

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

IN THE MATTER OF:

APPLICATION OF EAST KENTUCKY )  
POWER COOPERATIVE FOR A )  
CERTIFICATE OF PUBLIC CONVENIENCE ) DOCKET NO.  
AND NECESSITY FOR CONSTRUCTION ) 2005-00207  
OF TRANSMISSION FACILITIES IN )  
BARREN, WARREN, BUTLER, AND )  
OHIO COUNTIES, KENTUCKY )

**MEMORANDUM IN SUPPORT OF INTERVENORS' MOTION TO COMPEL EAST  
KENTUCKY POWER COOPERATIVE'S RESPONSE TO DATA REQUESTS**

**I. Introduction**

Intervenors, Carroll Tichenor, Doris Tichenor, John Colliver, and H. H. Barlow, by counsel, hereby file this motion to compel East Kentucky Power Cooperative ("Applicant") to respond to Intervenors' data requests. To more than half of Intervenors' requests, the Applicant objected on grounds of relevance. Yet, as discussed below, the Applicant has conceded the relevance of all information requested. The Applicant's refusal to respond has prejudiced Intervenors and compromised the Commission's ability to decide this case based on all the facts. To avoid further prejudice and to ensure the integrity of these proceedings, the Commission must require the Applicant to produce all responsive information.

**II. Analysis**

In response to 19 out of Intervenors' 33 data requests, the Applicant objected to the request and refused to provide information. The Applicant refused to respond to 12 of the 20 requests submitted in Intervenors' First Set of Data Requests. Specifically, Intervenors' objected to Item 1 (requesting route studies), Item 2 (requesting environmental impact studies), Item 4 (requesting historical impact studies), Item 5 (requesting identification of sites on National

Register of Historic Places), Item 6 (requesting studies concerning the Applicant's obligations under Section 106 of the National Historic Preservation Act), Item 9 (requesting studies on the Peabody Wildlife Management Area), Item 10 (requesting correspondence concerning the Peabody Wildlife Management Area), Item 11 (requesting documents related to proposed rights-of-way), Item 12 (requesting information concerning the Tennessee Valley Authority's refusal to provide interconnection), Item 15 (requesting information on the Applicant's herbicides and pesticides), and Item 19 (requesting information concerning assistance from the Rural Utilities Service). The Applicant objected to 7 of the 13 requests submitted in Intervenor's Second Set of Data Requests, including Item 3 (requesting explanation of how routes were determined to be "viable"), Item 4 (requesting explanation of how the Applicant chose the macro-corridor), Item 5 (requesting identification of the factors considered in determining the most favorable line route), Item 6 (requesting all documents relating to the sample routes), Item 7 (requesting documents relating to the Applicant's selection of the "best option" route), Item 8 (requesting documentation of local input and data by which the Applicant says it will make refinements and enhancements to the proposed route), Item 9 (requesting identification of all existing rights-of-way proposed for use and not proposed for use, and, for those not proposed for use, an explanation of why they will not be used), and Item 10 (requesting explanation of why the fourth segment use significantly more new rights-of-way).

In support of its objection, the Applicant stated as follows:

The Applicant OBJECTS to this request on the grounds that the information is not relevant to the Commissions [sic] determination of whether this Project is required by the public convenience and necessity. The Applicant does not believe that the 2004 Amendments to KRS 278.020 expanded the jurisdiction of the Commission to include a determination of routing, location, site

selection, environmental matters or right-of-way acquisitions. In Paragraph (12) of the Commission's Statement of Consideration relating to 807 KAR 5:120, the Commission's response to a request that environmental, historical, and archaeological impacts be addressed stated that:

The only mention in Chapter 75 of property impacts is the provision giving individual landowners the right to move for intervention. The statutory amendments therefore do not provide support for requiring the fillings the Counsel suggests.

In paragraph (15) of the State of Consideration, in response to a request that the Commission be required to make a finding that the Applicant has demonstrated that due consideration has been given to location, configuration, and proposed maintenance of lines and corridors so as to minimize adverse property, scenic and environmental impacts and that all reasonable alternatives have been considered, including co-location of the line along existing rights-of-way, the Commission stated that:

For the reasons stated in item (12) above, the PSC does not believe that legislation supports this change.

As a result, the Applicant OBJECTS to any request related to the location and configuration of the lines and corridors, property impacts, environmental impacts, and routing alternatives including co-location along existing rights-of-way.

