

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SOUTH KENTUCKY RURAL)	
ELECTRIC COOPERATIVE CORPORATION FOR A)	
CERTIFICATE OF PUBLIC CONVENIENCE AND)	
NECESSITY TO CONSTRUCT A NEW)	CASE NO.
HEADQUARTERS FACILITY AND FOR APPROVAL)	2014-00355
TO TRANSFER OWNERSHIP OF CERTAIN ASSETS)	
OR, IN THE ALTERNATIVE, A DETERMINATION)	
THAT SUCH APPROVAL IS UNNECESSARY)	

ORDER

On October 20, 2014, South Kentucky Rural Electric Cooperative Corporation ("South Kentucky") filed an application, pursuant to KRS 278.020(1), KRS 278.218(1), and 807 KAR 5:001, Sections 14 and 15, seeking a Certificate of Public Convenience and Necessity ("CPCN") to construct a new headquarters complex in Somerset, Kentucky.¹ South Kentucky also seeks approval to transfer ownership of real estate located on Norwood Road in north Somerset, Kentucky ("Northern Property"), or, in the alternative, a determination that Commission approval of the transfer is not required pursuant to KRS 278.218(1). The total cost of the project is approximately [REDACTED]

[REDACTED].²

On November 14, 2014, the Commission issued an Order establishing a procedural schedule for the processing of this matter. The procedural schedule

¹ The original application was received on October 8, 2014. The application was supplemented and deemed filed on October 20, 2014.

² The total cost of the proposed project consists of the sum of: (a) \$10.7 million associated with the construction of the headquarters facilities; and (b) the net amount associated with the sale of the Northern Property and the cost of the land for the proposed headquarters. The amounts associated with the sale and purchase of real estate are the subject of a petition for confidential treatment filed by South Kentucky.

established a deadline for requests to intervene and provided for two rounds of discovery on South Kentucky's application, the opportunity for the filing of intervenor testimony, discovery upon intervenor testimony, and the opportunity for South Kentucky to file rebuttal testimony. There are no intervenors in this matter. A formal evidentiary hearing was conducted on March 10, 2015. South Kentucky filed responses to post-hearing information requests on March 18, 2015. The matter now stands submitted to the Commission for a decision.

BACKGROUND

South Kentucky first applied for a CPCN to construct a new headquarters facility on September 5, 2008, in Case No. 2008-00371.³ South Kentucky sought to construct a new headquarters on the Northern Property location. In an Order issued October 15, 2009, the Commission found that a new headquarters facility was needed, but ruled that the proposed facility would result in wasteful duplication of facilities due to excess capacity over need and excessive investment. The Commission permitted South Kentucky to elect to revise its application to address the Commission's concerns regarding the size and scope of the proposed headquarters facility. South Kentucky filed a revised application on January 22, 2010, for a less expensive facility of reduced size. On May 11, 2010, the Commission granted South Kentucky a CPCN to construct the proposed headquarters facilities set forth in the revised application. However, South Kentucky did not move forward with the construction of the proposed headquarters facilities due to the severe recession that significantly impacted the economy, both nationwide and across Kentucky.

³ Case No. 2008-00371, *Application of South Kentucky Rural Electric Cooperative Corporation for a Certificate of Public Convenience and Necessity to Construct a New Headquarters Facility in Somerset, Kentucky* (Ky. PSC filed Sept. 5, 2008).

Pursuant to KRS 278.020(1), the authority conferred by the issuance of the CPCN in Case No. 2008-00371 became void when South Kentucky did not commence construction of the proposed facilities within one year from the date of the issuance of the CPCN. Having determined that a new headquarters facility was still required, and finding a more reasonable alternative to the facilities that had been proposed in Case No. 2008-00371, South Kentucky filed the instant case.

