

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS)	
ELECTRIC CORPORATION FOR A)	
CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY AUTHORIZING)	CASE NO.
CONSTRUCTION OF A NEW)	2021-00314
HEADQUARTERS FACILITY AND AN ORDER)	
AUTHORIZING BIG RIVERS TO SELL ITS)	
EXISTING HEADQUARTERS FACILITY)	

ORDER

On August 26, 2021, Big Rivers Electric Corporation (BREC) filed an application pursuant to KRS 278.020, KRS 278.218, and 807 KAR 5:001, Section 14 and 15 requesting a certificate of public necessity and convenience (CPCN) to construct a new headquarters building and approving the sale of BREC’s existing headquarters. BREC responded to two sets of requests for information from Commission Staff. This matter is now before the Commission for a decision on the merits.

BACKGROUND

BREC’s existing headquarters complex consists of six parcels and two structures in Henderson, Kentucky.¹ The headquarters office building located 201 Third Street, Henderson, Kentucky, was constructed in three phases from 1966 through 1981.² The existing headquarters also includes three pre-engineered buildings constructed in the

¹ Application, Exhibit D, Direct Testimony of Robert W. Berry (Berry Testimony) at 4.

² *Id.* at 4–5.

1980s and located at 314 N. Water St., Henderson, Kentucky.³ The remaining parcels that make-up BREC's existing headquarters are parking lots.⁴

BREC indicated that it has been depreciating its existing headquarters using a 50-year useful life based on depreciation rates set in Case No. 2012-00535.⁵ BREC stated that it had a proposal to construct a new headquarters in the early 2000s but that plan was placed on hold "to improve the economics of the Unwind Transaction [in which LG&E/WKE terminated the lease of certain BREC generation assets]."⁶ It asserted that it has now "right-sized" its generation with its load and that it is important to have a headquarters that is designed to meet current and future needs.⁷

BREC is proposing to construct a new headquarters facility in Owensboro. The new headquarters will be a 47,000 sq. ft. commercial structure.⁸ It will consist of a four story building, along with a parking lot with 129 spots.⁹ It will be about 25 percent smaller than the buildings that make up BREC's existing headquarters. BREC indicated that this is due to staffing reductions and the relocation of certain employees to a new Transmission Operations Center (TOC) that BREC intends to construct to replace its existing Energy Transmission & Substations (ET&S) facility.¹⁰ BREC indicated that the

³ *Id.* at 5.

⁴ *Id.* at 4.

⁵ Response to Staff's Second Request (filed Nov. 9, 2021), Item 6 and 15.

⁶ Berry Testimony at 9–10.

⁷ *Id.* at 11.

⁸ Application, Exhibit E, Direct Testimony Robert F. Toerne (Toerne Testimony) at 14–15.

⁹ *Id.* at 15.

¹⁰ *Id.*

proposed headquarters was designed to accommodate its current staff, subject to relocations to the TOC, “with increased meeting and collaborative spaces that align with modern business practices.”¹¹

BREC asserted that it is moving its Central Lab, for testing coal quality and specifications, from its headquarters to Wilson Station as that will be its only active coal plant. BREC also plans to move certain energy control and engineering personnel from the headquarters into a single TOC facility separate from the new headquarters.¹² BREC argued that moving its Energy Control and Engineering departments will achieve greater operational efficiencies and will allow it make needed updates to certain facilities used by those personnel that it claims are not possible at its existing headquarters.¹³ BREC asserted these relocations will leave unused and un-needed space in its current headquarters.¹⁴

BREC also indicated that its current headquarters will require significant work to remain useful. Specifically, BREC estimated about \$2.3 million in capital projects will be necessary over the next ten years if its stays in its current headquarters, including the following:

1. Heating, Ventilation, and Air Conditioning upgrades with an estimated cost of about \$250,000;
2. Parking lot resurfacing with an estimated cost of about \$225,000;
3. Roof repairs with an estimated cost of about \$280,000;

¹¹ *Id.* at 15.

¹² Berry Testimony at 12–13.

¹³ *Id.* at 13–14.

¹⁴ *Id.* at 13–15.