The Applicant made this argument despite its explicit acknowledgement to the Commission that the information sought in these requests is relevant. In Item 13 of the Commission's Data Requests, the Commission asked the Applicant to describe its "environmental responsibilities related to the proposed project." *See* Commission's First Data Request, 8/18/05, Item 13. The Applicant responded as follows:

EKPC is required to follow the environmental policies and procedures established by the United States Department of Agriculture, Rural Utility Service (RUS). The environmental documents will be prepared in accordance with RUS's "Environmental Policies and Procedures" 7 CR Part 1794. This part contains the policies and procedures of the [RUS] for

implementing the requirements of the National Environmental Policy Act of 1969 (NEPA) . . . the Council on Environmental Quality (CEQ) Regulations for implementing the Procedural Provisions of NEPA . . . and certain related Federal environmental laws, statutes, regulations, and Executive Orders (EO) that apply to RUS programs and administrative actions.

As stated in 7 CFR Part 1794:

“This part integrates the requirements of NEPA with other planning and environmental review procedures required by law, or by RUS practice including but not limited to:

- (1) Endangered Species Act of 1973
  - (2) The National Historic Preservation Act
  - (3) Farmland Protection Policy Act
  - (4) EO 11593, Protection and Enhancement of the Cultural Environment
  - (5) EO 11514, Protection and Enhancement of Environmental Quality
  - (6) EO 11988, Floodplain Management
  - (7) EO 11990, Protection of Wetlands
  - (8) EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.
- (d) Applicants are responsible for ensuring that proposed actions are in compliance with all appropriate RUS requirements. Environmental documents submitted by the applicant shall be prepared under the oversight and guidance of RUS. RUS will evaluate and be responsible for the accuracy of all information contained therein.

As the Applicant’s response to Item 13 makes clear, the Applicant acknowledges the relevance of information related to its environmental obligations. Moreover, the Commission’s request for such information telegraphs to the Applicant the Commission’s understanding that such information is relevant to these proceedings. While the Applicant is willing to provide the

information to the Commission, it refuses to provide the information to Intervenors. Contrary to the Applicant's presumption, the relevance of information does not depend on which entity—Intervenor or Commission—is asking for it.

The Applicant's shifting concept of relevance jeopardizes these proceedings. The Commission's Staff Consultant, ICF Resources, L.L.C. ("ICF"), explicitly evaluated the Applicant's route selection. Technical Appraisal, Prepared by ICF Resources, LLC (Aug. 15, 2005), p. 22. In its Appraisal, ICF noted that the "single largest opposition to transmission line builds in the continental [United States] has been environmental concerns." *Id.* at 22. It concluded, as a result, that an assessment of a line routing alternative that adds the goal of minimizing the need for new rights-of-way to the extent possible should be considered. "Such an analysis," ICF stated, "would provide valuable insights as to the costs and benefits of avoiding the need for new rights-of-way if compared to the current proposed plan." *Id.* at 22. Without that analysis, ICF found insufficient information available to examine the Applicant's selection of route. *Id.* at 22-23.

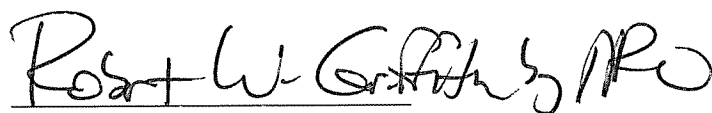
The information that ICF found to be missing is requested in Intervenors' data requests. According to the Appraisal, to determine routing options for the project the Applicant used the Electric Power Research Institute (EPRI) overhead electric transmission line siting methodology, which assumes a general macro transmission corridor and, applying multiple parameters, chooses possible routes within the corridor according to key factors. Some of the factors considered are proximity to residences, commercial and industrial buildings, forests, wetlands, and line length co-location opportunities with roads and existing transmission lines. The approach then assigns weights to each of these factors and ranks the various routing options to

select the best option. Based on this approach, the Applicant selected a final route, which, the Applicant states, is subject to modification in light of local input and detailed data. *Id.* at 17.

Proximity to residences, existence of forests and wetlands, and line length co-location opportunities with roads and existing transmission lines are determined by the studies and information requested by Intervenor—e.g., route studies, identification of impacts on historical sites, identification of the factors considered in determining the most favorable line route, documents relating to the sample routes, documents relating to the Applicant’s selection of the “best option” route, and documentation of local input and data by which the Applicant says it will make refinements and enhancements to the proposed route. That is, the studies and information requested by Intervenor informs the Applicant’s route selection. The Applicant cannot reasonably argue that information that was dispositive in its route selection process is now irrelevant to Intervenor’s review of the selected route.

As the Commission knows, discovery in these proceedings is essential to Intervenor’s fair review of the Applicant’s proposal. When the Applicant refuses to provide Intervenor with relevant information, the Intervenor is prejudiced—by the time, money and effort expended in pursuit of information that the Applicant is obligated to provide—and the Commission’s ability to make the right decision is comprised. To avoid further prejudice and to ensure the integrity of these proceedings, Intervenor requests the Commission to require the Applicant to produce all information responsive to Intervenor’s data requests.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was duly served by mailing, first class postage prepaid to the following:

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This the 8<sup>th</sup> day of September, 2005.

  
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