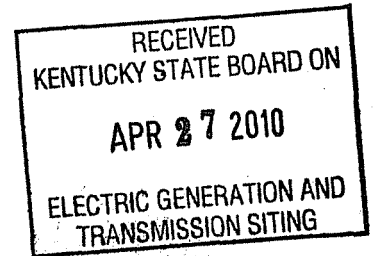


COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING

In the Matter of:

APPLICATION OF ECOPOWER GENERATION-)
HAZARD, LLC FOR A CERTIFICATE TO)
CONSTRUCT AND OPERATE A MERCHANT)
ELECTRIC GENERATING FACILITY AND A 69)
KV TRANSMISSION LINE IN PERRY)
COUNTY, KENTUCKY)

CASE NO.
2009-00530



APPLICANT'S RENEWED MOTION FOR DEVIATION FROM SETBACK REQUIREMENTS

Comes the Applicant, ecoPower Generation-Hazard, LLC ("ecoPower"), by counsel, and consistent with the Order of the Kentucky State Board on Electric Generation and Transmission Siting (the "Board"), entered on April 22, 2010, files its Renewed Motion in support of its request that the Board grant a deviation from the setback requirements of KRS 278.704(2). As grounds for its Renewed Motion, ecoPower states as follows.

I. INTRODUCTION

On February 18, 2010, ecoPower filed its Application for a Certificate to Construct a Merchant Electric Generating Facility and Transmission Line in Perry County, Kentucky (the "Application"). The Application fully and completely addressed setback requirements and requested a deviation from the setback requirements for the ecoPower facility. [See Application, Vol. One, Section 5.0, p. 13]. On April 8, 2010, ecoPower filed its Motion for Deviation from Setback Requirements (the "Motion").

On April 22, 2010, the Board entered an Order denying without prejudice ecoPower's Motion. The Order specifically provided that ecoPower is not precluded from filing a revised motion for deviation explaining how the proposed facility is designed and located to meet the goals of each of the statutes listed in KRS 278.704(4). ecoPower now files this Renewed demonstrating that it is entitled to a deviation from the setback requirements of KRS 278.704(2).

II. ARGUMENT

As set forth in the Application and Motion, the setback requirements applicable to the ecoPower facility are contained in KRS 278.704(2), which provides in part:

Except as provided in subsections (3), (4), and (5) of this section, no person shall commence to construct a merchant electric generating facility unless the exhaust stack of the proposed facility is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility.

KRS 278.704(2).

The Application and Motion clearly demonstrate that the exhaust stack of the ecoPower facility is located more than 2,000 feet from any residential neighborhood, school, hospital or nursing home facility and is therefore in compliance with the 2,000 foot setback requirement. [See Application, Vol. One, p. 13]. The Order does not take issue with nor otherwise question this conclusion.

As also set forth in the Application and noted in the Motion, the ecoPower exhaust stack is less than 1,000 feet from two of the adjoining properties, the Coal Fields Regional Industrial Park and Mountain Properties, Inc. [Motion, p. 2; Application, Vol. One, Figure 3, entitled

“Setback, Site Layout and 2000-foot Vicinity Map]. The fact that the stack is less than 1,000 feet from these adjacent properties is not dispositive because KRS 278.704(4) provides that the Board may grant a deviation from the setback requirements of KRS 278.704(2), if the proposed facility, “...is designed and located to meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 at a distance closer than those provided in subsection (2) of this section.” KRS 278.704(4).

In the Board action styled, *In the Matter of: The Application of Kentucky Mountain Power, LLC/EnviroPower, LLC For A Merchant Power Plant Construction Certificate in Knott County, Kentucky Near Talcum*, Board Case No. 2002-00149 (hereinafter “*KMP*”), a copy of which is attached as Exhibit I, the Board itself enunciated the standards applicable to applications seeking a deviation from the setback requirements found in KRS 278.704(2). This enunciated standard is the same as that set forth and satisfied by ecoPower in its Application and Motion when requesting a deviation from the setback requirements found in KRS 278.704(2).

In *KMP*, the Board noted that, “KRS 278.710(4) allows the Board to grant a deviation from the setback requirements upon a finding that the proposed facility is designed and located to meet the goals of the statute at a distance closer than the prescribed distances. *KMP* at 14.¹ In reviewing the statutory setback requirements outlined in KRS Chapter 278, the Board stated that, “[t]he legislative history and statutory language of the statute suggest that the primary purpose of the setback requirements is to protect the assumptions and expectations of property owners who

¹ The Board’s reference in *KMP* to KRS 278.710(4) appears to be a typographical error with the correct cite being KRS 278.704(4).

had no reason to expect the construction of a merchant power plant near their property.” *KMP* at 15.

In *KMP*, the Board reviewed evidentiary hearing testimony and language of the lease at issue and found that ARC, a subsidiary of Horizon Natural Resources and lessor of the KMP property, was aware of KMP’s plans for the property and had no objection to the proposed use. *KMP* at 15, 16. The Board also found that KMP made every effort to protect property owners from any adverse impacts that may result from the proposed project. *KMP* at 16. Therefore, to the extent that a deviation from the setback requirements was necessary, the Board granted a deviation based on its finding that the proposed project was designed and located to meet the goals of KRS Chapter 278 at a distance closer than the prescribed distance of 1,000 feet. *KMP* at 16.²

As stated in *KMP* and in both ecoPower’s Application and Motion, the legislative history and statutory language of KRS 278.704(2) suggests that the primary purpose of the setback requirement is to protect the assumptions and expectation of property owners who had no reason to expect the construction of a merchant power plant near their property. As in *KMP*, both of the ecoPower impacted property owners, Coal Fields Regional Industrial Park and Mountain

²KMP leased the 195-acre footprint of the proposed site and the 4,000 acres that surrounded it from ARC. Under the KMP project, the exhaust stack would be located 600 feet from the 195-acre footprint boundary. Thus, the Board concluded that under the most technical interpretation of the statute, one could argue that this configuration does not meet the statutory setback requirements. The Board did note, however, to the extent that KMP holds a significant ownership interest in the land adjacent to the proposed site, a strong argument could be made that there is no “adjoining property owner” within 1000 feet within the meaning of KRS Chapter 278. In any event, however, the Board concluded to the extent that a deviation from the setback requirements is necessary, a deviation would be granted based on the fact that the proposed project is designed and located to meet the goals of KRS Chapter 278. *KMP* at 15, 16.

Properties, Inc., are well aware of ecoPower's proposal to construct its merchant electric generation facility, have expressed their support for the same and have no objection to the proposal to construct the facility. [See Motion, p. 3; Application, Vol. One, Exhibit. D; copies of the letters of support are also attached hereto as Exhibit II]. As such, the ecoPower facility, like KMP's plans for its property, meet the general goals of KRS Chapter 278 at a distance closer than the prescribed distance of 1,000 feet. The Order does not question this conclusion nor the fact that the Application has been drafted and the facility designed to protect adjacent property owners from any adverse impacts. For example, the Application addresses issues that might arise from the construction and operation of the facility. These investigations included, but are not limited to, potential adverse impacts from noise and traffic associated with the construction and operation of the facility. Additionally, an analysis of visual impacts was also undertaken. A detailed evaluation of these issues may be found in the Application.

Further, KRS 278.704(4) provides that the deviation requested may be granted by the Board upon a finding that the proposed facility is designed and located to meet the goals of the following statutes:

1. KRS 224.10-280 Cumulative environmental assessment and fee required before construction of facility for generating electricity – Conditions imposed by cabinet – Administrative regulations. KRS 224.10-280 provides that no person shall commence to construct a facility to be used for the generation of electricity unless that person has submitted a cumulative environmental assessment to the Energy and Environment Cabinet (the "Cabinet") with its permit application, and remits a fee which has been set pursuant to KRS 224.10-100(20).

