

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In The Matter Of:

DEC 31 2014

PUBLIC SERVICE
COMMISSION

The Application Of Kentucky Power Company)
For: (1) An Order Declaring And Clarifying)
The Application Of The Inspection Requirements)
Of 807 KAR 5:006, Section 26(4) To Certain Of)
The Company's Transmission Facilities; Or)
(2) In The Alternative, And To The Extent)
Required, A Deviation In Part From The Inspection)
Requirements Of 807 KAR 5:006, Section 26(4))
With Respect To The Company's Transmission)
Facilities; And (3) All Other Required)
Approvals And Relief)

Case No. 2014-00 479

APPLICATION

Kentucky Power Company ("Kentucky Power" or the "Company") moves the Public Service Commission of Kentucky pursuant to 807 KAR 5:001, Section 19 and 807 KAR 5:006, Section 28 for an Order: (1) granting certain declaratory relief; or (2) in the alternative, and to the extent required, a deviation in part from certain inspection requirements with respect to the Company's transmission facilities; and (3) granting all other required approvals or relief. In support thereof Kentucky Power states:

Introduction

1. Kentucky Power is required by 807 KAR 5:006, Section 26 to perform various inspections of its distribution and transmission facilities. The regulation permits certain of these inspections to be conducted aerially and requires others to be conducted from the ground. The regulation is ambiguous with respect to the manner of inspection required for the Company's 34.5kV and 46 kV transmission facilities.

2. Through this application Kentucky Power seeks a declaration that the requirement set forth in 807 KAR 5:006, Section 26(4)(e) for sub-69 kV electric facilities to be inspected at two-year intervals “from the ground” does not apply to the Company’s 34.5kV and 46 kV transmission lines. Further, the Company seeks a declaration that the support structures for its transmission facilities may be inspected aurally at six month intervals in accordance with 807 KAR 5:006, Section 26(4)(b) and from the ground in accordance with 807 KAR 5: 006, Section 26(c). In the alternative, if the Commission is unable to grant the requested declaratory orders the Company requests a deviation to permit Kentucky Power to continue its existing transmission line inspection practices.

Applicant

3. Kentucky Power was organized in 1919 under the laws of the Commonwealth of Kentucky.¹ The Company’s mailing address is 101A Enterprise Drive, P.O. Box 5190, Frankfort, Kentucky 40602-5190. Its electronic mail address is kentucky_regulatory_services@aep.com . Kentucky Power is engaged in the generation, purchase, transmission, distribution and sale of electric power. The Company serves approximately 172,000 retail customers in the following 20 counties of eastern Kentucky: Boyd, Breathitt, Carter, Clay, Elliott, Floyd, Greenup, Johnson, Knott, Lawrence, Leslie, Letcher, Lewis, Magoffin, Martin, Morgan, Owsley, Perry, Pike and Rowan. In addition, the Company also supplies electric power at wholesale to other utilities and municipalities in Kentucky for resale. Kentucky Power is a utility as that term is defined at KRS 278.010(3).

¹ A certified copy of the Company’s Articles of Incorporation and all amendments thereto was attached to the Joint Application in *In the Matter Of: The Joint Application Of Kentucky Power Company, American Electric Power Company, Inc. And Central And South West Corporation Regarding A Proposed Merger*, P.S.C. Case No. 99-149. A Certificate of Existence dated December 29, 2014 is attached to this Application as EXHIBIT I.

Request for Declaratory Order

A. The Commission's Inspection Requirements.

4. 807 KAR 5:006, Section 26(4) imposes requirements for the inspection of electric utility systems. In conformity with the requirement that “[a]n electric utility shall make systematic inspections of its system ... as often as necessary but not less frequently than established in this subsection for various classes of facilities and types of inspections,” the regulation imposes specific inspection requirements for electric facilities that vary based upon the voltage of the facility.

(a) 807 KAR 5:006, Section 26(4)(b)(4) requires that:

At intervals not to exceed six (6) months, the utility shall inspect: [e]lectric lines operating at sixty-nine (69) KV or greater, including insulators, conductors, and supporting facilities, for damage, deterioration, and vegetation management consistent with the utility's vegetation management practices.

