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MAR 27 2006

PUBLIC SERVICE
COMMISSION

March 27, 2006

Docket Coordinator
Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

Re: Case No 2005-00458

In the Matter of: the Application of East Kentucky Power
Cooperative for A Certificate of Public Convenience
And Necessity for Construction of a 138 kV Transmission
Line in Rowan County, Kentucky

Dear Docket Clerk:

Enclosed please find the original and ten (10) copies of Intervenor Doug Doerrfeld's proposed Order in this case. A copy has been served electronically on counsel today, and copies are being served on the listed counsel.

At the conclusion of the evidentiary hearing the Commission Chair set March 23 as the date for this filing, and indicated that if needed that time could be enlarged. Commission staff and counsel for East Kentucky Power graciously agreed to allow the time to be extended to today for this filing, and that generosity is appreciated.

Thanks for your assistance in advance.

Cordially,



Tom FitzGerald
Counsel for Intervenor
Doug Doerrfeld

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MAR 27 2006

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

PUBLIC SERVICE
COMMISSION

In the Matter of:

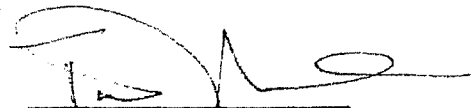
THE APPLICATION OF EAST KENTUCKY)
POWER COOPERATIVE, INC. FOR)
A CERTIFICATE OF PUBLIC) CASE NO. 2005-00458
CONVENIENCE AND NECESSITY TO)
CONSTRUCT A 138 KV TRANSMISSION LINE)
IN ROWAN COUNTY, KENTUCKY)

NOTICE OF FILING OF TENDERED ORDER

Comes Doug Doerrfeld, (hereinafter "Doerrfeld") by counsel, and tenders a proposed Order as directed by the Commission at the close of the evidentiary hearing in this matter. The proposed Order is attached.

WHEREFORE, Intervenor Doug Doerrfeld respectfully requests that the tendered proposed Order be adopted by the Commission as the final Order in this matter, and for any and all other relief to which he may appear entitled.

Respectfully submitted,



Tom FitzGerald
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Frankfort, Kentucky 40602
(502) 875-2428

Counsel for Intervenor
Doug Doerrfeld

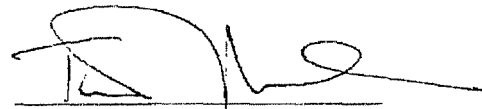
CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of this notice of filing have been filed with the Commission and served by first-class mail upon the following individuals this 27th day of March, 2006:

Honorable A.W. Turner
Public Service Commission
211 Sower Boulevard
P.O. Box 615
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Honorable Sherman Goodpaster III
East Kentucky Power Cooperative
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Hon. Greg Stumbo
Attorney General
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Frankfort, Kentucky 40601



Tom FitzGerald

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF EAST KENTUCKY)
POWER COOPERATIVE, INC. FOR)
A CERTIFICATE OF PUBLIC) CASE NO. 2005-00458
CONVENIENCE AND NECESSITY TO)
CONSTRUCT A 138 KV TRANSMISSION LINE)
IN ROWAN COUNTY, KENTUCKY)

ORDER

This matter is before the Commission on the application of East Kentucky Power Cooperative, Inc. ("East Kentucky Power") for a Certificate of Public Convenience and Necessity ("CPCN") to construct a 6.9 mile 138 kV transmission line connecting the existing Cranston Substation near Triplett, Kentucky with the existing Rowan County Substation near Morehead, Kentucky. The stated purpose of the line is to alleviate reliability problems in the Goddard-Cranston-Rowan area of Rowan County.

KRS 278.020 was amended in 2004 by the General Assembly to require that a utility obtain a CPCN prior to constructing any electric transmission line of 138 kilovolts or more and of more than 5,280 feet in length.

PROCEDURAL BACKGROUND

East Kentucky Power submitted an application to construct this 138 kV line on April 21, 2005, and by Order dated August 19, 2005 in Case No., 2005-00089, the Commission denied the application. *In the Matter of: The Application of East Kentucky Power Cooperative, Inc. For A Certificate Of Public Convenience And Necessity To Construct A 138 KV Transmission Line In Rowan County, Kentucky, Case No. 2005-00089.*

As is the case here, the need for the facility was uncontested, leaving the remaining question of whether the construction of the new facility “will result in a duplication of facilities.” *Kentucky Utilities Company v. Public Service Commission*, 252 S.W.2d 885 (Ky. 1952).