In conjunction with the investigation of the obligations and requirements to construct the facility which is proposed in this matter, representatives of ecoPower consulted with representatives of the Cabinet, specifically, Ms. Valerie Hudson, Office of the Commissioner of the Department for Environmental Protection, concerning the requirements contained in KRS 224.10-280. Ms. Hudson confirmed that no regulations have been promulgated pursuant to this section, but that the Cabinet's practice is to request applicants to file the environmental assessment at the time of the filing of the last environmental permit which will be required for the facility. In this case, that permit application will be for a KPDES permit to regulate industrial stormwater. Currently, no general permit for industrial stormwater discharges exists. For a facility of this nature it is a requirement that an application for an individual KPDES permit for stormwater discharge be filed and the permit issued. Ms. Hudson further advised that since no regulations have been promulgated, no fee has been established for the review of these applications.

It is the intent and commitment of ecoPower to provide the cumulative environmental assessment as set forth in KRS 224.10-280 in accordance with the instructions of the Department for Environmental Protection. Further, it is the intent and commitment of ecoPower not to begin construction of the facility described in this Board proceeding unless and until such cumulative environmental assessment has been properly filed with the Department for Environmental Protection. The goal of this statute clearly is to provide the Cabinet a central location for a cumulative overview of environmental impacts which may result from the construction of an electric generating facility. Through the existing permit programs applicable to the ecoPower project, the Cabinet may impose conditions regarding the timing, volume, duration or type of

pollutants on a permit registration, general permit or a permit by rule for a facility subject to this section as are necessary to comply with applicable standards. ecoPower has already applied for and obtained a proposed permit from the Division for Air Quality and will in the near future be applying for a KPDES permit for stormwater discharges from the facility. At that time the cumulative environmental assessment will be simultaneously filed. Any earlier submission of a cumulative environmental assessment would be premature as it could not take into account all environmental impacts envisioned by KRS 224-10-280. Therefore, the goals of KRS 224.10-280 will be met in accordance with the procedures provided by the Cabinet. [See Exhibit III].

2. **KRS 278.010. Definitions for KRS 278.010 to 278.450, 278.541 to 278-544, 278.546 to 278.5462 and KRS 278.990.** KRS 278.010 provides a list of definitions to be used in conjunction with KRS 278.010 to 278.450, 278.541 to 278.544, 278.546 to 278.5462 and KRS 278.990. The Board's authority begins with KRS 278.700 and extends through KRS 278.716 and any applicable provision of 278.990. ecoPower believes that in filing a complete Application pursuant to the applicable statutes in this proceeding it has satisfied the goal of providing the required information utilizing the definition of any applicable term defined in KRS 278.010. [See Exhibit IV].

3. **KRS 278.212. Filing for plans for electrical interconnection with merchant electric generating facility – Cost of upgrading existing grid.** ecoPower believes it has met the goals of KRS 278.212. The requirements of this section are a mandate to "utilities" and not to facilities such as are proposed in the Application. It is the intent of ecoPower to ensure compliance with all applicable conditions relating to electrical interconnection with utilities.

Further, ecoPower fully intends and will accept responsibility for appropriate costs which may result from its interconnecting with the electricity transmission grid. [See Exhibit V].

4. KRS 278.214. Curtailment of service by utility or generation and transmission cooperative. The goals of this statute are to establish the progression of entities whose service may be interrupted or curtailed pursuant to an emergency or other event. ecoPower intends to abide by the requirements of this provision to the extent that these requirements are applicable to a wholesale generator of electric power. ecoPower believes that by committing to comply with these requirements the company has met the goals anticipated by this statute. [See Exhibit VI].

5. KRS 278.216 Site compatibility certificate – Site assessment report – Commission action on application. KRS 278.216 specifically applies to utilities as they are defined in KRS 278.010(3). ecoPower is not such a defined utility. Further, this provision encompasses many of the requirements that are included within KRS 278.700 to 278.716, and makes those requirements applicable to utilities, just as they apply to a merchant generating facility such as ecoPower. Therefore, by complying with the requirements of 278.700 *et seq.*, ecoPower believes that it has met the requirements and goals of KRS 278.216. [See Exhibit VII].

6. KRS 278.218. Approval of commission for change in ownership or control of assets owned by utility. This statute specifically applies to utilities as those are defined pursuant to KRS 278.010(3)(a). The statute prohibits acquisition or transfer without prior approval of the Commission. ecoPower is not a utility as described in 278.010(e)(a) and therefore this statute does not apply to ecoPower. However, to the extent commission approval

may at some time be required for change of ownership or control of assets owned by ecoPower, ecoPower will abide by the applicable rules and regulations which govern its operation. [See Exhibit VIII].

7. **KRS 278.700 – 278.716. Electric Generation and Transmission Siting.** These provisions of the Kentucky Revised Statutes govern the application of a Merchant Electric Generating Facility such as the one proposed by ecoPower in its Application to the Board. ecoPower believes that the goals set forth in those provisions in the Kentucky Revised Statutes have been met, as evidenced by its Application in its entirety. The goals of those provisions are to provide for the location of merchant electric generating facilities in a fashion which will not intrude upon or unnecessarily disrupt other surrounding land uses, including hospitals, nursing homes, residential areas, schools, parks or otherwise have adverse environmental impacts which are not otherwise regulated. ecoPower believes that its application to the Board clearly demonstrates that the location of its facility meets all of the goals anticipated by KRS 278.700 *et seq.*

The facility is proposed to be located on 125 acres in an industrial park, surrounded by industrial uses or undeveloped land which will be for use by industrial facilities. Only two of its neighbors have adjoining property boundaries that will be less than 1,000 feet from the proposed location of the stack of the ecoPower facility. These two neighbors have been made fully aware of the proposed uses of the property, have had an opportunity to review the plans, the permit applications, and to question representatives of ecoPower concerning the facility proposed to be constructed. Following these investigations, both neighbors have provided letters of support for the project, including placement of the stack in proximity to their boundaries.

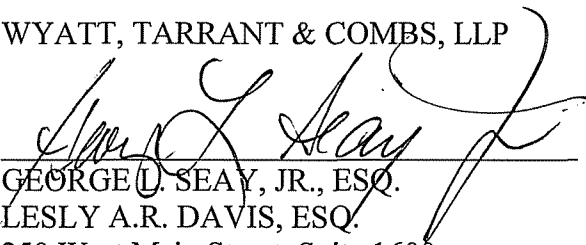
ecoPower has engaged in public education, public notification, has held a public meeting to respond to inquiries concerning the facility, has made presentations to the local governmental bodies concerning the facility, has specifically discussed and made itself available for questioning by adjoining landowners concerning the property use, and has filed a complete and thorough Application describing the proposed use of the land for the construction of the electric generating facility. ecoPower has, without question, met the goals of KRS 278.700 *et seq.* in locating its proposed facility in an environmentally compatible location, disclosing the facts surrounding its proposed operation, responding to inquiries and obtaining the concurrence and support of adjoining property owners in its proposal to construct its facility.

III. CONCLUSION

WHEREFORE, ecoPower Generation-Hazard, LLC, requests a deviation from the setback requirements contained in KRS 278.704(2) as the proposed facility is designed and located to meet the goals of those statutory provisions set forth in KRS 278.704(4).