(b) 807 KAR 5:006, Section 26(4)(c) requires that:

In addition to the requirements established by paragraph (b) of this subsection, all electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors, and supporting facilities shall be inspected from the ground for damage, deterioration, and vegetation management consistent with the utility's vegetation management practices at intervals not to exceed:

1. Six (6) years for each electric line supported by a wood pole or other wood support structure; or
2. Twelve (12) years for each electric line supported by a pole or other support structure constructed of steel or other nonwood material.

(c) 807 KAR 5:006, Section 26(4)(e) requires that:

At intervals not to exceed two (2) years, the utility shall inspect all electric facilities operating at voltages of less than sixty-nine (69) KV, to the point of service including insulators, conductors, meters, and supporting facilities from the ground for damage, deterioration, and vegetation management consistent with the utility's vegetation management practices.

5. Read together, these subsections of 807 KAR 5:006, Section 26(4) impose two complementary inspection requirements for electric lines operating at 69 kV or greater. All such lines, “including insulators, conductors, and supporting facilities,” are required to be inspected at six month intervals. These six-month inspections may be made aerially.² The lines, “including insulators, conductors, and supporting facilities,” also must be inspected from the ground at six-year intervals (for lines supported by wood supports) or twelve-year intervals (for lines supported by steel or other non-wooden supports).

6. Lines operating at less than 69 kV, by contrast, are subject to a single inspection requirement. They are required to be inspected from the ground at two-year intervals.

7. Read as set forth in paragraphs 5 and 6 above, 807 KAR 5:006, Section 26(4) imposes a reasonable and comprehensive regimen for the inspection of electric lines. Nevertheless, for the reasons described below, Kentucky Power requests two separate declarations from the Commission concerning the requirements of 807 KAR 5:006, Section 26(4).

B. The Requested Declaratory Orders.

(1) The Inapplicability Of 807 KAR 5:006, Section 26(4)(e) To The Company’s Sub-69 kV Transmission Lines.

8. Kentucky Power currently owns, operates, and maintains 166 miles of transmission lines operating at 46 kV. These transmission facilities are principally supported by wooden structures. In addition, the Company also owns, operates, and maintains approximately ten miles of transmission lines operating at 34.5 kV. Approximately one-half of the Company’s 34.5 kV transmission lines are supported by structures constructed of wood; the balance of the

² Kentucky Power acknowledges that 807 KAR 5:006, Section 26(4)(g) prohibits the use of aerial inspections to meet the requirement imposed by 807 KAR 5:006, Section 26(4)(b)(4) concerning the inspection of support facilities of electric lines operating at 69 kV or greater. The Company addresses this provision at paragraphs 14-17 below.

34.5 kV transmission lines are supported by structures constructed with metal lattice.

9. A rough rule of thumb is that 69kV is the demarcation point between distribution and transmission lines. Most lines used for distribution purposes operate at below 69 kV, while most transmission lines operate at 69 kV or greater voltages. It appears the Commission may have reflected this rough demarcation point in establishing differing inspection requirements for electric lines operating at 69 kV or greater (807 KAR 5:006, Section 26(4)(b)(4) and 807 KAR 5:006, Section 26(4)(c)) and those lines operating at less than 69 kV (807 KAR 5:006, Section 26(4)(e)).

10. By reason of the fact that distribution lines are used to connect the customer's facilities with the Company's facilities, distribution lines tend to be found in more populated areas and oftentimes are located along roads. As a result distribution lines in most cases are easily accessible by ground, and may be inspected from the ground without unreasonable difficulty or expense. Transmission lines, by contrast, run cross-country from station to station and typically are not located in populated areas. Moreover, transmission lines are oftentimes located in rugged or otherwise much less accessible terrain than distribution lines. Ground inspection of transmission lines typically is more difficult and expensive than ground inspection of distribution lines.

11. 807 KAR 5:006, Section 26(4)(e) could be read to govern the inspection requirements for the Company's sub-69 kV transmission lines despite the fact the sub-69 kV transmission lines operate in all respects, other than voltage, like the remainder (approximately 1,000 miles) of the Company's transmission lines. The Company is unaware of any characteristic of sub-69 kV transmission lines that necessitates more frequent inspections from the ground than is prudent or otherwise required for transmission lines operating at greater than

69 kV.

