

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF)	
KENTUCKY UTILITIES COMPANY AND)	Case No.
LOUISVILLE GAS AND ELECTRIC)	2016-00274
COMPANY FOR APPROVAL OF AN)	
OPTIONAL SOLAR SHARE PROGRAM)	
RIDER)	

ORDER

This matter arises upon a motion for rehearing filed by Gerald Karem ("Mr. Karem") on November 23, 2016. Mr. Karem requests that the Commission grant rehearing of two Orders entered November 4, 2016: the first Order denied his request to intervene in this matter, and the second Order approved an optional, voluntary Solar Share Program Standard Rate Rider ("Rider SSP") requested by Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E") (jointly "Companies") in conjunction with their proposed construction of a four-megawatt ("MW") solar facility located in Shelby County, Kentucky. On November 30, 2016, the Companies filed a joint response requesting that the Commission deny Mr. Karem's motion for rehearing. Having reviewed the motion for rehearing, the response thereto, and being otherwise sufficiently advised, the Commission finds that Mr. Karem's motion for rehearing should be denied.

BACKGROUND

The Companies filed their joint application in this matter on August 2, 2016. On the next day, Kentucky Industrial Utility Customers, Inc. ("KIUC") filed a motion to

intervene, which was granted by the Commission. Pursuant to an Order entered August 12, 2016, ("August 12, 2016 Order") the Commission established a deadline of August 19, 2016, for requests to intervene. The August 12, 2016 Order further provided that any request to intervene filed after August 19, 2016, had to show a basis for intervention and good cause for being untimely filed. The August 12, 2016 Order also established a deadline of October 31, 2016, for parties to request a hearing or a waiver of hearing. On September 30, 2016, the Companies filed a motion to waive a hearing and have the matter decided based upon the written record. KIUC filed no response to the Companies' motion. Thus, this matter was submitted for a decision on the written record as of October 31, 2016, due to the absence of a request for an evidentiary hearing by a party.

On November 3, 2016, Mr. Karem filed a request to intervene in the instant matter. As a basis for his request to intervene, Mr. Karem asserted that the Companies failed to provide proper written notice to customers pursuant to 807 KAR 5:001, Section 5 and 8; failed to provide proper notice of a meeting for nearby property owners to learn more about the proposed project. He also challenged the site selection and mitigation.

The Commission denied Mr. Karem's request to intervene by Order entered November 4, 2016 ("November 4, 2016 Intervention Order"). The Commission found that, in contravention of the August 12, 2016 Order, Mr. Karem failed to provide good cause to permit leave to file his untimely motion to intervene or to state any reasons to explain the several months of delay between his learning of the pending case and his filing of a request to intervene. Additionally, the Commission found that, in contravention of 807 KAR 5:001, Section 4(11)(a), Mr. Karem failed to demonstrate that

he was likely to present issues or develop facts without unduly disrupting the proceedings, which had been submitted for a decision prior to his filing the request to intervene. Lastly, the Commission found that, in contravention of 807 KAR 5:001, Section 4(11)(a), Mr. Karem failed to demonstrate that he was likely to present issues or develop facts that would assist the Commission in fully considering the matter because he raised the same issues in his request to intervene that he raised in multiple public comments he filed in this proceeding between October 25, 2016, and November 3, 2016. Additionally, the Commission received a number of public comments expressing the same or similar concerns raised by Mr. Karem regarding notice, site selection, and mitigation.

Also on November 4, 2016, the Commission entered an Order (“November 4, 2016 Final Order”) that, *inter alia*, approved the Rider SSP and found that the proposed four-MW solar facility was properly classified as an ordinary extension of existing systems in the usual course of business, and thus a Certificate of Public Convenience and Necessity (“CPCN”) was not required for its construction pursuant to KRS 278.020(1).