Respectfully submitted,

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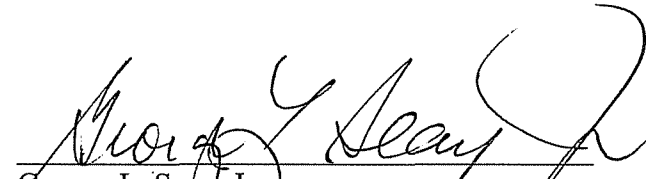
*Counsel for ecoPower Generation-Hazard,
LLP*

CERTIFICATE OF SERVICE

This is to certify that the original and ten true and correct copies of the foregoing have been filed in the office of the Kentucky Public Service Commission, 211 Sower Blvd, Frankfort, Kentucky 40601 and that the following have been served, via regular U.S. mail, postage prepaid, on this the 27th day of April, 2010:

Hon. Rick Bertelson
Public Service Commission
211 Sower Blvd
P.O. Box 615
Frankfort, KY 40602-0615

Mr. Jeff Derouen
Executive Director
Public Service Commission
P.O. Box 615
Frankfort, KY 40602


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*Counsel for Applicant, ecoPower Generation-
Hazard, LLC*

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING

In the Matter of:

THE APPLICATION OF KENTUCKY)
MOUNTAIN POWER, LLC /)
ENVIROPOWER, LLC FOR A) CASE NO. 2002-00149
MERCHANT POWER PLANT)
CONSTRUCTION CERTIFICATE IN)
KNOTT COUNTY, KENTUCKY)
NEAR TALCUM)

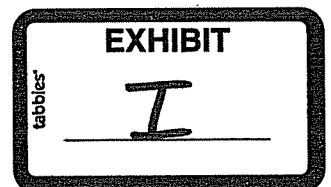
*Before: Martin J. Huelsmann, Chairman, Donnie Newsome, Vice Chairman,
Gary W. Gillis, Robert E. Spurlin, Henry List, J. R. Wilhite,
and Karen Jones*

O R D E R

On June 13, 2002, Kentucky Mountain Power, LLC ("KMP") filed, pursuant to KRS 278.706(1), an application with the Kentucky State Board on Electric Generation and Transmission Siting (the "Board") for approval to construct a 520 megawatt ("MW") electrical generation facility in Knott County, Kentucky.

PROCEDURE

On July 16, 2002, a procedural schedule providing for discovery, intervenor testimony, an evidentiary hearing, and post-hearing briefs was established in this proceeding. On July 15, 2002, BBC Research and Consulting ("BBC"), a Board consultant, submitted its Review and Evaluation of KMP's Site Assessment Report. Another Board consultant, Commonwealth Associates, Inc. ("CAI"), filed its transmission system review of KMP's proposed facility as direct testimony on August 2, 2002. On



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In the Matter of:

THE APPLICATION OF KENTUCKY)
 MOUNTAIN POWER, LLC /)
 ENVIROPOWER, LLC FOR A)
 MERCHANT POWER PLANT)
 CONSTRUCTION CERTIFICATE IN)
 KNOTT COUNTY, KENTUCKY)
 NEAR TALCUM)

CASE NO. 2002-00149

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August 1, 2002, the Board granted full intervention to Pauline Stacy who also filed direct testimony in this proceeding on August 2, 2002. In lieu of direct testimony, KMP submitted its application as filed on June 13, 2002. The Board conducted an evidentiary hearing on August 7, 2002. Robin Morecroft, Randy Bird, and Peter Brown¹ testified on behalf of KMP. Pauline Stacy testified on her own behalf. Ed Harvey and Douglas Jeavons of BBC, and David Shafer of CAI provided testimony for the Board. All witnesses were subject to cross-examination by the other parties. On August 14, 2002, attorneys for KMP, and Ms. Stacy filed post-hearing briefs in this proceeding.

KMP

KMP is a Kentucky corporation principally located at 2810 Lexington Financial Center, Lexington, Kentucky 40507. KMP proposes to construct and operate the Kentucky Mountain Power Project located on a reclaimed coal mine site eight miles from Hazard, Kentucky. KMP is a wholly owned subsidiary of EnviroPower, LLC ("EnviroPower"). EnviroPower is a Kentucky corporation founded in 1999. EnviroPower currently has five 500 MW projects in active development in Kentucky and Indiana.²

¹ SCR 3.130(3.7) provides: "A lawyer shall not advocate at a trial in which the lawyer is likely to be a necessary witness except where. . . [3] disqualification of the lawyer would work a substantial hardship on the client." The Board notes that Mr. Brown is the attorney of record for KMP. However, Mr. Brown is also the only witness qualified to testify on issues related to lease agreements and authorized to make commitments on behalf of KMP. After giving this issue special consideration during the evidentiary hearing, the Board concluded that Mr. Brown's disqualification as a witness would substantially undermine KMP's ability to meet the burden of proof necessary to obtain the construction permit.

² Proposed locations include: Knott County, Kentucky; Martin County, Kentucky; Franklin County, Illinois; South Kindall, Indiana; and North Kindall, Indiana. Section 4.1, KMP Application.

KMP proposes to construct a 520 MW coal- and waste coal-fired merchant power plant in Knott County, Kentucky. The proposed plant will interconnect with American Electric Power's ("AEP") 138 kV transmission system at substations in Hazard and Beaver Creek via proposed transmission lines that AEP will own and operate.³ The project will utilize a combination of waste coal and run-of-mine coal from the local area. The proposed plant will be located on a 195-acre site which lies within 4,000 acres currently leased by KMP from Appalachian Realty Company ("ARC").

KMP also proposes to construct a water system to meet the facility's water supply needs. In addition to an intake and pumping station at the North Fork of the Kentucky River, the proposed water system will include a 22-mile water line and a 1.4 billion gallon water storage reservoir. The plant will also treat wastewater discharges.⁴ KMP estimates that the total capital expenditure for the entire project will exceed \$750,000,000.⁵

STATUTORY PROVISIONS

Pursuant to KRS 278.706(1), no person shall commence to construct a merchant electrical generating facility until that person has applied for and obtained a construction certificate for the proposed facility from the Board. KRS 278.710(1) directs the Board to consider the following criteria in rendering its decision: impact on scenic surroundings; property values, and surrounding roads; anticipated noise levels; economic impact upon the affected region; the existence of other generation facilities capable of generating at

³ See discussion on p. 12 of this Order.

⁴ KMP Application, Section 8.1.0.

⁵ KMP Application, Section 6.1.

least 10 MW of energy; local planning and zoning requirements; potential impact upon the electricity transmission system; compliance with statutory setback requirements; efficacy of any proposed measures to mitigate adverse impacts; and history of environmental compliance.

KRS 278.710(1) explicitly grants the Board the authority to grant or deny a certificate, in whole or in part, on the basis of these criteria. KRS 278.708(6) authorizes the Board to condition its approval upon the implementation of any mitigation measures that the Board deems appropriate. This Order will outline the evidence that KMP has presented with regard to each of the criteria listed in KRS 278.710(1) and evaluate each proposed mitigation strategy.

Impact on Scenic Surroundings, Property Values, Adjacent Property, and Surrounding Roads

KRS 278.710(1)(a) directs the Board to consider the impact of a proposed merchant power plant on scenic surroundings and property values before deciding whether to grant or deny a construction certificate. The statute also requires the Board to consider the impact that the facility will have on surrounding roads and adjacent properties.

KMP has clearly made special efforts to insulate the proposed plant site from local residents and property owners. The 195-acre plant site lies within a 4,000-acre KMP leasehold located on a 17,000-acre active coal mine called Starfire. There are no residential properties within 2 miles of the proposed plant.⁶ The closest residential and

⁶ BBC Report at B-1.

commercial properties are located approximately 2-1/2 miles from the site.⁷ According to BBC, the configuration of the 4,000-acre leasehold, together with the vegetation and topography that surrounds the area containing the site, will render any negative visual impacts "negligible or non-existent."⁸

With regard to potential changes in the value of adjacent properties, the Board agrees with BBC that the 17,000-acre coal mine will serve as an adequate buffer for any negative impact that the plant could have on property values. The Board also notes that the residential properties closest to the plant lie within the valley below the proposed facility. The Board believes that the plant's location and position also serve as a buffer to possible negative effects.