12. The text of 807 KAR 5:006, Section 26(4)(e) (which imposes the requirement of biannual inspections from the ground for electric lines operating at less than 69 kV) supports a construction limiting its application to distribution lines:

(a) The regulation requires biannual inspections from the ground “to the point of service.” Transmission lines, including the Company’s 34.5 kV and 46 kV transmission lines, run from station to station and do not directly serve customers. They have no “point of service” for transmission lines. Distribution lines, by contrast, more directly provide service to customers and have “points of service.”

(b) Prior to its amendment in 2013, 807 KAR 5:006, Section 26(e) was “codified” at 807 KAR 5:006, Section 25(4)(d) and lacked the current provision requiring inspections to the “point of service:

At intervals not to exceed two (2) years, the utility shall inspect electric lines operating at voltages of less than sixty-nine (69) kV, including insulators, conductors and supporting facilities.

It is presumed the Commission intended to change the regulation governing the inspection of electric lines operating at less than 69 kV by the addition of the language “to the point of service.”³ A reasonable understanding of the change intended by the amendment is that the Commission intended to clarify or otherwise limit 807 KAR 5:006, Section 4(e) to sub-69 kV distribution lines. Further, because transmission lines lack a “point of service,” reading the regulation to apply to transmission lines would violate the presumption that the Commission intended something by adding the new language, and render the addition meaningless with

³ *Castle v. Commonwealth*, 411 S.W.3d 754, 758 (Ky. 2013) (“it must be presumed that the Legislature intended something by what it attempted to do’ when amending a statute—namely to change the law.”) (emphasis in original). Administrative regulations are governed by the same rules of construction governing statutes. *Comprehensive Home Health Services, Inc. v. Professional Home Health Care Agency, Inc.*, 434 S.W.3d 433, 441 (Ky. 2013).

respect to transmission lines (because transmission lines lack a point of service) in violation of well-established rules of construction.⁴

13. Kentucky Power respectfully requests that the Commission issue an Order declaring that the biannual ground inspection requirement of 807 KAR 5:006, Section 26(4)(e) is inapplicable to the Company's 34.5 kV and 46 kV *transmission* lines and that instead such transmission lines are subject to the six-year or twelve-year ground inspection requirements of 807 KAR 5:006, Section 26(4)(c).

(2) The Resolution Of The Apparent Conflict Between 807 KAR 5:006 Section 26(4)(c) and 807 KAR 5:006, Section 26(4)(g).

14. 807 KAR 5:006, Section 26(4)(g) provides in pertinent part:

Aerial inspections shall not be the basis for compliance with ... [the] support facility provisions of in [807 KAR 5:006, Section 26(4)](b)4

807 KAR 5:006, Section 26(4)(b)(4) in turn requires the semi-annual inspection of electric lines operating at 69 kV, including "supporting facilities." Read together, the two regulations seemingly require the semi-annual inspection from the ground, the only alternative to aerial inspections, of the supporting facilities of electric lines operating at 69 kV or greater.

15. 807 KAR 5:006, Section 26(4)(c) provides for the ground inspection at six-year and twelve-year intervals, depending on the materials used in their supporting structures, of, *inter alia*, the supporting facilities of electric lines operating at 69 kV or greater.

16. 807 KAR 5:006, Section 26(4)(c) and 807 KAR 5:006, Section 26(4)(g), as applied to 807 KAR 5:006, Section 26(4)(b)(4), address the same subject matter – the intervals for ground inspection of the supporting structures for electric lines operating at 69 kV or greater – but impose differing intervals for the inspections. In fact, if determined applicable to the

⁴ *Popplewell's Alligator Dock No. 1 v. Revenue Cabinet*, 133 S.W3d 156, 465 n. 34 (Ky. 2004) ("No rule of statutory construction has been more definitely stated or more often repeated than the cardinal rule that significance and effect shall, if possible, be accorded every part of the Act.")