PROPOSED FACILITY

South Kentucky proposes to construct a new headquarters facility on 30.2 acres of real estate located at the intersection of Parkers Mill Road and Somerset Boulevard in Somerset, Kentucky ("Somerset Houseboats Property").⁴ The Somerset Houseboats Property contains a large manufacturing building that comprises 176,220 square feet, and five smaller buildings that comprise 8,690 square feet, 8,043 square feet, 1,873 square feet, 575 square feet, and 512 square feet, respectively.⁵ South Kentucky states that it intends to remodel approximately 123,124 square feet of the large manufacturing building to use as warehouse, storage, operations, maintenance, and covered parking.⁶ South Kentucky will demolish the remaining 53,096 square feet of the large manufacturing building, which will be replaced with a two-story, 37,064-square-foot office building.⁷ South Kentucky further intends to remodel the five existing buildings to use for vehicle maintenance, meter testing, storage, and workshop needs.⁸

⁴ Application at 6.

⁵ *Id.*

⁶ *Id.* at 7.

⁷ *Id.*

⁸ *Id.*

In evaluating alternatives to satisfy its headquarter needs, South Kentucky analyzed renovating the existing headquarters facility, constructing a new headquarters facility on the Northern Property, and adapting the existing buildings on the Somerset Houseboats Property. South Kentucky concluded that it would not be cost-effective or feasible to renovate, expand, and retrofit the existing headquarters to meet South Kentucky's current and future needs.⁹ South Kentucky rejected the option to build on the completely undeveloped Northern Property because estimated construction and development costs would be much greater there than those for the Somerset Houseboats Property.¹⁰ South Kentucky determined that the most reasonable, least-cost option was to adapt the existing buildings on the Somerset Houseboats property, since the property was fully developed and would require little site preparation, and because the existing buildings required renovation rather than entirely new construction.¹¹

The Somerset Houseboat Property is owned by Citizens National Bank of Somerset ("Citizens"). South Kentucky intends to purchase the Somerset Houseboat Property at a [REDACTED]

[REDACTED]

⁹ *Id.* at 4.

¹⁰ *Id.* at Section III, Direct Testimony of Allen Anderson at 12 and 17.

¹¹ *Id.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The estimated cost to construct the new headquarters is \$10.7 million, bringing the total net cost of the project to [REDACTED] South Kentucky will finance the construction and real estate purchase through an existing loan from the United States Department of Agriculture's Rural Utilities Service.¹⁷

Regarding the project's impact on rates, South Kentucky asserts that the headquarters construction project will not have a substantial impact on South Kentucky's overall financial condition. South Kentucky forecasts that the project will not increase the rates paid by its members in the next ten years.¹⁸

DISCUSSION

Legal Standard

KRS 278.020(1) provides that no utility may construct or acquire any facility to be used in providing utility service to the public until it has obtained a CPCN from this Commission. To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.¹⁹

"Need" requires:

[A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it

[REDACTED]

[REDACTED]

[REDACTED]

¹⁷ Application at 11-12.

¹⁸ *Id.* at 23

¹⁹ *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885 (Ky. 1952).

economically feasible for the new system or facility to be constructed or operated.

[T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.²⁰

“Wasteful duplication” is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”²¹ To demonstrate that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.²² Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.²³

Need for new facility

The Commission finds that the issue concerning South Kentucky’s need for a new headquarters facility was raised and addressed in Case No. 2008-00371.²⁴ In the instant matter, South Kentucky relies upon the same factual basis as it relied upon in

²⁰ *Id.* at 890.

²¹ *Id.*

²² Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

²³ See *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 390 S.W.2d 168, 175 (Ky. 1965). See also Case No. 2005-00089, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005), Final Order.

²⁴ Case No. 2008-00371, Order at 5-6 (Ky. PSC Oct. 5, 2009).

Case No. 2008-00371 to support the need for a new headquarters facility. Those facts have not changed and South Kentucky has again demonstrated that the size, inefficiencies, design, and location of the existing headquarters cannot adequately satisfy the current and future needs of South Kentucky, and it is neither cost-effective nor feasible to renovate, expand, and retrofit the existing headquarters. Therefore, our determination in Case No. 2008-00371 that South Kentucky demonstrated, based on the evidence, that a new headquarters facility is needed governs the disposition of the same issue presented in the instant matter.

Duplication of Facilities

Having determined that a new headquarters facility is needed, the Commission now addresses whether the proposed facility will result in wasteful duplication of facilities. Having reviewed the record and being otherwise sufficiently advised, the Commission finds that South Kentucky's proposed new headquarters is the most reasonable least-cost alternative and would not result in wasteful duplication. South Kentucky investigated and examined reasonable alternatives to the proposed headquarters facility. The proposed headquarters facility would reasonably satisfy South Kentucky's near-term needs for office and warehouse space without jeopardizing its ability to expand in the future. The proposed headquarters facility is not excessive in terms of investment or scope, and thus will not result in a wasteful duplication of facilities.