Because KMP will rely upon trucks to haul the materials necessary to construct and operate the proposed facility, the Board has carefully considered the impact that the proposed plant will have on land-based transportation and surrounding roads. The project will likely generate an additional 1500-1900 trips per day on area roads during the construction phase alone.⁹ KMP will access the site from KY 80. This road consists of four lanes, two in each direction, with a raised median for traffic separation. According to KMP, KY 80 was constructed as a Resource Recovery Road and is designed to accommodate high volumes of heavy truck traffic.¹⁰ BBC concurs with KMP's findings and reports that projected increases in traffic along KY 80 will result in

⁷ Approximately 250 homes are located in the valley below the 4,000-acre leasehold. BBC Report at B-1.

⁸ BBC Report at B-2.

⁹ BBC Report at C-33.

¹⁰ Section 8.7, KMP Application.

traffic volumes substantially below the road's maximum capacity.¹¹ However, BBC warns that this increased traffic could cause considerable adverse effects if vehicles migrate from KY 80 and KY 15 and use KY 1087 instead.¹²

Early in this proceeding, the Board became aware of the increased dust, mud, and noise levels that could affect those residents living near the proposed site, particularly those living on KY 1087.¹³ KMP has made several commitments in response to these concerns. According to its letter to the Board dated July 26, 2002, KMP does not intend to rely on KY 1087 to access the proposed site. Instead, KMP intends to use the existing haul road, which is accessible from KY 80. KMP has also committed to instruct and encourage its employees and contractors to avoid KY 1087 and instead use KY 80, KY 15, or the new access road during all phases of the KMP project. The Board believes that these proposed mitigation strategies will address the legitimate concerns raised by BBC and residents living on KY 1087.

KMP has committed to work in conjunction with the Kentucky Transportation Cabinet ("KTC") to construct a new bridge and access road to serve the project. The new access road will consist of two 12-foot traffic lanes made of heavy duty pavement and designed to accommodate heavy coal trucks. The KTC will monitor the road's construction and ensure that it is in compliance with agency guidelines. While the KTC has ultimate authority to construct the road, KMP has assured the Board that it will make every reasonable effort to ensure that construction proceeds expeditiously.

¹¹ BBC Report at C-33.

¹² *Id.* at C-34.

¹³ Letter from Pauline Stacy dated July 12, 2002.

The Board has considered the issues raised by Ms. Pauline Stacy regarding the storage capacity of the proposed impoundment, and notes that the Division of Surface Mine Reclamation and Enforcement ("DSMRE") has already granted KMP a permit to build the structure. The Board will rely on DSMRE's evaluation of the risk of impoundment failure and concludes that this agency is better suited to address issues related to the proposed embankment structure.

Anticipated Noise Levels

KRS 278.710(1)(b) requires the Board to consider the anticipated noise levels expected to result from the construction and operation of the proposed facility.

The KMP project could substantially increase baseline noise levels because of certain activities that are likely to occur throughout the construction and operation phases. These activities include increased water pumping, vehicle traffic, and the use of "steam blows."¹⁴

When construction begins, the maximum projected noise level at the nearest residence will be approximately 40 dBA.¹⁵ Noise at this level is comparable to a quiet home. However, KMP also intends to conduct steam blows shortly before operation commences, which will create a maximum noise level of 87 dBA at the nearest residence. Noise at this level is comparable to the engine of a large truck at a distance of 50 feet.¹⁶

¹⁴ BBC Report at C-23.

¹⁵ BBC Report at C-21.

¹⁶ BBC Report at C-21.

With regard to the pumping and traffic, the Board agrees with BBC's findings that the varied topography and dense vegetation, in conjunction with the baseline setting of an active coal mine, will successfully mitigate adverse noise impacts resulting from the proposed facility. KMP has explained that the boiler feed pumps will be enclosed within the boiler and turbine building and that the river pumps will be enclosed and baffled. BBC recommended, both in its site assessment report and at the hearing, that silencers be used for the steam blows.¹⁷ However, KMP points out that the use of silencers for the steam blows is not the industry standard, and that the steam blows would occur only during a 3-day period near the end of construction.¹⁸ Moreover, it is doubtful that the steam blows would produce disturbance exceeding that created by blasting by the adjacent mining company. Nevertheless, occurrence of the steam blows during nighttime hours would create an unacceptable disturbance. Accordingly, as a condition of granting the certificate, the Board will grant KMP the option of installing silencers or adjusting the timing of steam blows to occur between the hours 7:00 a.m. and 9:00 p.m.

Economic Impact on the Affected Region

KRS 278.710(1)(c) requires the Board to consider the economic impact that the proposed facility will have upon the affected region and the Commonwealth.

KMP asserts that the total capital expenditure for the proposed project will exceed \$750,000,000 with over 60 percent of that amount allocated to materials and

¹⁷ BBC Report at C-24.

¹⁸ KMP's Objections to Review of Kentucky Mountain Power Site Assessment Report ("KMP Objections") filed August 7, 2002.

40 percent allocated to labor.¹⁹ KMP predicts that the construction phase of the project will create between 400 and 600 jobs for skilled craft and contract workers.²⁰ Once construction is completed, KMP expects to retain a number of employees to operate and maintain the plant.

While the Board is hopeful that the KMP project will result in economic growth for the Knott County region, the Board believes that any positive economic impact resulting from this project greatly depends upon the extent to which KMP employs local workers and utilizes local resources. In approving this project, the Board relies upon KMP's commitments to hire construction and operation workers from the local population and to utilize local materials whenever practical and possible.

Existence of Other Generation Facilities

KRS 278.710(1)(d) provides that the Board must consider whether a merchant power plant is proposed for a site upon which facilities capable of generating 10 MW or more of electricity are already located.

No such facilities are located on the site proposed by KMP. Accordingly, KMP is not entitled to the statutory preference, including the automatic setback exemption provided by SB 257, Section 4(2)(e), accorded to applicants who propose to construct generating facilities on sites already used for this purpose.

Local Planning and Zoning Requirements

In deciding whether to grant or deny a construction permit, KRS 278.710(1)(e) directs the Board to consider whether the proposed facility will meet all the local

¹⁹ KMP Application, Section 6.0.

²⁰ *Id.*

planning and zoning requirements that existed on the date the application was filed. However, KMP has indicated to the Board that Knott County has no local planning and zoning regulations.²¹ Therefore, the Board need not consider the issue of KMP's compliance with local zoning laws in rendering its decision.

Potential Impact on the Electricity Transmission System

Before the Board may grant a merchant plant construction certificate, KRS 278.710(1)(f) requires the Board to consider whether the additional load imposed upon the electricity transmission system by the proposed facility will adversely affect the reliability of service for retail customers of electric utilities regulated by the Kentucky Public Service Commission.

The proposed plant will interconnect with AEP's transmission grid at substations in Hazard and Beaver Creek. AEP conducted load flow, short circuit, and transient stability studies to evaluate the transmission interconnection of the power plant to the system. As a result of these studies, KMP must construct the transmission lines and facilities described below to enable the plant to interconnect with the AEP transmission grid:

a. Talcum Switching Station. KMP will construct a new 138 kV switching station near the plant site and will connect the proposed generating plant to three 138 kV circuits.

b. Talcum-Hiner-Hazard 138 kV Circuit. On a newly acquired right-of-way, KMP will construct a 9.75-mile single circuit wood H-frame 138 kV line from Talcum to Hiner and a new 2.6-mile single-circuit wood H-frame 138 kV from Hiner to

²¹ KMP Application.