DISCUSSION

In his motion for a rehearing of the November 4, 2016 Intervention Order, Mr. Karem addresses only the lack of timeliness in filing his November 3, 2016 motion to intervene. Mr. Karem acknowledges he did not file a timely motion to intervene, and now offers two arguments to explain the untimely motion. Mr. Karem’s first argument is that he did not receive a copy of the August 12, 2016 Order that established the procedural schedule, implicitly asserting he did not receive direct notice of the deadline

to intervene. Mr. Karem's second argument is that the notice the Companies published in the *Shelbyville Sentinel News* regarding this matter was both untimely, as it was published five days after the August 19, 2016 intervention deadline, and failed to include the full scope of the project by referencing only a voluntary tariff, but not land acquisition or facility construction, and thus there was no reason to "pay any further attention to this matter."¹

As a basis for his request for a rehearing of the November 4, 2016 Final Order, Mr. Karem contends that the Commission's finding that a CPCN was not required for the project was erroneous because the project failed to satisfy the requirements for an extension in the ordinary course of business, and thus a CPCN was required. First, Mr. Karem contends that the project was evaluated as an extension of the Companies' solar facility at the E. W. Brown Generating Station ("Brown") in Mercer County, Kentucky, and questions how a solar facility constructed in Shelby County, Kentucky, can be considered an extension in the ordinary course of business when it is located more than 50 miles away from Brown. Second, Mr. Karem contends that the Commission erroneously applied KRS 278.216, which requires site compatibility certificates for facilities that generate more than 10 MW, when it determined that a CPCN was not required. Third, Mr. Karem argues that the Rider SSP increases charges to customers, and thus disqualifies the project as an extension in the ordinary course of business. Pursuant to 807 KAR 5:001, Section 15(3),² one of the requirements for determining that a project is an extension in the ordinary course of business is that the project will

¹ Motion for Rehearing, unnumbered page 1.

² In his Motion for Rehearing, Mr. Karem cites to "KAR 807:001, Section 15(3)," but quotes language from 807 KAR 5:001, Section 15(3). This appears to be an inadvertent citation error.

not materially affect the existing financial condition of the utility or will not result in increased charges to its customers. Mr. Karem argues that the voluntary nature of the Rider SSP is irrelevant because the express language of the regulation addresses an increase in customer charges, not whether the charge is voluntary or involuntary. Fourth, Mr. Karem argues that there has been no showing that the proposed solar facility will not create wasteful duplication of plant, which is a requirement under 807 KAR 5:001, Section 15(3), to be exempt from a CPCN. Mr. Karem contends that the Commission failed to determine whether an additional solar facility is needed given the Companies' existing solar facility at Brown and East Kentucky Power Cooperative Inc.'s proposed solar facility in Winchester, Kentucky. Mr. Karem also argues that it is wasteful to acquire additional property that requires construction of transmission lines and that the Companies should build the facility on land it already owns with existing transmission lines. Fifth, Mr. Karem contends that the Commission failed to identify how the facility serves public convenience and necessity, asserting that the proposed project has "virtually nothing to do with generating power" and is instead "strictly a public relations exercise."³

In their joint response, the Companies argue that Mr. Karem's motion for rehearing should be denied because it provides no basis for the Commission to reconsider either the November 4, 2016 Intervention Order or the November 4, 2016 Final Order. As for the request for rehearing of the November 4, 2016 Intervention Order, the Companies assert that Mr. Karem's request for intervention was untimely filed without setting forth good cause for the delay. The Companies argue that the request was not only filed until after the August 19, 2016 intervention deadline and the

³ Motion for Rehearing, unnumbered page 5.

other events on the procedural schedule had occurred, but also after events occurred that either put Mr. Karem on notice of the project or indicate his knowledge of the project, including his attendance at the Companies' August 23, 2016 public meeting to inform nearby residents about the project, as documented on the meeting sign-in sheet,⁴ as well as by the Companies' publication of the notice of this application in the *Shelbyville Sentinel News* and 92 other Kentucky newspapers within the Companies' service territories, and in public comments filed by Mr. Karem or his wife. Further, the Companies reiterate the Commission's finding that Mr. Karem stated no cause, good or otherwise, for the late-filed request. In response to Mr. Karem's argument that the Companies failed to provide proper notice, the Companies note that Mr. Karem fails to cite any authority to support his assertion that the Companies had an obligation to provide notice of the location of the proposed solar facility because there is no such obligation. Additionally, the Companies maintain that Mr. Karem was on notice of the proposed solar facility by virtue of his attendance at the aforementioned August 23, 2016 public meeting, as evidenced by multiple public comments filed by Mr. Karem and his wife which explicitly address the Karems' concerns about the location and configuration of the proposed solar facility that were discussed at the August 23 meeting. The Companies also request that the Commission not reconsider the issue of Mr. Karem's request for intervention, stating that permitting a non-party to wait until the completion of procedural events, especially absent good cause, would undermine orderly and efficient administration of Commission proceedings.