As to this second prong of the test for issuance of a CPCN, the Commission found that “creating a new corridor through the [Daniel Boone National] Forest for the construction of a transmission line would result in a wasteful duplication of facilities due to the existence of an alternative route that is slightly more costly but would utilize existing rights-of-way.” Weighing the impact to the Forest against the minimally increased cost of an alternative line that would avoid all or most of the Forest and the Sheltolee Trace Trail, the Commission concluded that “the new transmission corridor through the Forest as proposed by East Kentucky Power in this case would result in the “multiple sets of rights of ways, and a cluttering of the land with poles and wires,” that the Commission was warned to avoid in *Kentucky Utilities*.”

The Commission left open the door for East Kentucky Power to refile a new application for the same route, “if further study of alternatives shows all of them to be infeasible.” In doing so, the Commission cautioned East Kentucky Power and all other electric utilities, however, “that future applications should comprehensively consider the use of existing corridors in planning future transmission.”

On November 10, 2005 East Kentucky Power moved for a deviation from the Commission’s regulation requiring a thirty-day period between the filing of a Notice of Intent to File an Application and the application itself. By Order dated November 23, 2005, the Commission granted that deviation, and on December 8, 2005, East Kentucky

Power filed a new application for approval of a transmission line in Rowan County, Kentucky. The case was docketed as Case No. 2005-00458. East Kentucky Power's new application proposed to utilize the same transmission line routing that had been rejected in the earlier case, and provided additional evidence of consideration of alternative routes.

On December 14, 2005 East Kentucky filed a motion requesting that the Commission expedite the schedule to the extent possible. The Commission granted the motion to expedite, and entered a procedural schedule for the case on December 16, 2005. The December 16, 2005 Order extended the time for the Commission to process the case from 90 to 120 days, pursuant to KRS 278.020(8).

On January 10, 2006, the Commission granted the January 4, 2006 motion of Doug Doerrfeld to intervene. Mr. Doerrfeld had participated as an intervenor in the previous East Kentucky Power case in opposition to the grant of a CPCN.

An evidentiary hearing was held on February 21 2006 for cross-examination of witnesses. The Commission's consideration of the case included testimony and exhibits from East Kentucky Power, a protest letter received from Danny Porter on December 7, 2005, testimony opposing the application from intervenor Doerrfeld, and a report prepared by Commission consultant Jerry E. Mendl dated January 13, 2006 and captioned *Assessment of the Completeness of Alternative Routes Considered by East Kentucky Power Cooperative In its Application to Construct the Cranston-Rowan County 138kV Transmission Line – Case No. 2005-00458*. At the close of the evidentiary hearing, the matter was submitted to the Commission for decision. In lieu of post-hearing briefs, the parties agreed to submit proposed Orders for consideration by the Commission. The

Commission set March 23, 2006 as the deadline for submittal of the proposed Orders, and at the request of Intervenor, the parties extended that date until March 27, 2006.

DISCUSSION

The issues to be decided in an application for a CPCN to construct facilities are (1) whether the facilities are needed and (2) whether the construction will result in a duplication of facilities. *E.g. Kentucky Utilities Company v. Public Service Commission*, 252 S.W.2d 885 (Ky. 1952). The first issue was uncontested in the initial case and likewise is uncontested here. East Kentucky Power's Goddard-Hilda 69 kV line and Kentucky Utilities Company's ("KU") Goddard-Rodburn 138 kV lines re both overloaded, East Kentucky Power's Hilda-Elliotville 769kV line has a low voltage problem, and supply to the Cranston Substation is at risk because it is supplied by a radial 138 kV feed. Based on the East Kentucky Power application, the MSB Energy Associates, Inc. report in June 2005, and the stipulation of all parties, the Commission finds that there is a need for additional transmission facilities in the area.

The second issue, regarding the potential for wasteful duplication of facilities, is significantly more complicated, and as was the case in Case No. 2005-00089, was strongly contested in this case. The application in this case renewed a request for approval of the same line that would run through the Daniel Boone National Forest and which this Commission had previously rejected.