Hazard. On an existing right-of-way between Hazard and Hiner, KMP will remove 2.25 miles of existing 69 kV line wood H-frame and construct a double-circuit steel lattice line to carry the existing 69 kV line and the new 138 kV line.

c. Talcum-Harbert-Consolidated Coal-Beaver Creek 138 kV Circuit. On a newly acquired right-of-way, KMP will construct a 3.9-mile double circuit steel lattice tower line between Talcum and Harbert. KMP will remove 9.97 miles of existing wood H-frame 138 kV line between Consolidated Coal and Beaver Creek and replace it with a double-circuit 138 kV steel lattice line.

d. Talcum-Beaver Creek Circuit. This circuit will utilize the above-listed double-circuit line sections between Talcum and Harbert and between Consolidated Coal and Beaver Creek to create a second circuit to Beaver Creek, including 9.25 miles of new wood H-frame single-circuit 138 kV line on parallel right-of-way between Harbert and Consolidated Coal.

e. Hiner Substation. KMP will construct a 138/69 kV substation near Bulan and connect it to the Talcum-Hiner-Hazard 138 kV line and the existing Bonnyman-Hazard 69 kV line.

In addition to the above-listed system upgrades, additional upgrades are required at Harbert Substation, Beaver Creek Substation, and Hazard Substation and the existing 138 kV and 69 kV transmission lines in the vicinities of these substations. The total estimated construction cost for the transmission lines and associated facilities is approximately \$33 million and will be paid by KMP.

CAI conducted additional studies that compared existing 2002 Summer conditions without the KMP plant, and 2005 Summer conditions with and without the

KMP plant. According to these studies, the KMP plant would inject 500 MW of power at the Talcum Substation. The normal power flows from Talcum are 139.9 MW to Harbert, 125.4 MW to Beaver Creek, and 234.7 MW to Hiner (Hazard). CAI's analysis demonstrates that the transmission system can accommodate this level of power flow for both normal and single contingency conditions.

KMP is constructing the 138kV transmission lines that will connect the KMP plant site to AEP substations. Ms. Stacy asserts that the proposed lines are nonregulated transmission lines and that KMP should have filed an application pursuant to KRS 278.714(1) to construct them.²² However, KRS 278.700(5) defines a nonregulated transmission line as an electric transmission line that is not regulated by the Public Service Commission. According to the terms of an Interconnection and Operation Agreement signed by KMP and AEP in May 2001, KMP must transfer these lines to AEP, a regulated utility, before electricity moves across them. Because AEP will own and operate these lines, they will fall under the jurisdiction of the Public Service Commission and therefore cannot be considered "nonregulated transmission lines" within the meaning of KRS Chapter 278.

Overall, the record demonstrates that the proposed facility will not adversely affect service to Kentucky customers. In fact, the project should be beneficial to transmission reliability in this area. The plant will provide voltage regulating capability, which will improve power quality to customers in the Knott County area. In its report to the Board, CAI states:

²² KRS 278.714(1) requires any person seeking to construct a nonregulated transmission line to obtain Board approval before commencing construction.

On the basis of the review of information provided in the application, in telephone conversations with AEP, and from an independent power flow analysis, CAI concludes that the addition of a 520 MW power plant in Knott County near Talcum will not adversely impact the reliability of service to retail customers. Our conclusion is that the addition of the proposed power plant and the proposed transmission lines will improve the reliability of the transmission system that serves the substations identified in the "analysis" section of this report. This will increase reliability of service to those customers served by these substations, though the improvement will, most likely, be unnoticed by the customer. For other retail customers served by transmission lines and substations remote from those listed above, there would be no increase or decrease in the expected reliability of the transmission system.²³

In addition to retaining CAI to conduct transmission analyses, the Board also requested information from all transmission owners under Public Service Commission jurisdiction as to whether the proposed plant would require upgrades to their respective transmission systems. All replies received from these utilities indicate that no upgrade to their respective systems would be necessary. For these reasons, the Board concludes, pursuant to KRS 278.710(1)(f), that the proposed facility will not adversely affect reliability of service for Kentucky customers.

Compliance with Statutory Setback Requirements

Before deciding whether to grant or deny an application, the Board must consider whether the exhaust stack of the proposed merchant plant is at least 1,000 feet from the property boundary of an adjoining property owner and 2,000 feet from any residential neighborhood, school, hospital, or nursing home facility. KRS 278.710(4) allows the Board to grant a deviation from these setback requirements upon a finding that the proposed facility is designed and located to meet the goals of the statute at a distance closer than the prescribed distances.

²³ CAI Report submitted August 2, 2002.

KMP leases the 195-acre footprint of the proposed site and the 4,000 acres that surround it from ARC, a subsidiary of Horizon Natural Resources. This lease extends to December 1, 2098, at which time KMP may renew the lease for an additional 99 years. Under the terms of the lease, KMP has the exclusive right "to use and occupy the Property for any and all lawful purposes."²⁴

The current configuration of the KMP project indicates that the exhaust stack would be located 600 feet from the 195-acre footprint boundary. Under the most technical interpretation of the statute, one could argue that this configuration does not meet the statutory setback requirements. However, to the extent that KMP holds a significant ownership interest in the land adjacent to the proposed site, a strong argument can be made that there is no "adjoining property owner" within 1,000 feet within the meaning of KRS Chapter 278, and that the setback requirements do not apply because KMP essentially "owns"²⁵ the entire 4,000 acres.

The Board concludes that KMP has substantially complied with the setback requirements outlined in KRS Chapter 278. The legislative history and statutory language of the statute suggest that the primary purpose of the setback requirements is to protect the assumptions and expectations of property owners who had no reason to expect the construction of a merchant power plant near their property. The facts of this

²⁴ Page 3 of Lease between EnviroPower, LLC and ARC. EnviroPower assigned the lease to KMP in an agreement dated January 2, 2000.

²⁵ "The word 'owner', as used in statutes relating to real property, is one of general meaning and may be applied to any defined interest in real property. . .the term owner is often used to characterize the possessor of an interest less than that of absolute ownership, such as a tenant for years, a tenant for life, and a remainderman in fee." 63C Am. Jur. 2d, Property, Section 26.

proceeding present a different scenario. KMP testified at the evidentiary hearing, and the language of the lease suggests, that ARC is aware of KMP's plans for the property and has no objection to this proposed use. Moreover, the Board believes that KMP has made every effort to protect property owners from any adverse impact that may result from the proposed project. The proposed site is surrounded by 4,000 acres that KMP will lease for the next 195 years. Therefore, to the extent that a deviation from the setback requirements is necessary, the Board grants such deviation based upon its finding that the proposed project is designed and located to meet the goals of KRS Chapter 278 at a distance closer than the prescribed distance of 1,000 feet.

Efficacy of Proposed Mitigation Measures

KRS 278.710(1)(h) requires the Board to consider the efficacy of measures proposed to mitigate any adverse impact that the proposed facility may have on the affected region. Pursuant to this statute, the Board has reviewed and considered the measures that BBC has proposed to mitigate the negative impact that the KMP project may have on the Knott County region.

With regard to access control issues, adequate security is essential to protecting residents from the dangers that may result from security breaches. The Board believes that the implementation of standard industry practices for security and access control will successfully mitigate the risk of security breach.

In assessing the scenic compatibility of the proposed facility with surrounding land, BBC asserts that visual impairment may occur for residents near the North Fork of the Kentucky River.²⁶ In response to this potential impairment, BBC proposes that KMP

²⁶ BBC Report at C-14.

keep certain facility structures at a low profile and select colors for these structures that are similar to surrounding vegetation. The Board concludes that implementation of these mitigation strategies will render the KMP project largely compatible with its scenic surroundings.

Mitigation strategies related to anticipated noise levels are discussed on page 8 of this Order. Mitigation strategies related to impact on surrounding roads are discussed on page 6 of this Order.