inspection requirements of 807 KAR 5:006, Section 26(4)(b)(4), 807 KAR 5:006 Section 26(4)(g) would render 807 KAR 5:006, Section 26(4)(c)(1) and 807 KAR 5:006, Section 26(4)(c)(2) meaningless. Not only would 807 KAR 5:006, Section 26(4)(g) as applied to 807 KAR 5:006, Section 26(4)(b)(4) require the ground inspection at the same six and twelve-year intervals as 807 KAR 5:006, Section 26(4)(c), but would require an additional eleven ground inspections (in the case of wood supporting structures) or an additional 23 ground inspections (in the case of metal supporting structures) during each six-year or twelve-year ground inspection cycle. Such a construction is contrary to the clear requirement that administrative regulations not be construed so as to render them meaningless.⁵

17. Kentucky Power respectfully requests that the Commission issue an Order declaring that to the extent Kentucky Power complies with the ground inspection requirements of 807 KAR 5:006, Section 26(4)(c) with respect to its transmission facilities that the six month inspections required by 807 KAR 5:006, Section 26(4)(b)(4), including inspections of supporting facilities, may be made aurally.

Request for Deviation

18. The Commission has the authority to issue a deviation from the requirements set forth in 807 KAR 5:006, Section 26(4) pursuant to 807 KAR 5:006, Section 28. The regulation provides that “[i]n special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.” If the Commission is unable to grant either part of the declaratory relief requested in paragraphs 13 and 17 above, the Company respectfully requests that the Commission grant the following deviations:

- (a) Subjecting Kentucky Power’s 34.5 kV and 46 kV transmission facilities to

⁵ See *MPM Financial Group, Inc. v. Morton*, 289 S.W.3d 193, 198 (Ky. 2009).

the ground inspection requirements of 807 KAR 5:006, Section 26(4)(c) and exempting its 34.5 kV and 46 kV transmission facilities from the biannual ground inspection requirements imposed by 807 KAR 5:006, Section 26(4)(e); and

(b) Waiving with respect to all of the Company's transmission facilities the prohibition contained in 807 KAR 5:006, Section 26(4)(g) against using aerial inspection as the means of compliance with the six-month inspection requirements imposed by 807 KAR 5:006, Section 26(4)(b)(4). The Company would inspect its transmission facilities from the ground, including supporting facilities, at six-year and 12-year intervals, as required by 807 KAR 5:006, Section 26(4)(c).

19. The overarching intent of the inspection requirements set forth in 807 KAR 5:006, Section 26 is to "assure safe and adequate operation of the utility's facilities." Kentucky Power's inspection program for its transmission facilities meets this objective.

20. Kentucky Power currently aerially inspects at six-month intervals all of its electric transmission lines, including its 34.5 kV and 46 kV transmission lines, in accordance with 807 KAR 5:006, Section 26(4)(b). In addition, it currently inspects from the ground at six-year and 12-year intervals (depending upon the materials used in its supporting structures) in accordance with 807 KAR 5:006, Section 26(4)(c) all of its electric transmission lines, including its 34.5 kV and 46 kV transmission lines. These inspections allow the Company to operate and maintain its transmission facilities in a safe, adequate, efficient, and reasonable manner, and to protect against outages or other service interruptions related to the inspected facilities.

21. Kentucky Power's transmission facilities typically are located away from roadways and often cross mountainous and forested terrain in the Company's eastern Kentucky service territory. As such, the Company's transmission lines are not easily accessible from the

ground.

22. Ground inspection of the Company's electric transmission lines at more frequent intervals than provided for by 807 KAR 5:006, Section 26(4)(c) is neither necessary nor practicable. Kentucky Power's aerial and ground inspection program of its transmission facilities, including its 34.5 kV and 46 kV transmission lines, is sufficient to ensure the safe and adequate operation of its transmission lines. As a result, good cause exists for the deviation requested in paragraph 18 *supra*.

Communications

23. Kentucky Power previously met with Staff in an informal conference on October 24, 2014 to address the issues raised in this application. At the informal conference the Company agreed to use its best efforts to file this application on or before December 31, 2014.

