

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

THE APPLICATION OF EAST KENTUCKY)
POWER COOPERATIVE, INC. FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY FOR) **CASE NO**
FOR THE CONSTRUCTION OF A 138 kV ELECTRIC) **2005-00089**
TRANSMISSION PROJECT IN ROWAN)
COUNTY, KENTUCKY)

APPLICANT'S MEMORANDUM IN SUPPORT OF
THE ISSUANCE OF A CERTIFICATE OF CONVENIENCE
AND NECESSITY FOR THE CRANSTON TO ROWAN
138 kV TRANSMISSION PROJECT

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Comes the Applicant, East Kentucky Power Cooperative, Inc., and respectfully submits to the Commission this Memorandum in support of the issuance of a Certificate of Convenience and Necessity for the Cranston-Rowan Project.

ARGUMENT I

The authority of the Commission in this case is limited to a determination of whether the Cranston-Rowan Project is required by the Public Convenience and Necessity.

It has been the law of this Commonwealth for sixty years or more that the authority of the Commission is limited by the statute creating it and that authority is "...unmistakably limited to the Regulation of Rates and Services of Utilities." Public Service Commission v. Blue Grass Natural Gas Co., Ky., 197 S.W. 2d 765 (1946). That case involved an Application for a Certificate of Convenience and Necessity to bid on

service franchises from various cities and counties. The Commission, in that case, sought to extend its jurisdiction beyond a determination of whether there is a demand or need for such services and to make a determination as to the respective qualifications of the prospective bidders. The Court held that the only authority delegated to the Commission by the Legislature was to determine whether such services were required by the public convenience and necessity.

The present case involves an Application for a construction certificate, not a franchise certificate, but the holding of the Court in the Blue Grass Natural Gas case is just as applicable. The Commission may determine whether there is a need for the Cranston-Rowan Project; whether the Cranston-Rowan Project best addresses that need; and whether the Cranston-Rowan Project best protects the ratepayers by being the most cost effective.

At the formal hearing, there were some eleventh-hour suggestions thrown out concerning various other routes the Cranston-Rowan line could follow – suggestions that generally centered around whether it could be put in a different location on U.S. Forest Service property. The fact of the matter is that federal law gives the U.S. Forest Service the right to determine where on its property and electric transmission line will cross. The Forest Service has made the determination of where it wants the line to cross its property, and with all respect and deference to the jurisdiction of the Commission, the Applicant does not believe that the Commission has the authority to overturn that determination.

More fundamentally, however, the Applicant does not believe the Commission has the authority in a certificate case such as this to require a utility to route or locate a line in a certain place unless the proposed location has adverse reliability implications or

is not cost justified. Senate Bill 246 passed by the Kentucky General Assembly in 2003, did grant intervenor status in a transmission line certification case to any property owner crossed by the line. It did not, however, change the criteria for the issuance of a certificate. That criteria still remains whether the line is needed to serve the public and whether it is cost justified. If the Legislature had intended that the Commission jurisdiction be expanded to determine the routing and location of transmission lines, it could have added specific language to do just that. It did not do that, and the Commission, under the Blue Grass Natural Gas case cannot, without such specific authorizations, expand its authority beyond a determination of public necessity and cost effectiveness.

ARGUMENT II

The only evidence before the Commission supports the Issuance of a Certificate.

The only evidence before the Commission is that there are existing overloading and under-voltage problems in the transmission system in Rowan County and the surrounding area, and that the Cranston-Rowan Project will correct those problems in the most cost effective manner. The Commission's own consultant, MSB, admitted that neither of the alternatives identified in the MSB Report were viable. The Goddard-Hilda-Rowan upgrade was not cost-effective once the cost of rebuilding intermediate distribution substations was taken into consideration. It would also not provide a back-feed into Cranston. The Cranston Tap – parallel to Rodburn – would not solve under-voltage problems at Hilda and Elliottville unless it was extended into the Rowan substation as suggested by MSB at the hearing. If that occurred, it became the same Cranston-Rowan Project proposed by the Applicant, just along a lot longer route. The

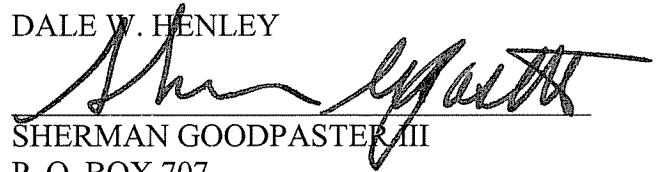
cost estimates provided by the Applicant's engineers in the post-hearing data request indicated that the extra length would increase the cost of the Project by about 20% or \$1,000,000.00, thereby rendering it unjustifiable with respect to cost. In addition to the extra length and cost, it would require a new Environmental Assessment be prepared by the Forest Service, thus further delaying the Project another two to three years.

CONCLUSION

The Applicant would respectfully submit that it has established that the Cranston-Rowan Project is required by the public convenience and that it is the most cost-justified Project to correct the deficiencies on the transmission grid. As a result, the Applicant believes that a Certificate should be granted.

Respectfully submitted,

DALE W. HENLEY



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ATTORNEYS FOR EAST KENTUCKY
POWER COOPERATIVE, INC.

CERTIFICATE OF SERVICE

This is to certify that an original and 10 copies of the foregoing Memorandum in the above-styled case were hand delivered to the office of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, and one copy was mailed to each party of record, this 1st day of August, 2005.



SHERMAN GOODPASTER III