Finally, the Board is sensitive to the fact that many of KMP's proposed plans and agreements have not been finalized. If KMP failed to honor the commitments it has made to this Board, it would substantially affect the projected impact the proposed plant will have on the region. For these reasons, the Board has a responsibility to make every effort to ensure that the project is constructed as KMP has represented throughout this proceeding. To that end, the Board finds that the submission of an annual project impact report would successfully mitigate any adverse impacts caused by the inherent uncertainty of this project.

History of Environmental Compliance

In determining whether to grant a construction permit, KRS 278.710 directs the Board to consider whether the applicant has a good environmental compliance history. KMP asserts that it has not violated any federal or state environmental rules or regulations. The Board is encouraged by KMP's record of environmental compliance and believes that the company's record reflects its commitment to environmental responsibility.

CONCLUSION

After carefully considering the criteria outlined in KRS Chapter 278, the Board finds that KMP has presented sufficient evidence to obtain a certificate to construct the proposed merchant power plant. The Board conditions its approval upon the implementation of the measures described herein and listed in Appendix A to this Order.

The Board, having reviewed the evidence presented in the record, and being otherwise sufficiently advised, hereby grants KMP's application for a certificate to construct a 520 MW electric generating facility in Knott County, Kentucky.

Done at Frankfort, Kentucky, this 5th day of September, 2002.

IT IS SO ORDERED.

KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND
TRANSMISSION SITING

/s/ Martin J. Huelsmann
Martin J. Huelsmann, Chairman

Donnie Newsome, Vice Chairman

/s/ Gary W. Gillis
Gary W. Gillis

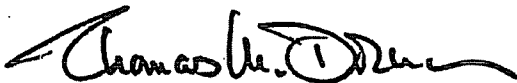
/s/ Robert E. Spurlin
Robert E. Spurlin

/s/ Henry List
Henry List

/s/ Karen Jones
Karen Jones

/s/ J. R. Wilhite
J. R. Wilhite

ATTEST:



Thomas M. Dorman
Executive Director, Public Service Commission
On behalf of
The Kentucky State Board on Electric
Generation and Transmission Siting

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION AND TRANSMISSION SITING IN CASE NO. 2002-00149 DATED September 5, 2002.

In its report, *Review and Evaluation of Kentucky Mountain Power Site Assessment Report*, BBC recommended that the Board develop a monitoring program to ensure that a proposed merchant plant is constructed as the applicant has represented throughout the siting process. The following program shall apply to KMP and all subsequent permittees under Board jurisdiction.

A. The permittee (or its successors) shall file an annual report throughout the duration of the construction of its facility. The initial report shall be filed within 1 year of the date of any Order granting a construction certificate. Subsequent reports shall be filed annually.

B. The report shall be filed in the form of a letter to the Chairman of the Kentucky State Board on Electric Generation and Transmission Siting. The report shall contain the following sections:

Overview -- The permittee shall provide a short narrative summary of the project's progress or changes, which have occurred since the last report. The permittee shall also identify the primary contractor(s) responsible for the largest portion of the construction effort, if applicable.

Implementation of Site Development Plan -- The permittee shall describe: 1) the implementation of access control to the site; 2) any substantive modifications to the proposed buildings, transmission lines and other structures; 3) any substantive

modifications to the access ways, internal roads and railways serving the site; and
4) development of utilities to service the site. A map must accompany any change in
the above four items.

Local Hiring and Procurement -- The permittee shall describe the efforts made by
the permittee, if any, to encourage the use of local workers and vendors. At a minimum,
the permittee shall include a description of the efforts made by the permittee and those
efforts made by contractors and vendors to use local workers and local vendors to build
and operate this project. The permittee shall also include at least an informed estimate
of the proportion of the construction and operational workforce that resided in the region
(e.g., 50-mile radius) of the plant site prior to coming to work at the KMP site.

Public Comments and Responses -- The permittee shall provide a summary of
any oral, telephone, e-mail or other written complaints or comments received from the
public during the intervening period since the last report. The permittee shall also
summarize the topics of public comments, the number of comments received, and the
permittee's response to each topic area. Original complaints and comments should be
attached in their original form, including telephone transcriptions.

Specific Mitigation Conditions -- The specific mitigation conditions for each
permittee may vary, depending on its site and the issues presented by its facility plan.
In each case, however, the permittee shall provide a brief (e.g., 1 to 3 paragraph)
narrative response to indicate its progress, any obstacles encountered, and plans to
fulfill the permit condition or mitigation requirement or permit condition required by the
Board.

C. Within 6 months after the conclusion of construction, the permittee shall submit to a final site visit from the Board, its staff and its consultants, to review and ascertain that the constructed facility followed the description provided by the permittee in its site assessment report and that the mitigation conditions imposed by the Board were successfully implemented. The permittee shall also submit "as-built" plans in the form of maps that illustrate the implementation of the Site Development Plan.

D. The following conditions shall apply specifically to KMP:

1. KMP shall provide access control and security that meet industry standards suitable to its particular operation. Listed below are industry standards that the Board would consider appropriate. If KMP subsequently determines that there is a preponderance of industry standards which suggest an exception to these standards, it may request and substantiate such an exception in its periodic compliance reports.

- a. Approved parking areas for employees.
- b. Fenced, lighted plant perimeter.
- c. Access to waste disposal areas must be locked.
- d. Storage buildings with hazardous or dangerous chemicals must be locked.
- e. Only personnel who have attended an induction course will be permitted to work on-site.
- f. All employees and subcontractors working at the site must have a site security pass which must be carried at all times.

g. Entry to the site will be controlled, and only persons approved for work on the site will be allowed access. Access for site personnel will be via a security gate controlled by site security.

h. Commercial vehicle drivers delivering/removing materials to/from the site must first register with KMP.

i. Documentation of all drivers will be subject to examination. (Only those holding the necessary documents for the type of vehicle, plant or equipment to be driven, will be allowed on the site.)

j. All vehicles entering/leaving the site shall be subject to search by KMP security.

k. Vehicle speeds on site shall not exceed 15 kilometers per hour unless there are signs indicating other limits.

2. KMP shall ensure that the building contractors responsible for the smokestack construction, the water pump house construction, and the water diversion structure select neutral background colors which will minimize contrast with existing surroundings. Industry standards for accomplishing this permit condition should be applied.

3. KMP shall instruct its contractors to include enclosures and baffling for the boiler pumps and the water pumps to reduce noise impacts to the extent practicable, following industry standards.

4. To reduce noise impacts from steam blows, KMP shall ensure that its contractors either install silencers during the planned start-up period during which steam blows occur, or adjust the timing of steam blows such that they occur between

the hours of 7:00 a.m. to 9:00 p.m. Prior to conducting the steam blows, KMP shall provide adequate and reasonable notice to residents within the affected area.

5. KMP shall encourage and support the Commonwealth of Kentucky, Knott County, and any other parties in their effort to design, construct, operate, and maintain the turn-out lane from KY 80 to Talcum, the new bridge, and the new paved access road to the plant site. KMP shall encourage and in no way inhibit the construction of this new access road as soon as possible after project construction commences.

6. Prior to completion of the new bridge and access road, KMP shall require its employees and contractors to use KY 80, KY 15, and the access road to the plant site at Talcum which crosses KY 1087 heading directly to the plant site. Without violating existing laws or breaching existing contracts, KMP shall instruct its employees, vendors, contractors, and their sub-contractors to utilize the existing Talcum access to the plant from KY 80, and subsequently the new bridge and access road when it is completed, to the maximum extent practicable. Exceptions would include emergencies where other routes are necessary, access by employees or vendors who currently reside along other access roads to the sites or other similar circumstances where the use of the preferred route would be clearly unreasonable.