4. Upgrades to restrooms with an estimated cost of about \$162,500;
5. Generator upgrades with an estimated cost of about \$125,000;
6. Server room upgrades with an estimated cost of about \$120,000;
7. Fire suppression upgrades with an estimated cost of about \$150,000;
8. Painting and flooring replacement with an estimated cost \$400,000; and
9. Security upgrades with an estimated cost of about \$320,000.¹⁵

BREC's new headquarters is estimated to cost a total of \$10.8 million for the land and the building plus an additional \$60,000 for moving and \$235,000 for furnishings, telephonics, and equipment.¹⁶ However, BREC is receiving a number of incentives from the City of Owensboro (Owensboro) to offset the cost of constructing the new headquarters. Owensboro will rebate BREC the full purchase price of the property on which BREC will construct its new headquarters.¹⁷ Owensboro will also rebate 50 percent of Owensboro's occupational tax collected from BREC's employees over the first ten years, which BREC estimated as having a value of about \$121,381 per year.¹⁸

BREC performed a benefit-cost analysis of remaining in its existing headquarters and constructing the new headquarters with the incentives offered by Owensboro and indicated the results showed a net favorable margin of \$1,460,166 over ten years.¹⁹ BREC acknowledged in its initial testimony that the bulk of that net favorable margin arose

¹⁵ Toerne Testimony at 7–10.

¹⁶ *Id.*, Exhibit Toerne-2 at 16 (a report from Envision, BREC's design firm, describing the project, including the estimated cost).

¹⁷ Application, Exhibit F, Direct Testimony of Paul G. Smith (Smith Testimony) at 6–7.

¹⁸ *Id.* at 12.

¹⁹ *Id.* at 13–14.

in the first year from the assumption that it will be able to sell its existing headquarters above its net book value.²⁰ However, BREC's analysis also did not account for savings it could obtain by financing the new headquarters with New Markets Tax Credits (NMTC) from the U.S. Department of Treasury, which BREC indicated could result in additional savings in the amount of about \$2.5 million.²¹ BREC indicated that it is eligible to receive NMTC based on the location of its proposed headquarters and that it has not identified any issues that might cause its financing application to be unsuccessful.²²

BREC investigated the possibility of buying an existing structure in Owensboro but indicated that it could not find a structure to meet its needs. BREC investigated the possibility of having a developer build a structure to suit its needs in Owensboro and then leasing the structure, but it concluded that the leasing option would not be prudent because BREC would end up paying the entire cost of the building plus the return on the lessor's investment.²³

BREC investigated building outside of Owensboro and acknowledged that it was offered incentives by other cities, excluding the city of Henderson. However, BREC indicated that it chose Owensboro due to its central location.²⁴ BREC also asserted that moving to Owensboro offers potential "strategic transaction opportunities" and power supply options.²⁵ BREC explained that the move is likely to enhance Owensboro

²⁰ *Id.* at 9, 14.

²¹ *Id.* at 11, 15.

²² Response to Staff's First Request (filed Oct. 22, 2021), Item 3.

²³ Berry Testimony at 16–17.

²⁴ *Id.* at 18–19.

²⁵ Smith Testimony at 16.

Municipal Utilities' favorable consideration to extend its existing power supply contract with BREC. BREC also argued that the move places it closer to its Members and certain larger industrial customers and that the local presence and interactions within Owensboro "are likely to be favorable considerations if BREC should make a formal offer to lease or acquire the City of Owensboro's municipal electric assets."²⁶

DISCUSSION

BREC's Request for a CPCN

The Commission's standard of review regarding a CPCN is well settled. Under KRS 278.020(1), no utility may construct or acquire any facility to be used in providing utility service to the public until it has obtained a CPCN from this Commission. To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.²⁷

"Need" requires:

[A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.

[T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.²⁸

²⁶ Response to Staff's First Request (filed Oct. 22, 2021), Item 6.

²⁷ *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885 (Ky. 1952).

²⁸ *Id.* at 890.

“Wasteful duplication” is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”²⁹ To demonstrate that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.³⁰ Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.³¹ All relevant factors must be balanced.³²

BREC’s current headquarters was placed in service forty years ago and currently requires significant upgrades over the next ten years. As an alternative to performing those upgrades to the existing headquarters, BREC investigated the possibility of constructing or leasing a new headquarters. BREC indicated that leasing a new headquarters would not be practical in a situation like BREC’s where it plans to remain in the headquarters for its entire useful life, because BREC, which is a non-profit corporation, would end up having to cover the lessors return on its investment (instead of funding the project with lower cost debt available to BREC).³³ BREC’s analysis indicated that purchasing a new headquarters would be less expensive than making upgrades to

²⁹ *Id.*

³⁰ Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

³¹ See *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 390 S.W.2d 168, 175 (Ky. 1965). See also Case No. 2005-00089, *The Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity to Construct a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005).