The Commission notes that South Kentucky was granted a CPCN to construct a new headquarters facility in Case No. 2008-00371, but failed to inform the Commission of South Kentucky's decision not to move forward with the approved construction.

Accordingly, in order to keep the Commission apprised of the status of the project, we find that South Kentucky should file a written status report with the Commission on a quarterly basis describing the progress of the construction of the new headquarters facility. If there is any delay in beginning or continuing construction of the new headquarters facility, South Kentucky should explain the reason for the delay and provide the date it reasonably expects the construction to resume.

Transfer of Assets

The Commission must also determine whether approval is required regarding the sale of the Northern property, and, if approval is required, whether to approve the proposed transaction.

Pursuant to KRS 278.218(1), Commission approval is required prior to the transfer of ownership of assets owned by an electric utility if the assets have an original book value of \$1 million or more, and if the assets are to be transferred by the electric utility for reasons other than obsolescence, or if the assets will continue to be used to provide the same or similar service to the utility or its customers.

South Kentucky acknowledges that the value of the Northern Property crosses the threshold set forth in KRS 278.218(1). However, South Kentucky argues that Commission approval is nonetheless not required because the Northern Property is not in use and is no longer useful for its intended and original purpose, and is therefore obsolete. South Kentucky does not address the statutory provision requiring approval if the asset will continue to be used to provide the same or similar service to the utility or its customers. Since South Kentucky is not using the property to provide service, this provision does not apply to the proposed transfer.

The Commission finds that Black's Law Dictionary defines obsolete as "no longer in general use; out-of-date."²⁵ Here, that South Kentucky no longer has an intended use for the Northern Property is not dispositive of the issue whether the property is obsolete. South Kentucky could have chosen this site to build its new headquarters facility or for any other reasonable purpose, but opted not to do so. The property is not incapable of being used, nor is it out of date. It is merely undeveloped property that South Kentucky decided to sell for use by another entity.

The Commission, having considered the record and being otherwise sufficiently advised, finds that KRS 278.218 is applicable to South Kentucky and that its proposed transaction does not meet either of the exemptions provided by the statute. We find, however, that the proposed transfer is consistent with the public interest and that it should be approved as proposed.

IT IS THEREFORE ORDERED that:

1. South Kentucky is granted a CPCN to construct a new headquarters facility to be located on the Somerset Houseboat Property.
2. South Kentucky is authorized to sell the Northern Property, as described in the Application.
3. South Kentucky's request that no Commission approval is required to sell the Northern Property is denied.
4. South Kentucky's purchase of the Somerset Houseboat Property, as described in the Application, is approved.

²⁵ Black's Law Dictionary (10th ed. 2014).

5. South Kentucky shall file within 45 days of the end of each calendar quarter, beginning August 15, 2015, a written report detailing the status of the construction of the new headquarters facility.

6. South Kentucky shall obtain the approval of the Commission prior to performing any additional construction not expressly authorized by this Order.

7. Any material deviation from the construction approved shall be undertaken only with prior approval of the Commission.

8. South Kentucky shall furnish documentation of the total costs of this project, including the cost of construction and all other capitalized costs, together with, but not limited to, engineering, legal, and administrative expenses, within 60 days of the date construction is substantially completed. Construction costs shall be classified into appropriate plant accounts in accordance with the Uniform System of Accounts for electric utilities as prescribed by the Commission.

9. South Kentucky shall file with the Commission a copy of the "as-built" drawings and a certified statement that the construction has been satisfactorily completed in accordance with the contract plans and specifications within 60 days of the substantial completion of the construction certificated herein.


10. South Kentucky shall file with the Commission, within ten days of receipt from the proper authority, copies of all required permits referenced in Paragraph 26 of the Application.

11. Any documents filed in the future pursuant to ordering paragraphs 5, 8, 9, and 10 herein shall reference this case number and shall be retained in the utility's general correspondence file.

By the Commission

ENTERED
MAR 27 2015
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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