East Kentucky Power conducted further analysis and provided further documentation of routing alternatives to the proposed Cranston-Rowan County line. The Commission requested MSB Energy Associates (MSB) to assess whether East Kentucky Power did a comprehensive survey of all possible routes for the Cranston-Rowan County 138 kV

transmission line. MSB concluded that East Kentucky had considered “a full spectrum of primary¹ route alternatives[,]” and that “just because information identifying and evaluating a full spectrum of alternatives is available to EKPC does not mean that all reasonable people would reach the same conclusion regarding the preferred alternative that EKPC arrived at. The judgment as to whether EKPC’s choice of location for the route is reasonable is beyond the scope of MSB’s work.” MSB Energy Associates, *Assessment of the Completeness of Alternative Routes Considered by East Kentucky Power Cooperative In its Application to Construct the Cranston-Rowan County 138kV Transmission Line – Case No. 2005-00458*, p. 11 (January 13, 2006) (“MSB Report”).

The Commission provided guidance to East Kentucky Power and other utilities in the earlier Order, where it stated that “future applications should comprehensively consider the use of existing corridors in planning future transmission.” The Commission rejected the earlier application on the specific finding that “East Kentucky Power’s proposed route does not adequately consider the use of existing rights-of-ways and transmission lines and corridors.

As will be discussed in more detail below, the Commission again denies the CPCN request to construct the proposed transmission line for failure by the applicant to adequately consider the use of existing rights-of-way and transmission lines and corridors. The record reflects the existence of feasible alternatives that would result in lesser impact due to alignment along areas of existing disturbance associated with

¹ The MSB Report used the term “primary alternative corridors” to describe the alternative corridors reflecting substantially different potential impacts due to current and potential land uses and the public values attached to those land uses, as distinguished from “secondary alternatives” which are deviations or adjustments made to the primary alternatives to address specific problems.

highway, transmission and pipeline corridors, and that East Kentucky Power has acknowledged the feasibility of routing along those corridors for all or part of the project.

The MSB Report describes the purpose of evaluating alternative as being the identification of “the one(s) that best satisfy the public interest”:

The public interest is not a monolith – it is determined by weighing a number of often-conflicting factors to establish what is the best balance of tradeoffs. The least expensive to build alternative is not necessarily the least expensive to operate, and it may have the most impact on aesthetics or natural areas or agricultural land use, etc. In addition, what is the “best” alternative is in the eye of the beholder. For example, one person may be more concerned about aesthetic impacts while another may be more concerned about potential impacts to sensitive ecological communities. Route selection, to be in the public interest, should address and balance these various perspectives.

The point of this is to reach a pragmatic definition of what constitutes a comprehensive survey of alternatives. For transmission line corridors, the scope of alternatives should reflect substantially different potential impacts. That way, the alternative corridors will provide real choices in terms of balancing the public interest.

MSB Report, *supra*, at p.2.

The Commission is both guided and bounded in consideration of an application for a CPCN, by the decisions of the state’s courts concerning the standards for issuance of such a certificate. In *Kentucky Utilities*, the Court of Appeals, then Kentucky’s highest court, defined “duplication of facilities” to mean that the Commission must examine proposed facilities from the standpoints of excessive investment in relation to efficiency, “and from the standpoint of inconvenience to the public generally, and economic loss through interference with normal uses of the land, that may result from multiple sets of right of ways [sic] and a cluttering of the land with poles and wires.” 252 S.W.2d at 892. The record in this case reflects that alternative primary routes do exist that would use more existing rights-of-way and transmission and utility corridors, and which would

result in lesser overall impact in “inconvenience to the public generally” and less “cluttering of the land with poles and wires.” Since such alternatives have been demonstrated to exist, the requested CPCN fails to meet the standards set out in the *Kentucky Utilities* case and must again be denied.

The record reflects that several alternatives were evaluated and rejected by East Kentucky Power in arriving at the proposed line routing. East Kentucky’s application in Case No. 2005-00089 described two alternatives – the proposed Cranston –Rowan County line and the Cranston-Cranston Tap line with Cranston Tap-Rodburn 138 kV (and Goddard-Hilda 609 kV) reconductoring. The application in Case No. 2005-00089 provided no primary route alternatives to connecting Cranston to Rowan County other than its proposed line. MSB Report (2006), p. 4.