24. The Applicant respectfully requests that communications in this matter be transmitted electronically to:

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R. Benjamin Crittenden
STITES & HARBISON PLLC
moverstreet@stites.com
bcrittenden@stites.com

Kentucky Power Company
Kentucky_regulatory_services@aep.com

ON BEHALF OF KENTUCKY POWER

WHEREFORE, Kentucky Power Company requests that the Commission issue an Order:

1. Declaring that the biannual ground inspection requirement of 807 KAR 5:006, Section 26(4)(e) is inapplicable to the Company's 34.5 kV and 46 kV transmission lines, and that instead such transmission lines are subject to the ground inspection requirements of 807 KAR 5:006, Section 26(4)(c) depending on the material comprising their support structures;

2. Declaring that to the extent Kentucky Power complies with the ground inspection requirements of 807 KAR 5:006, Section 26(4)(c) with respect to its transmission facilities that the six month inspections required by 807 KAR 5:006, Section 26(4)(b)(4), including inspections of supporting facilities, may be made aerially;

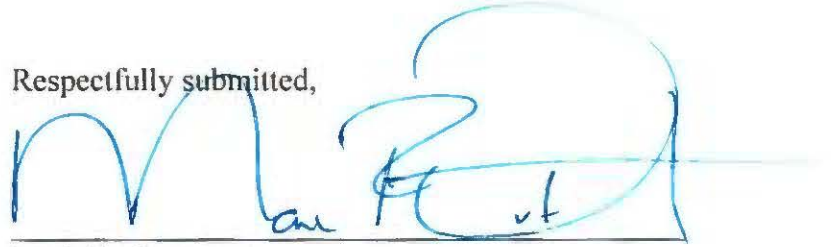
3. In the alternative, and to the extent required, that the Commission grant Kentucky Power grant the following deviations:

(a) Subjecting Kentucky Power's 34.5 kV and 46 kV transmission facilities to the ground inspection requirements of 807 KAR 5:006, Section 26(4)(c) and exempting its 34.5 kV and 46 kV transmission facilities from the biannual ground inspection requirements imposed by 807 KAR 5:006, Section 26(4)(e); and

(b) Waiving with respect to all of the Company's transmission facilities the prohibition contained in 807 KAR 5:006, Section 26(4)(g) against using aerial inspection as the means of compliance with the six-month inspection requirements imposed by 807 KAR 5:006, Section 26(4)(b)(4) respect to the Company's transmission support facilities. The Company would inspect all of its transmission facilities from the ground, including supporting facilities, at six-year and 12-year intervals, as required by 807 KAR 5:006, Section 26(4)(c); and

4. Granting Kentucky Power all other approvals and relief to which it may be entitled.

Respectfully submitted,



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COUNSEL FOR KENTUCKY POWER
COMPANY

VERIFICATION

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF FRANKLIN)

The undersigned, John A. Rogness, being duly sworn, deposes and says that he is the Director, Regulatory Services for Kentucky Power Company, and that the factual allegations set forth hereinabove are true and correct to the best of his information, knowledge and belief.

JOHN A. ROGNESS III

Subscribed and sworn to before me, a Notary Public in and before the said County and State, by John A. Rogness, this the 31st day of December, 2014.

Notary Public

My Commission Expires: *April 7, 2015*

EXHIBIT 1

Commonwealth of Kentucky
Alison Lundergan Grimes, Secretary of State

Alison Lundergan Grimes
Secretary of State
P. O. Box 718
Frankfort, KY 40602-0718
(502) 564-3490
<http://www.sos.ky.gov>

Certificate of Existence

Authentication number: 158980
Visit <https://app.sos.ky.gov/ftshow/certvalidate.aspx> to authenticate this certificate.

I, Alison Lundergan Grimes, Secretary of State of the Commonwealth of Kentucky, do hereby certify that according to the records in the Office of the Secretary of State,

KENTUCKY POWER COMPANY

is a corporation duly incorporated and existing under KRS Chapter 14A and KRS Chapter 271B, whose date of incorporation is July 21, 1919 and whose period of duration is perpetual.

I further certify that all fees and penalties owed to the Secretary of State have been paid; that Articles of Dissolution have not been filed; and that the most recent annual report required by KRS 14A.6-010 has been delivered to the Secretary of State.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at Frankfort, Kentucky, this 29th day of December, 2014, in the 223rd year of the Commonwealth.



Alison Lundergan Grimes

Alison Lundergan Grimes
Secretary of State
Commonwealth of Kentucky
158980/0028317