⁴ Companies' Response to Commission Staff's Second Request for Information (filed Sept. 26, 2016), Item 10.

In regards to Mr. Karem's request for rehearing of the November 4, 2016 Final Order, the Companies argue that Mr. Karem lacks standing to request rehearing of the November 4, 2016 Final Order because he is not a party to this proceeding. The Companies explain that KRS 278.400, which governs rehearing in Commission proceedings, expressly provides that "any party to the proceedings" may apply for a rehearing of matters previously determined, and that Commission precedent holds that a non-party, such as Mr. Karem in this instance, has no right under KRS 278.400 to request rehearing of any Commission decision.

Should the Commission determine that Mr. Karem had a right to request rehearing of the November 4, 2016 Final Order, the Companies assert that Mr. Karem's motion should be denied for failing to present any evidence or arguments not already addressed in this proceeding. The Companies state that under KRS 278.400 and Commission precedent, final Orders are not reconsidered unless there are extraordinary circumstances or there is additional evidence that could not with reasonable diligence have been offered during the pendency of the case. The Companies argue that Mr. Karem's motion provides no new evidence or argument, but instead requests a rehearing based upon legal issues already decided in the November 4, 2016 Final Order: whether the project required a CPCN, whether the Commission has jurisdiction over the siting of solar facilities, and whether the project was an extension in the ordinary course of business. Because Mr. Karem neither offered nor stated that he would offer new arguments or evidence admissible under the "reasonable diligence" standard set forth in KRS 278.400, the Companies request that the Commission deny his request for rehearing of the November 4, 2016 Final Order.

FINDINGS

The Commission finds that Mr. Karem's motion for rehearing should be denied in its entirety. In regard to the request for rehearing of the November 4, 2016 Intervention Order, Mr. Karem attempts to excuse the untimely filing of his motion by purporting a lack of notice regarding the case. We note that the reasons for the delay could have been proffered by Mr. Karem in his initial request for intervention but he failed to do so. The reasons now provided by Mr. Karem for the delay in filing his intervention request cannot be characterized as additional evidence that could not with reasonable diligence have been offered during the pendency of this matter.

We also find that Mr. Karem's claim that he had no or insufficient notice regarding the scope and nature of the project to justify seeking to intervene is belied by the case record. The Commission notes that a scheduling Order was issued on August 12, 2016, establishing a procedural schedule for the orderly processing of this matter. That scheduling Order included a deadline for requests to intervene in this matter. The scheduling Order also allowed for an untimely intervention request to be considered so long as the request was supported by good cause. The Commission's scheduling Order places everyone on notice as to the deadlines associated with the processing of a matter. As discussed in the November 4, 2016 Intervention Order, the case record demonstrates that Mr. Karem received notice regarding the scope of the proposed project, including land acquisition and facility construction, in a letter from the Companies dated August 3, 2016; that Mr. Karem attended a meeting hosted by the Companies on August 23, 2016, that detailed the proposed project and provided him with an opportunity to question the Companies' representatives about the project; and

that Mr. Karem acknowledged receiving notice of the solar facility Rider SSP that was published in the *Shelbyville Sentinel-News* on August 24, 2016, and included information regarding a person's right to request to intervene, the case number, and Commission contact information.⁵ Additionally, Mr. Karem stated in a public comment filed on October 25, 2016, that, a few days after the August 23, 2016 meeting, he sent a letter describing the proposed project to approximately 96 nearby residences so that other property owners would be aware of the project and its "impact to our neighborhood."⁶ Thus, Mr. Karem's claim that his request to intervene was untimely filed because he did not have sufficient notice of the extent of the proposed solar project is not plausible.