³² Case No. 2005-00089, *East Kentucky Power Cooperative, Inc.* (Ky. PSC Aug. 19, 2005), final Order at 6.

³³Berry Testimony at 17–18.

its existing headquarters given the incentives being offered. Further, while there are uncertainties with respect to some of the assumptions in BREC's analysis, the Commission finds that it is reasonable and notes BREC did not include all potential savings in its benefit-cost analysis. Thus, having reviewed the record and being otherwise sufficiently advised, the Commission finds that BREC's proposed headquarters is needed and will not result in wasteful duplication, and therefore, that BREC's application for a CPCN should be granted.

Transfer of Assets

KRS 278.218 requires prior Commission approval before a person may acquire or transfer a utility's assets with an original book value of over \$1,000,000 if:

- (a) The assets are to be transferred by the utility for reasons other than obsolescence; or
- (b) The assets will continue to be used to provide the same or similar service to the utility or its customers.³⁴

The Commission is required to grant such approval if the transaction is for a proper purpose and is consistent with the public interest.³⁵

BREC acknowledged that approval of the transfer of its current headquarters is necessary pursuant to KRS 278.218. BREC argued that the transfer is justified pursuant to KRS 278.218, because the construction of new office space will eliminate the need for the current facility. BREC does not currently have a buyer for the existing headquarters and acknowledged that it will be unable to vacate the existing headquarters for sale until personnel in the existing headquarters are able to relocate.³⁶ BREC stated that any

³⁴ KRS 278.218(1).

³⁵ KRS 278.218 (2).

³⁶ Berry Testimony at 19.

agreement to transfer possession of its existing headquarters would account for those contingencies.³⁷ BREC expects its existing headquarters to sell for more than its remaining net book value.³⁸

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the proposed transfer is for a proper purpose and in the public interest. However, while the Commission approves the proposed transfer, it is doing so with the expectation that any transfer will be made in a manner consistent with the representations made in this matter. Thus, unless BREC obtains an amended approval from the Commission, the existing headquarters should not be transferred unless BREC proceeds with the construction of the new headquarters and it should not be sold for less than its remaining net book value at the time of the transfer.

IT IS THEREFORE ORDERED that:

1. BREC is granted a CPCN to purchase the land and construct its new headquarters as proposed in its application.
2. BREC shall immediately notify the Commission upon knowledge of any material changes to the project, including, but not limited to, increase in cost and any significant delays in construction.
3. Any material deviation from the construction approved by this Order shall be undertaken only with the prior approval of the Commission.
4. BREC shall file with the Commission documentation of the total costs of the projects, including the cost of construction and all other capitalized costs, (e.g.

³⁷ *Id.*

³⁸ Smith Testimony at 9.

engineering, legal, administrative, etc.) within 60 days of the date that construction authorized under this CPCN is substantially completed. Construction costs shall be classified into appropriate plant accounts in accordance with the Uniform System of Accounts for electric utilities as prescribed by the Commission.

5. BREC shall file a copy of the “as-built” drawings and a certified statement that the construction has been satisfactorily completed in accordance with the contract plans and specifications within 60 days of the substantial completion of the construction certificated herein.

6. Any documents filed in the future pursuant to ordering paragraphs 4 and 5 herein shall reference this case number and shall be retained in the post-case correspondence file.

7. BREC’s application requesting approval of the transfer of ownership of its existing headquarters is granted on the condition that:

a. BREC proceeds with the construction of the new headquarters as proposed herein; and

b. The sale price of the existing headquarters is not less than its remaining net book value at the time of the transfer.

8. The Executive Director is delegated authority to grant reasonable extensions of time for filing any documents required by this Order upon BREC’s showing of good cause for such extension.

9. This case is closed and removed from the Commission’s docket.

By the Commission

ENTERED
DEC 07 2021
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2021-00314

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