In the testimony of Mark Brewer (“Brewer”) filed in case No. 2005-00458, it is indicated that East Kentucky had identified three alternatives routes that were taken to the Forest Service in 2002. They are depicted on Application Exhibit VIII₁ and are discussed in Brewer Exhibit A to his testimony. Option 1 is a “straight line” option crossing at virtually the shortest distance between the Cranston and Rowan County substations. Option 2 runs down the ban of private owned land in the North Fork of Triplett Creek Valley along the west side of the project area from Cranston until it intersects the KU Goddard-Rodburn 138 kV line, and then from there crossing the National Forest by paralleling the KU Goddard-Rodburn line until it intersects with the Hilda-Rowan 69 kV line. From there it parallels that line through the National Forest until making its final approach to the Rowan County Substation. Option 3 crosses the Daniel Boone National

Forest at a narrow point by routing along “fingers” of privately owned land extending into the National Forest.

The route selected by East Kentucky Power and proposed in this application is, as noted by the 2006 MSB report, “a refinement of Option 1, deviating by less than a quarter mile from the ‘straight line’ route of Option 1 as it approaches the Cranston substation.”

Of that Option 1, MSB stated:

Option 1 . . . crosses the National Forest without any apparent regard for sharing corridors or routing along other land uses. Option 1 appears designed to minimize length and construction cost.

In his testimony in Case No. 2005-00458, Mr. Brewer indicated that the Forest Service evaluated six alternative routes: A and B, which are the same primary route alternative as Option 1; Alternative C, which is a no-action alternative; Alternative D, which is a western route similar to Option 2 in that it parallel the existing KU line part way across the Forest, but running east of I-64 rather than sharing or paralleling corridors on the west side of I-64; Alternative E, which completely skirts the Forest running west and south; Alternative F , which is the Cranston – Cranston Tap – Rodburn reconductoring alternative and is the same as Option 2 and Alternative E until it reaches the KU Goddard-Rodburn line and was rejected as not being electrically equivalent in the April 21, 2005 East Kentucky Power application; Alternative G, which is similar to East Kentucky Power’s Option 3; Alternative H, which runs to the southeast from the Cranston substation crossing a narrow place in the Daniel Boone National Forest to privately owned forest land until it reaches Triplett Creek valley, then going southwest to Perry Branch, where it becomes identical to Alternative G.

After the July 18, 2005 hearing, Mr. Brewer filed testimony in Case No. 2005-00458 indicating that three more alternative routes had been evaluated: a post-hearing parallel alternative more westerly than Option 2 until it intersects the KU Goddard-Rodburn line and then similar to Option 2; a post-hearing parallel alternative adjusted, which crosses Highway 799 to the east of the post-hearing parallel alternative and avoids existing and potential residential development; and post-hearing I-64, which was intended to closely parallel or to share the right of way with Interstate 64. The MSB Report (2006) describes the various alternatives and the distinctions among them.

The testimony of Mark Brewer reflects that East Kentucky Power has yet to thoroughly evaluate the feasibility of routing the transmission line adjacent to and parallel to existing utility corridors. In response to the question of whether a route parallel to the gas transmission line corridor and I-64 and accessed from Route 377 and county roads could be sited, Mr. Brewer responded “yeah. I mean, feasibly, you could put – we could probably find a location in there between the gas lines. You have Columbia Gulf, I believe, that’s probably parallel to I-64. Then you have a bit of a gap on the other side of the creek, which is Tennessee Gas, but we could go between it, but between it you have Triplett Creek.” Transcript, p. 29. Mr. Brewer noted that stream crossings of Triplett Creek are a concern, but that “there are ways to” construct crossings of streams and to maintain appropriate erosion control. *Id.* at 30. Later, in response to Commission questioning, Mr. Brewer acknowledged that the post-hearing parallel route that would go on the other side of I-64 from the Forest Service would result in less acres of new right-of-way. *Id.* at 79.

Regarding the post-hearing parallel route, East Kentucky again failed to thoroughly assess the alternative relative to the preferred route. Mr. Brewer acknowledged that a new right-of-way could be located as close as 19 feet to parallel the existing KU line. Transcript, p. 47. While East Kentucky rejected the parallel alternative as being primarily forested area, Mr. Brewer acknowledged that the preferred alternative was also primarily forested area. Id. at 48. Pressed to explain the answer to data request that stated that the post-hearing parallel route requires “significantly more access roads to be built,” Mr. Brewer acknowledged that the roads to be constructed are temporary roads and that a quantitative analysis on the number of length of roads was not conducted; Id. at 49, and also admitted that there are access roads to the area where the post-hearing parallel route would that he had not been back there “in several years” and had not, after the initial application hearing, gong back to the Forest Service to inquire regarding the availability and access to those roads. The lack of investigation undercuts the credibility of the statement that the post-hearing parallel route would require “significantly more access roads to be built.”² Mr. Brewer acknowledged in response to questioning by the Chair that “we can parallel” KU. Transcript at p. 57.