7. KMP shall make reasonable efforts to hire workers, vendors, and contractors from the local area. A worker hired from the local area is one that can commute daily to the plant site from his or her primary residence that existed prior to employment at the KMP site. Typically, workers, vendors or contractors living within a 50-mile radius of the site prior to their association with KMP may be considered local.

8. KMP shall include language in its contracts, provide training for its hiring agents and purchasing agents which indicate the preference for such local hiring and local expenditure patterns to the maximum extent practicable. Such provisions would not be considered practicable if they directly threatened the ability to construct or operate the project or obtain financing.

December 31st 2009

Kentucky State Board on Electric Generation and Transmission Siting
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

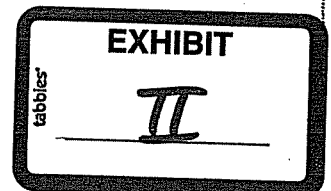
RE: ecoPower Generation, LLC

To Whom It May Concern:

I represent Mountain Properties which owns property adjacent to the approximately 125 acres of previously mined land within the Coal Fields Regional Industrial Park, Chavies, Perry County, Kentucky where ecoPower Generation, LLC ("ecoPower") proposes to construct its merchant electric generation facility. Our properties will share a common boundary.

I am in receipt of a letter from ecoPower which describes the facility to be constructed at 1244 Coalfields Industrial Drive, Chavies, Kentucky 41727, and further gives a description of the proposed operations and the rights which may be exercised to petition the Board regarding local and evidentiary hearings.

It is my understanding that the site and/or the exhaust stack of the proposed merchant electric generating facility will be within 1,000 feet of the Mountain Properties boundary which adjoins the ecoPower property.

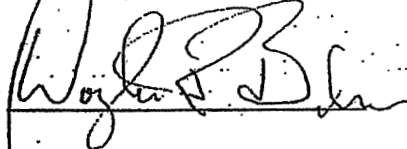


I have reviewed the materials provided to me and have been given an opportunity to seek additional information from representatives of ecoPower regarding the construction and operation of the proposed 50 megawatt merchant electric generating facility.

I understand that for this facility the law requires the site and/or the exhaust stack of such a facility to be at least 1,000 feet from the property boundaries of any adjoining property, unless a waiver or deviation of this requirement is granted by the Kentucky State Board on Electric Generation and Transmission Siting.

After reviewing the materials provided to me, the responses to my inquiries, and as an owner of property adjacent to the ecoPower facility, Mountain Properties has no objection to the facility, the site, or the operation's exhaust stack being located within 1,000 feet of the property boundary which adjoins the ecoPower property.

Sincerely,



title

Director of Engineering

address

122 Roy Campbell Drive
Hazard, Ky 41701

**Coal Fields Regional
Industrial Authority, Inc.**

917 Perry Park Road Hazard, Kentucky 41701
Phone: 606-436-3158 Fax: 606-436-2144
Email: Annette@kradd.org

January 6, 2010

Kentucky State Board on Electric Generation and Transmission Siting
211 Sower Boulevard
PO Box 615
Frankfort, KY 40602

RE: *ecoPower Generation, LLC*

To Whom it May Concern:

I represent the Coal Fields Regional Industrial Authority, Inc. which owns property adjacent to the approximately 125 acres of previously mined lined within the Coal Fields Regional Business Park, Chavies, Perry County, Kentucky where ecoPower Generation LLC proposes to construct its merchant electric generation facility. Our properties will share a common boundary.

I am in receipt of a letter from ecoPower which describes the facility to be constructed at 1244 Coalfields Industrial Drive, Chavies, KY 41727, and further gives a description of the proposed operations and rights which may be exercised to petition the Board regarding local and evidentiary hearings.

It is my understanding that the site and/or the exhaust stack of the proposed merchant electric generating facility will be within 1,000 feet of the Authority's property boundary which adjoins the ecoPower property.

I have reviewed the materials provided to me and have been given an opportunity to seek additional information from representatives of ecoPower regarding the construction and operation of the proposed 50 megawatt merchant electric generation facility.

Page 2

I understand that for this facility the law requires the site and/or the exhaust stack of such a facility be at least 1,000 feet from the property boundaries of any adjoining property, unless a waiver or deviation of this requirement is granted by the Kentucky State Board on Electric Generation and Transmission Siting.

After reviewing the materials provided to me, the responses to my inquiries, and as an owner of property adjacent to the ecoPower facility, the Authority has no objection to the facility, the site, or the operation's exhaust stack being located within 1,000 feet of the property boundary which adjoins the ecoPower property.

If you have questions, or need additional information, please feel free to contact me.

Sincerely,



*Charles Colwell
Chairman*

224.10-280 Cumulative environmental assessment and fee required before construction of facility for generating electricity -- Conditions imposed by cabinet -- Administrative regulations.

- (1) Except for a person that commenced construction of a facility prior to April 15, 2002, or that has received a certificate of public convenience and necessity from the Public Service Commission prior to April 15, 2002, no person shall commence to construct a facility to be used for the generation of electricity unless the person:
 - (a) Submits a cumulative environmental assessment to the cabinet with the permit application; and
 - (b) Remits a fee set pursuant to KRS 224.10-100(20) by the cabinet to defray the cost of processing the cumulative environmental assessment.
- (2) The person may submit and the cabinet may accept documentation of compliance with the National Environmental Policy Act (NEPA) as satisfying the requirements to file a cumulative environmental assessment under subsection (1) of this section.
- (3) The cumulative environmental assessment shall contain a description, with appropriate analytical support, of:
 - (a) For air pollutants:
 1. Types and quantities of air pollutants that will be emitted from the facility; and
 2. A description of the methods to be used to control those emissions;
 - (b) For water pollutants:
 1. Types and quantities of water pollutants that will be discharged from the facility into the waters of the Commonwealth; and
 2. A description of the methods to be used to control those discharges;
 - (c) For wastes:
 1. Types and quantities of wastes that will be generated by the facility; and
 2. A description of the methods to be used to manage and dispose of such wastes; and
 - (d) For water withdrawal:
 1. Identification of the source and volume of anticipated water withdrawal needed to support facility construction and operations; and
 2. A description of the methods to be used for managing water usage and withdrawal.
- (4) The cabinet may impose such conditions regarding the timing, volume, duration, or type of pollutants on a permit, registration, general permit, or permit-by-rule for a facility subject to this section as are necessary to comply with applicable standards.
- (5) The cabinet may promulgate administrative regulations to implement the provisions of this section.

Effective: April 24, 2002

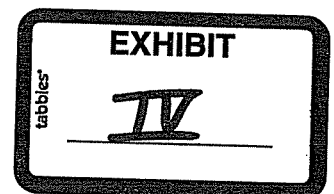
History: Created 2002 Ky. Acts ch. 365, sec. 10, effective April 24, 2002.



