

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY FOR A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY TO)	
CONSTRUCT A 138 KV TRANSMISSION LINE)	
AND ASSOCIATED FACILITIES IN BREATHITT,)	CASE NO.
FLOYD AND KNOTT COUNTIES, KENTUCKY)	2021-00346
(GARRETT AREA IMPROVEMENTS 138 KV)	
TRANSMISSION PROJECT))	

ORDER

On December 7, 2021, Jeffery B. Conley filed a written request for intervention in this proceeding. Mr. Conley stated that he was “filing a formal protest of the proposed route” on behalf of Western Pocahontas Properties¹ and asked that intervention be granted. As a basis for his request, Mr. Conley stated that Western Pocahontas Properties owns property along the right-of-way for the Garrett Area Transmission Project and that the proposed route devalues property owned by Western Pocahontas Properties on the south side of Kentucky Route 80.² Further, Mr. Conley included a map of a route he indicated was being proposed by Western Pocahontas Properties as an alternative to the route proposed by Kentucky Power Company (Kentucky Power).³ Mr. Conley alleged the route proposed by Western Pocahontas Properties is shorter, straighter, and involves fewer property owners than the route proposed by Kentucky Power.⁴

¹ Western Pocahontas Properties Request for Intervention at unnumbered page 1.

² *Id.*

³ *Id.* at unnumbered page 3.

⁴ *Id.* at unnumbered page 1.

On December 14, 2021, Kentucky Power filed a response to Mr. Conley's request. Kentucky Power stated that it opposes Western Pocahontas Properties request to intervene in this matter because: (1) the request was untimely; (2) the request was unaccompanied by a motion demonstrating good cause for modification of the procedural schedule; (3) the request was submitted by Mr. Conley of Natural Resource Partners, L.P. and neither Mr. Conley nor Natural Resource Partners L.P. owns property within the proposed right-of-way or the filing corridor and they lack an interest in the project and this proceeding in their own capacities; and (4) to the extent Mr. Conley is submitting the request on behalf of Western Pocahontas Properties, he does not appear to be licensed to practice law in Kentucky, and thus the submission violates Commission regulation 807 KAR 5:001, Section 4(4).

LEGAL STANDARD

The only person who has a statutory right to intervene in a Commission case is the Attorney General of the Commonwealth of Kentucky (Attorney General), pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sole discretion of the Commission.⁵

The statutory standard for permissive intervention, KRS 278.040(2), requires that "the person seeking intervention must have an interest in the 'rates' or 'service' of a utility, since those are the only two subjects under the jurisdiction of the PSC."⁶

The regulatory standard for permissive intervention, set forth in 807 KAR 5:001, Section 4, is twofold. Commission regulation 807 KAR 5:001, Section 4(11) requires a

⁵ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

⁶ *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 at 3 (Ky. App. Feb. 2, 2007).

person to set forth in the motion to intervene either (1) a special interest in the proceeding that is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

In proceedings involving an application for a Certificate of Public Convenience and Necessity (CPCN) to construct an electric transmission line, the Commission also considers KRS 278.020(9), which includes a person over whose property a proposed transmission line will cross as an “interested person” who may request intervention.

Additionally Commission regulation 807 KAR 5:001, Section 4(4) prohibits a person not licensed to practice law in Kentucky from filing papers with the Commission on behalf another person or otherwise representing another person in a matter pending before the Commission.

DISCUSSION AND FINDINGS

Based on a review of the pleadings at issue and being otherwise sufficiently advised, the Commission finds that Mr. Conley failed to demonstrate that he has a special interest in the proceeding over which the Commission has jurisdiction that is not otherwise adequately represented or that Mr. Conley is likely to present issues or develop facts that will assist the Commission in considering this matter without unduly complicating the proceedings. Further, for the reasons stated below, the Commission finds that although Western Pocahontas Properties is an interested person in these proceedings, there is no proper motion from Western Pocahontas Properties before the Commission upon which the Commission can rule.

Mr. Conley does not have a special interest in these proceedings. He has not alleged any facts that would lead the Commission to conclude that he does have a special

interest, and Mr. Conley's name does not appear on the list, which was submitted by Kentucky Power in Exhibit 15 of the application, of property owners who own property in the proposed right-of way or filing corridor.

