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**PUBLIC SERVICE
COMMISSION**

**COMMONWEALTH OF KENTUCY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 2013-00291**

HAROLD BARKER;)
ANN BARKER; and)
BROOKS BARKER,)
COMPLAINANTS)

**RESPONSE TO MOTION TO DISMISS
OF EAST KENTUCKY POWER
COOPERATIVE, INC**

V.)
)
EAST KENTUCKY POWER)
COOPERATIVE, INC.,)
DEFENDANT)

Come the Complainants, Harold Barker, Ann Barker and Brooks Barker (the "Barkers"), by counsel, and for their response to the Motion to Dismiss of East Kentucky Power Cooperative, Inc. ("EKPC"), state as follows:

1. In their Complaint to the Public Service Commission ("PSC"), the Barkers allege that EKPC misled the PSC regarding application of the exception found in KRS 278.020(2) to the Certificate of Public Convenience and Necessity ("CPCN") process which would otherwise have been required for approval of the expanded transmission line crossing the Barkers' land in Clark County, Kentucky. The Barkers contend that the project in question -- enlargement of EKPC's Smith-Hunt-Sideview 69kV transmission line to a double-circuit 345kV/138kV line -- was not an "ordinary extension[] of [an] existing system[] in the usual course of business" as that phrase is defined in KRS 278.020(2) despite EKPC's representations to the contrary in an October 7, 2005 letter to the PSC regarding the proposed expansion. If the PSC agrees with the Barkers' position on this issue, they request that EKPC be held accountable for understating the

scope of its project by being ordered to move the portion of the new transmission line encroaching upon the Barkers' residence a safe distance away. Such a remedy would be an appropriate sanction for violating Kentucky's public utility laws which have been placed within the purview of the PSC.

2. EKPC cites *Carr v. Cincinnati Bell, Inc.*, 651 S.W.2d 126(Ky. App. 1983), for the proposition that the Barkers' Complaint must be dismissed to the extent it seeks money damages for the harm caused by enlargement of EKPC's line. While EKPC may be correct on this narrow point, neither *Carr* nor the statutory scheme set forth in KRS Chapter 278 prohibit the PSC from enforcement of the law, which instead is its mandate under KRS 278.040. In particular, KRS 278.040(1) states the PSC "shall regulate utilities *and enforce the provisions of [KRS Chapter 278]*." (emphasis added) Moreover, KRS 278.040(3) gives the PSC authority to "investigate the methods and practices of utilities to require them to conform to the laws of this state." Nowhere in Chapter 278 is the PSC's jurisdiction limited to "rates" and "services" as claimed by EKPC.

3. EKPC also mischaracterizes the essence of the Barkers' Complaint. While it is correct that the Barkers attended EKPC's open house regarding the project held in November 2005, they nevertheless were denied an impartial fact-finding process conducted by the agency responsible for approving and denying projects such as the one in question here, during which the Barkers would have had a full opportunity to present the health and safety concerns that are now so significant. KRS 278.020(8) grants to individual landowners like the Barkers the right to participate in the CPCN process; yet EKPC's October 7, 2005 letter deprived them (and the 97 other affected landowners along the 18.68-mile project) of that chance.

4. As for EKPC's contention that the Barkers assumed the risk for the expanded line

which now encroaches upon a portion of their home, this issue was addressed in their response to the first question posed in the PSC's initial request for information directed to them on November 7, 2013. As stated in the response, the Barkers sought the assistance of EKPC officials when locating the site to build their residence and were assured that the now-existing location of the home would not interfere with EKPC's easement. On many occasions thereafter, EKPC personnel entered the Barkers' land for maintenance of the former 69kV line, but no concerns about location were ever mentioned. It was not until the new, much-larger, transmission line was constructed that the encroachment problem arose which, as was noted in the Complaint, did not have to occur since the Barkers had ample land away from their home for the new line.

5. Finally, the Barkers attach the affidavit of their engineer John Pfeiffer who opines that EKPC was not forthcoming in its October 7, 2005 letter to the PSC regarding the scope of its Smith-Hunt-Sideview expansion.

WHEREFORE, the Barkers respectfully request the PSC to deny EKPC's Motion to Dismiss.

Respectfully submitted,



M. ALEX ROWADY, ESQ.
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(859) 744-3251
ATTORNEY FOR COMPLAINANTS

CERTIFICATE OF SERVICE

This is to certify that the original and 10 true copies of the foregoing Response to Motion to Dismiss of East Kentucky Power Cooperative, Inc. was hand-delivered to Kentucky Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602-0615 and a true copy was sent by first-class mail to David S. Sanford, Esq., Gross Samford, PLLC, 2365 Harrodsburg Road, Suite B235, Lexington, Kentucky 40504, this 19 day of February, 2014.



M. ALEX ROWADY, ESQ.

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HAROLD BARKER;)	
ANN BARKER; and)	
BROOKS BARKER,)	
COMPLAINANTS)	
)	AFFIDAVIT OF JOHN PFEIFFER
V.)	
)	
EAST KENTUCKY POWER)	
COOPERATIVE, INC.,)	
DEFENDANT)	

* * * * *

Affiant, **JOHN PFEIFFER**, after being duly sworn, states as follows:

1. Affiant is a registered electrical engineer, licensed in the Commonwealth of Kentucky (License #7983).
2. Affiant has been engaged in the field of electrical engineering for more than 40 years, with emphasis in the design of electrical systems for industry.
3. Affiant has reviewed the expansion of Defendant's Smith-Hunt-Sideview transmission line (the "transmission line") through Clark County, Kentucky as it relates to Kentucky law found in KRS 278.020(2).
4. In Affiant's opinion, the expansion of the transmission line did not fall within the exception to the requirement for a certificate of public convenience and necessity ("CPCN") in that it involved construction of 14,717 feet of new 345kV line, an amount well beyond the 5,280-foot limitation stated in KRS 278.020(2). Further, Affiant believes the Defendant was aware of the amount of new construction which would be necessary to expand the transmission line prior to its October 7, 2005 letter to the Public Service Commission seeking to avoid the CPCN process.

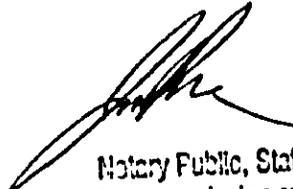
Further the Affiant sayeth naught.


JOHN PFEIFFER

STATE OF KENTUCKY)
) s.s.
COUNTY OF JEFFERSON)

Subscribed and acknowledged before me by JOHN PFEIFFER, on this 17 day of February, 2014.




Notary Public, State at Large, KY
My commission expires July 21, 2015