278.010 Definitions for KRS 278.010 to 278.450, 278.541 to 278.544, 278.546 to 278.5462, and 278.990.

As used in KRS 278.010 to 278.450, 278.541 to 278.544, 278.546 to 278.5462, and 278.990, unless the context otherwise requires:

- (1) "Corporation" includes private, quasipublic, and public corporations, and all boards, agencies, and instrumentalities thereof, associations, joint-stock companies, and business trusts;
- (2) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest;
- (3) "Utility" means any person except, for purposes of paragraphs (a), (b), (c), (d), and (f) of this subsection, a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with:
 - (a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;
 - (b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;
 - (c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;
 - (d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation;
 - (e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation; or
 - (f) The collection, transmission, or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission, or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission, or treatment facility that is affixed to real property, that is located in any other county, and that is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220;
- (4) "Retail electric supplier" means any person, firm, corporation, association, or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service;
- (5) "Certified territory" shall mean the areas as certified by and pursuant to KRS 278.017;
- (6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is being or has been substantially used to supply retail electric service and includes all lines from the distribution substation to the electric consuming facility but does not include any transmission facilities used primarily to transfer energy in bulk;



- (7) "Retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale;
- (8) "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;
- (9) "Generation and transmission cooperative" or "G&T" means a utility formed under KRS Chapter 279 that provides electric generation and transmission services;
- (10) "Distribution cooperative" means a utility formed under KRS Chapter 279 that provides retail electric service;
- (11) "Facility" includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;
- (12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;
- (13) "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility, but does not include Voice over Internet Protocol (VoIP) service;
- (14) "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;
- (15) "Commission" means the Public Service Commission of Kentucky;
- (16) "Commissioner" means one (1) of the members of the commission;
- (17) "Demand-side management" means any conservation, load management, or other utility activity intended to influence the level or pattern of customer usage or demand, including home energy assistance programs;
- (18) "Affiliate" means a person that controls or that is controlled by, or is under common control with, a utility;
- (19) "Control" means the power to direct the management or policies of a person through ownership, by contract, or otherwise;
- (20) "CAM" means a cost allocation manual which is an indexed compilation and documentation of a company's cost allocation policies and related procedures;

- (21) "Nonregulated activity" means the provision of competitive retail gas or electric services or other products or services over which the commission exerts no regulatory authority;
- (22) "Nonregulated" means that which is not subject to regulation by the commission;
- (23) "Regulated activity" means a service provided by a utility or other person, the rates and charges of which are regulated by the commission;
- (24) "USoA" means uniform system of accounts which is a system of accounts for public utilities established by the FERC and adopted by the commission;
- (25) "Arm's length" means the standard of conduct under which unrelated parties, each party acting in its own best interest, would negotiate and carry out a particular transaction;
- (26) "Subsidize" means the recovery of costs or the transfer of value from one (1) class of customer, activity, or business unit that is attributable to another;
- (27) "Solicit" means to engage in or offer for sale a good or service, either directly or indirectly and irrespective of place or audience;
- (28) "USDA" means the United States Department of Agriculture;
- (29) "FERC" means the Federal Energy Regulatory Commission;
- (30) "SEC" means the Securities and Exchange Commission;
- (31) "Commercial mobile radio services" has the same meaning as in 47 C.F.R. sec. 20.3 and includes the term "wireless" and service provided by any wireless real time two (2) way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, and the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line; and
- (32) "Voice over Internet Protocol" or "VoIP" has the same meaning as in federal law.

Effective: July 12, 2006

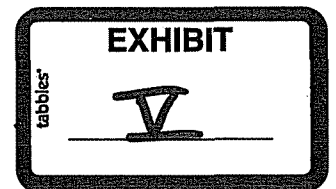
History: Amended 2006 Ky. Acts ch. 239, sec. 5, effective July 12, 2006. -- Amended 2005 Ky. Acts ch. 109, sec. 2, effective June 20, 2005. -- Amended 2002 Ky. Acts ch. 365, sec. 15, effective April 24 2002. -- Amended 2001 Ky. Acts ch. 11, sec. 1, effective June 21, 2001. -- Amended 2000 Ky. Acts ch. 101, sec. 5, effective July 14, 2000; ch. 118, sec. 1, effective July 14, 2000; and ch. 511, sec. 1, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 188, sec. 1, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 238, sec. 1, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 82, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 1, effective April 1, 1979. -- Amended 1974 Ky. Acts ch. 118, sec. 1. -- Amended 1972 Ky. Acts ch. 83, sec. 1. -- Amended 1964 Ky. Acts ch. 195, sec. 1. -- Amended 1960 Ky. Acts ch. 209, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-1.

278.212 Filing of plans for electrical interconnection with merchant electric generating facility -- Costs of upgrading existing grid.

- (1) No utility shall begin the construction or installation of any property, equipment, or facility to establish an electrical interconnection with a merchant electric generating facility in excess of ten megawatts (10MW) until the plans and specifications for the electrical interconnection have been filed with the commission.
- (2) Notwithstanding any other provision of law, any costs or expenses associated with upgrading the existing electricity transmission grid, as a result of the additional load caused by a merchant electric generating facility, shall be borne solely by the person constructing the merchant electric generating facility and shall in no way be borne by the retail electric customers of the Commonwealth.

Effective: April 24, 2002

History: Created 2002 Ky. Acts ch. 365, sec. 11, effective April 24, 2002.

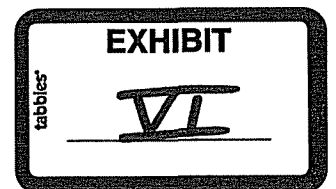


278.214 Curtailment of service by utility or generation and transmission cooperative.

When a utility or generation and transmission cooperative engaged in the transmission of electricity experiences on its transmission facilities an emergency or other event that necessitates a curtailment or interruption of service, the utility or generation and transmission cooperative shall not curtail or interrupt retail electric service within its certified territory, or curtail or interrupt wholesale electric energy furnished to a member distribution cooperative for retail electric service within the cooperative's certified territory, except for customers who have agreed to receive interruptible service, until after service has been interrupted to all other customers whose interruption may relieve the emergency or other event.

Effective: April 24, 2002

History: Created 2002 Ky. Acts ch. 365, sec. 12, effective April 24, 2002.

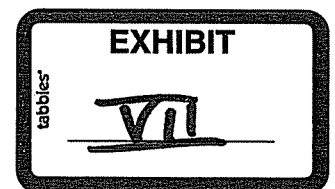


278.216 Site compatibility certificate -- Site assessment report -- Commission action on application.

- (1) Except for a utility as defined under KRS 278.010(9) that has been granted a certificate of public convenience and necessity prior to April 15, 2002, no utility shall begin the construction of a facility for the generation of electricity capable of generating in aggregate more than ten megawatts (10MW) without having first obtained a site compatibility certificate from the commission.
- (2) An application for a site compatibility certificate shall include the submission of a site assessment report as prescribed in KRS 278.708(3) and (4), except that a utility which proposes to construct a facility on a site that already contains facilities capable of generating ten megawatts (10MW) or more of electricity shall not be required to comply with setback requirements established pursuant to KRS 278.704(3). A utility may submit and the commission may accept documentation of compliance with the National Environmental Policy Act (NEPA) rather than a site assessment report.
- (3) The commission may deny an application filed pursuant to, and in compliance with, this section. The commission may require reasonable mitigation of impacts disclosed in the site assessment report including planting trees, changing outside lighting, erecting noise barriers, and suppressing fugitive dust, but the commission shall, in no event, order relocation of the facility.
- (4) The commission may also grant a deviation from any applicable setback requirements on a finding that the proposed facility is designed and located to meet the goals of this section and KRS 224.10-280, 278.010, 278.212, 278.214, 278.218, and 278.700 to 278.716 at a distance closer than those provided by the applicable setback requirements.
- (5) Nothing contained in this section shall be construed to limit a utility's exemption provided under KRS 100.324.
- (6) Unless specifically stated otherwise, for the purposes of this section, "utility" has the same meaning as in KRS 278.010(3)(a) or (9).

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 150, sec. 3, effective June 24, 2003. -- Created 2002 Ky. Acts ch. 365, sec. 13, effective April 24, 2002.



278.218 Approval of commission for change in ownership or control of assets owned by utility.

- (1) No person shall acquire or transfer ownership of or control, or the right to control, any assets that are owned by a utility as defined under KRS 278.010(3)(a) without prior approval of the commission, if the assets have an original book value of one million dollars (\$1,000,000) or more and:
 - (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.
- (2) The commission shall grant its approval if the transaction is for a proper purpose and is consistent with the public interest.

Effective: April 24, 2002

History: Created 2002 Ky. Acts ch. 365, sec. 14, effective April 24, 2002.