Western Pocahontas Properties owns property over which the proposed transmission line will cross.⁷ Therefore, Western Pocahontas Properties is an "interested person" as that term is used in KRS 278.020(9). However, KRS 278.020(9) simply states that an interested person may request intervention. It does not relieve the interested person from the obligation to follow Commission regulation 807 KAR 5:001, Section 4 (11) when seeking intervention in a Commission proceeding. As the Commission articulated in its December 7, 2021 Order in this proceeding, ownership of property over which a proposed transmission line will cross is considered by the Commission to be a special interest. Interested persons must still follow Commission regulations when seeking intervention.

Western Pocahontas Properties has not properly filed a motion with the Commission seeking intervention in this case. The only request was made by Mr. Conley who, on information and belief, is not an attorney licensed to practice law in Kentucky. Since Western Pocahontas Properties is a business entity⁸ it must be represented by an attorney to licensed to practice law in Kentucky.⁹ In addition, the Commission issued a procedural schedule on November 17, 2021, to facilitate the orderly processing of this

⁷ Application, Exhibit 15 at 6.

⁸ See Kentucky Power's Response to Western Pocahontas Properties Request for Intervention, Exhibit 1.

⁹ 807 KAR 5:001, Section 4(4) indicates that no person may file a paper with the Commission on behalf of another person or otherwise represent another person in matters before the Commission unless that person is an attorney licensed in Kentucky. Western Pocahontas Properties is a limited partnership. Therefore, any natural person filing a paper on behalf of Western Pocahontas Properties is contrary to the regulation unless that person is licensed to practice law in Kentucky.

case. The procedural schedule set November 29, 2021, as the last day to request intervention. The Commission is required to issue its final Order in this matter by March 8, 2022.¹⁰ Because the applicable statute provides the Commission limited time to review an application for a transmission line, it is important that the Commission avoids delays. Untimely requests for intervention are disruptive to the orderly processing of a CPCN application, and often necessitate amendments to the procedural schedule. This is why the Commission establishes deadlines to file requests for intervention.

Kentucky Power mailed the required notice to Western Pocahontas Properties on October 25, 2021.¹¹ Western Pocahontas Properties received this notice because a copy of it was included in Mr. Conley's request.¹² Therefore, Western Pocahontas Properties had ample opportunity to properly file a motion for intervention with the Commission, but it did not do so. Commission regulation 807 KAR 5:001, Section 4(11)(b) indicates the Commission shall grant intervention to a person seeking to become a party if the Commission finds that a timely motion requesting intervention was made, and that the person seeking intervention has a special interest in the case that is not otherwise adequately represented or that the person will present issues or develop facts to assist the Commission in fully considering the matter. Western Pocahontas Properties has not timely filed a motion conforming to the regulations and seeking intervention. The time has passed for Western Pocahontas Properties to seek intervention. Therefore, the

¹⁰ KRS 278.020(9) requires the Commission to issue a final Order no later than 90 days after an application for a Certificate of Public Convenience and Necessity (CPCN) to construct a 138 kV or greater transmission line is filed, unless the Commission finds good cause to extend the time period to 120 days. Kentucky Power filed its application on November 8, 2021. In addition to establishing a procedural schedule the November 17, 2021 Order extended the time period to process this application to 120 days, meaning the Commission must issue a final Order on or before March 8, 2022.

¹¹ Application, Exhibit 13.

¹² Western Pocahontas Properties Request for Intervention at unnumbered pages 4–7.

Commission has no proper motion from Western Pocahontas Properties upon which to rule.

Mr. Conley did not allege he could present issues or develop facts that would aid the Commission in fully considering the matter being considered in this case. He provided a map of a proposed alternate route and alleged, without providing supporting documentation, that the route proposed by Kentucky Power would devalue property owned by Western Pocahontas Properties. Mr. Conley does not own the property at issue, nor is he an attorney licensed to practice law in Kentucky representing the interests of the owner of property within the right-of way of Kentucky Power's proposed transmission line. As such, Mr. Conley cannot present issues or develop facts to aid the Commission.

Mr. Conley and Western Pocahontas Properties will have an opportunity to participate in this proceeding even though they are not granted intervenor status. Mr. Conley and Western Pocahontas Properties can review all public documents filed in this case and monitor the proceedings via the Commission's website <https://psc.gov/Case/ViewCaseFilings/2021-00346>. In addition, Mr. Conley and Western Pocahontas Properties may file comments as frequently as they choose, and those comments will be entered into the record of this case.

IT IS THEREFORE ORDERED that the request to intervene filed by Mr. Jeffery B. Conley is denied.

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By the Commission



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