Because Mr. Karem failed to address the remaining bases for our denial of his request to intervene set forth in the November 4, 2016 Intervention Order, we will not address them here. However, we note that we discussed in the November 4, 2016 Intervention Order that Mr. Karem's request was not only untimely filed, but also failed to state any reason, much less good cause, to explain the several month delay between when Mr. Karem received notice of the project and his right to request to intervene in August 2016, and when he filed his request to intervene on November 3, 2016.

As to Mr. Karem's request for rehearing of the November 4, 2016 Final Order, we find that Mr. Karem does not have standing to request rehearing because he is not a party to this proceeding. Pursuant to KRS 278.400, "any party to the proceedings" may

⁵ Order (Ky. PSC Nov. 4, 2016) at 3.

⁶ Public Comment of Jerry Karem (filed Oct. 25, 2016) (accessible on the PSC website at http://psc.ky.gov/pscscf/2016%20cases/2016-00274/Public%20Comments//20161025_Jerry%20Karem%20Public%20Comment.pdf)

request a rehearing within 20 days after a determination has been made by the Commission. Because the November 4, 2016 Final Order did not grant Mr. Karem's request to intervene, and because the plain language of the statute limits the right to request rehearing to a "party", and Mr. Karem was not a party to the proceeding, he cannot request a rehearing of the November 4, 2016 Final Order. As the Companies noted in their response, the one case in which the Commission permitted an entity denied intervention to seek rehearing of a final Order is distinguished from the matter at hand.⁷ In that case, the affected utility did not object to the entity's request for and participation in a rehearing of the final Order.⁸ In contrast, here, the Companies have opposed Mr. Karem's request for rehearing of a final Order. For the above reasons, Mr. Karem's request for rehearing of the November 4, 2016 Final Order should be denied.

Although we need not address Mr. Karem's arguments that a CPCN was required, we will address certain misstatements and mischaracterizations contained in Mr. Karem's motion for rehearing. Mr. Karem inaccurately states that the Commission evaluated whether the proposed solar facility in this case was an extension of the solar facility at Brown. Although the Commission approved the Companies' request to apply the same depreciation rates we authorized for the Brown solar facility in Case No. 2016-00063,⁹ we never stated or implied that we evaluated the proposed solar facility in this case as an extension of the Brown solar facility. On the contrary, the November 4, 2016 Final Order expressly states our finding that the proposed solar facility "is an ordinary

⁷ See Case No. 2012-00152, *Application of Big Sandy Water District for an Adjustment in Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Ky. PSC Sept. 17, 2012).

⁸ *Id.* at 2–4.

⁹ Case No. 2016-00063, *Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Approval of Depreciation Rates for Brown Solar* (Ky. PSC Apr. 8, 2016).

extension of the Companies' *existing generating systems* in the usual course of business."¹⁰ Similarly, we did not cite KRS 278.216 as a basis for finding that a CPCN was not required, as asserted by Mr. Karem. Nowhere in our discussion that a CPCN was not required for this project did we refer to KRS 278.216.¹¹ Where we cited KRS 278.216 was in our discussion that the Companies were not required to file a site assessment report regarding potential impact of the project on property values for adjacent property owners.¹² Similarly, despite Mr. Karem's assertion to the contrary, we found that the proposed solar facility was needed and will not be a wasteful duplication of plant because each individual facility will be constructed only after full customer subscription is achieved. We further found that the project was designed to "satisfy customers' desire for renewable resource options," as supported by a market survey conducted by the Companies.¹³ We did not issue a blanket statement that future similar projects would not require a CPCN; we instead found that the determination whether a facility fell within the ordinary course of business exemption to the CPCN requirement is a factual determination and directed that, before building similar facilities, the Companies request a declaratory ruling whether future similar projects would need a CPCN or would be exempt under the ordinary course of business exemption.¹⁴

¹⁰ November 4, 2016 Final Order at 13 (emphasis added).

¹¹ *Id.* at 13–14.

¹² *Id.* at 13.

¹³ *Id.* at 2 and 13.

¹⁴ *Id.* at 14.

IT IS THEREFORE ORDERED that Mr. Karem's motion for rehearing is denied.

By the Commission

ENTERED
DEC 12 2016
KENTUCKY PUBLIC
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