowatt engine generators housed in a concrete block building with a fuel compressor and associated switchgear. The Bavarian LFGTE expansion will include the addition of a single Caterpillar G3520 1.6-MW engine generator and switchgear housed in a concrete block building extension, a fuel compressor housed in a separate concrete block building, an engine-cooling system, and a step-up transformer. The building extension and transformer will be sized for future expansion at the Bavarian site.

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<sup>2</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). By Order entered on Dec. 18, 2002, the Commission determined that the initial construction of the Bavarian LFGTE was an ordinary extension in the usual course of business, and thus was exempt from the requirements to obtain a CPCN.

The estimated capital cost for the expansion is \$2,261,946. EKPC states that the cost to construct and operate the facility will not materially affect its financial condition or result in an increase in its rates. EKPC further states that it will use equipment from the recently closed Mason County LFGTE facility, which will result in capital savings. The projected all-in cost of energy from Bavarian LFGTE for 2015 is \$45/MWh and, after the proposed expansion, from \$46.83/MWh in 2016 to \$49.08/MWh (levelized) in 2021.

EKPC states that the capital cost of the Project is small enough to be carried in EKPC's unsecured credit facility. EKPC proposes to include financing of the Project in a future loan from the United States Department of Agriculture Rural Utilities Service ("RUS") that will include financing for other generation projects. EKPC has not yet determined the expected application date for or additional generation projects to be included in the future RUS loan.

EKPC states that, pursuant to KRS 278.216(1), no site compatibility certificate is required for the Project. KRS 278.216 requires a site compatibility certificate before construction of an electric generation facility capable of generating in aggregate more than 10 MW. After the proposed expansion, the Bavarian LFGTE facility would have an aggregate capacity of 4.8 MW, and thus, a site compatibility certificate is not required.

#### 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.

The Commission, having reviewed the record and being sufficiently advised, finds that the Bavarian LFGTE expansion is an ordinary extension in the usual course of business, and therefore is exempt from the requirements of a CPCN pursuant to KRS 278.020(1). As an expansion of an existing facility, the Bavarian LFGTE expansion will not create a wasteful duplication of facilities or conflict with the existing certificates or service of other utilities operating in the area. The energy generated by the Bavarian LFGTE expansion will be sold to EKPC Members for electric service to EKPC Members' end-use consumers. Further, the cost to construct and operate the facility will not involve sufficient capital outlay to materially affect EKPC's financial condition or require an increase in EKPC's rates.

The Commission further finds that additional time is required to review EKPC's request for a blanket declaration that future LFGTE projects be exempt from the certificate requirements of KRS 278.020(1). The Commission notes the basis for EKPC's request for an expedited decision, and thus issues this Order addressing only the Bavarian LFGTE expansion. The Commission will timely issue a further Order addressing whether future LFGTE projects are ordinary extensions in the usual course of business, and thus exempt from CPCN requirements.

IT IS THEREFORE ORDERED that the 1.6-MW Bavarian LFGTE expansion is properly classified as an ordinary extension of existing systems in the usual course of business, and a CPCN, pursuant to KRS 278.020(1), shall not be required for its construction.

By the Commission

ENTERED  
NOV 20 2015  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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Executive Director

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