East Kentucky has defended the decision not to pursue the post-hearing parallel route along I-64 on the basis that the U.S. Forest Service had evaluated the alternative and had selected instead an almost direct-line approach proposed by East Kentucky. Yet both the Environmental Assessment developed by the Forest Service and the correspondence provided by East Kentucky Power reflect that the company was actively involved in the development of the environmental documentation for the project, and that the Forest

² Questioning by Commission staff underscored that in developing the post-hearing alternative route parallel to KU, that East Kentucky could make use of temporary roads and access routes that KU is

Service included cost as a significant factor in evaluating alternatives with the result that detailed consideration of alternatives that might have been more costly but of less overall impact (such as Alternative D) than the shortest, straight-line approach were rejected.

See: USDA Forest Service, *Environmental Assessment, Construction of the Rowan-Cranston 138 kV Electric Transmission Line On The Daniel Boone National Forest In Rowan County, Kentucky*, p. 11, 22. (“The Special Use Permit from the Forest Service and decision by the RUS would help allow the transmission line to be built at a reasonable cost and help make efficient use of public funds.”) East Kentucky Power was actively involved in the development of the purpose and need statement, reviewing drafts of same, and providing technical assistance to the agency on answering questions raised by the public. Alternative D, which would parallel the I-64 corridor to the south along Forest Service land, was not advanced by the Forest Service to detailed consideration, because it did not meet the project purpose. There is no indication in the record that the Alternative D, or Option 2 running along KU’s line and crossing to the north of I-64, would have or will be rejected if presented as East Kentucky’s preferred option under a project whose stated purpose is to minimize new corridor creation and maximize use of existing corridors, rather than simply to hold down direct costs.

Mr. Brewer acknowledged that an alternative running outside and parallel to the KU line and then up I 64 was feasible electrically and from an engineering standpoint. Transcript at p. 109. The post-hearing adjusted parallel route that follows the KU line and crosses to the north of I-64 was also acknowledged by Mr. Brewer to be feasible. *Id.* At the end of the day, the proposed East Kentucky route was “relatively a straight-line” that was proposed to minimize direct costs without consideration of the factors outlined

required to develop in order to conduct vegetation management and pole replacement. Transcript 63-64.

in *Kentucky Utilities* of avoiding inconvenience to the public, economic losses and a cluttering of the land with poles and wires. The result is a proposed routing that would create a new transmission line corridor in an area that has high scenic and historic value when admittedly feasible alternatives that would closely parallel existing disturbed utility corridors and highway developments exist.

The Commission's Order in Case No. 2005-00089 indicated that the Commission would "not prohibit a new application for this same route, if further study of alternatives shows all of them to be infeasible." No new evidence has been presented in the second application that demonstrates that the alternative routes paralleling the KU line and I-64 to the north or south are infeasible; rather Mr. Brewer acknowledged the alternatives to be feasible.

The paralleling of the KU line will create a new transmission line corridor as would the East Kentucky preferred route, however the parallel line option would be in close proximity to an existing utility corridor and could benefit from shared access roads to the KU line, and would avoid a new corridor in an area made more sensitive to aesthetic impacts by the presence of a nationally-recognized scenic and historic trail. The Commission cautioned East Kentucky Power in the August 19, 2005 Order that future applications "should comprehensively consider the use of existing corridors in planning future transmission." While East Kentucky's application does not reflect a level of assessment of the impacts of use of existing corridors necessary to definitely compare those alternatives, the evidence is sufficient to indicate that, with proper management of stream crossing impacts, a route paralleling the KU line and I-64 to the north is a feasible alternative that will have less overall impact due to maximizing location along or near

already-existing utility and highway corridors which, as noted in the MSB Report (2006), “are sites of disturbance for certain types of impacts [that] can result in less incremental impact than opening new corridors.”

The Commission, having considered the evidence and testimony offered in this proceeding and being otherwise sufficiently advised, holds and concludes that East Kentucky Power’s application for a CPCN to construct the proposed transmission line should be denied.

IT IS THEREFORE ORDERED that East Kentucky Power’s application in this case is denied.

Done at Frankfort, Kentucky this _____ day of _____, 2006.

By the Commission.

ATTEST:

Executive Director