

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF DUKE ENERGY KENTUCKY,)	
INC. FOR A CERTIFICATE OF PUBLIC)	CASE NO.
CONVENIENCE AND NECESSITY)	2016-00168
AUTHORIZING THE CONSTRUCTION OF A)	
GAS PIPELINE FROM WALTON, KENTUCKY)	
TO BIG BONE, KENTUCKY)	

ORDER

On May 11, 2016, Duke Energy Kentucky, Inc. (“Duke”) tendered an application seeking a Certificate of Public Convenience and Necessity (“CPCN”) for the proposed construction of a 9.5-mile-long, 12-inch-diameter natural gas pipeline from Walton, Kentucky, to Big Bone, Kentucky, and associated facilities, including a 4,000-foot-long, eight-inch-diameter pipe and two pressure regulating stations (“Project”). On May 18, 2016, the filing was rejected as deficient pursuant to 807 KAR 5:001, Section 15(2)(b), which requires a utility to submit “[c]opies of franchises or permits, if any, from the proper public authority for the proposed construction or extension, if not previously filed with the Commission.”¹

On May 23, 2016, Duke filed a motion to deviate from the filing requirements in 807 KAR 5:001, Section 15(2)(b), and requested expedited treatment.² In support of its motion, Duke asserts that it has previously filed applicable franchises from the

¹ Letter to Rocco O. D’Ascenzo, Associate General Counsel for Duke Energy Kentucky, Inc., from Linda Faulkner, Filings Division Director, Public Service Commission (May 18, 2016).

² Motion at 1.

necessary public authorities, and that as part of its application in this matter, has filed copies of all necessary permit applications that are currently pending with the relevant regulatory agencies. These include applications for the following: (a) a Kentucky Transportation Cabinet permit; (b) a railroad crossing permit; (c) an Energy and Environmental Cabinet, Division of Water, Section 401, of the Clean Water Act of 1977 permit; (d) a U.S. Army Corps of Engineers Section 404 Notification; and, (e) a Boone County encroachment permit.³ Duke maintains that it has substantially complied with the requirement of 807 KAR 5:001, Section 15(2)(b), and that in the past, the Commission has implicitly found that submission of permit applications and a utility's affirmation that it has applied for such permits constitutes sufficient compliance with 807 KAR 5:001, Section 15(2)(b).⁴

Duke confirms that it has applied for the above five permits that are required to construct the Project, and that there has been no indication that these permit applications will not be approved.⁵ Duke anticipates that it will obtain all necessary permits within the next three to six months, but acknowledges that the timing of the receipt of these permits is outside its control.⁶ Duke requests that the Commission accept these permit applications in lieu of the actual permits, with its assurance that it will supplement its filing with permit approvals once they are received, which will allow

³ Application at 5–6.

⁴ *Id.*

⁵ *Motion* at 3.

⁶ *Id.*

Duke's CPCN application to proceed with the Commission's review in a timely manner.⁷

Duke states that the Project is necessary to satisfy load-growth demand and to ensure system reliability. Duke also states that the Project that must be completed by the winter of 2017– 2018 heating seasons.⁸ Duke states that its CPCN application was submitted in order for the Commission to have sufficient time for regulatory review and to allow Duke to complete construction on time, giving it the ability to procure materials and construct the Project without having to incur additional costs for expedited procurement and overtime.⁹

Duke requests that the Commission: expeditiously grant the requested waiver; find that the permit applications attached to its CPCN application substantially complies with 807 KAR 5:001, Section 15(2)(b); withdraw the notice of filing deficiency, or in the alternative, find that Duke has cured such deficiency; and accept Duke's application for filing as of May 11, 2016.¹⁰

807 KAR 5:001, Section 22, permits the Commission, for good cause shown to allow a deviation from the rules contained in 807 KAR 5:001. We find that in prior cases, we have granted a deviation from the requirements of 807 KAR 5:001, Section 15(2)(b), upon a demonstration that the omission of the permits from an application

⁷ Motion at 2.

⁸ *Id.*

⁹ *Id.* at 2-3.

¹⁰ *Id.* at 4.

would not impede the Commission's investigation and review.¹¹ We have also granted a deviation and allowed the application process to go forward while an applicant awaits a permit from the proper authorities when circumstances warranted an expeditious review by the Commission.¹² The Commission notes that on May 26, 2016, Duke supplemented its application with a copy of the approval of the Steam Construction Permit issued by the Department for Environmental Protection, Division of Water.

The Commission finds that Duke's decision to seek a CPCN for the Project prior to receiving the permits listed above should allow it to complete construction by the 2017–2018 winter heating season. We further find that Duke has explained the omission of these five permits from its application, has demonstrated good cause for the omission, and has stated that the omission will not impede the Commission's investigation and review of the application. Finally, we find that Duke should provide copies of the remaining permits within ten days of obtaining each permit or approval.

IT IS THEREFORE ORDERED that:

1. Duke's request for a deviation from 807 KAR 5:001, Section 15(2)(b), is granted.
2. Duke shall provide copies of all remaining permits within ten days of obtaining each permit or approval.
3. The permits and approvals required to be filed pursuant to ordering paragraph 2 shall be filed in the record of this case if it is still open; otherwise, the

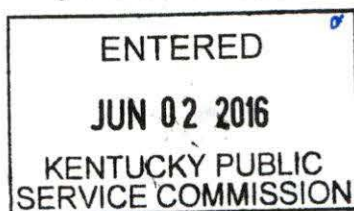
¹¹ Case No. 2014-00258, *Application of Kentucky-American Water Company for a Certificate of Convenience and Necessity Authorizing the Construction of Richmond Road Station Filter Building Improvements* (Ky. PSC Aug. 25, 2014), Order at 2.

¹² Case No. 2007-00168, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of Modifications to the Water Intake System at Cooper Power Station in Pulaski County, Kentucky* (Ky. PSC May 9, 2007), Order at 1 and 2.

permits and approvals shall be filed with this case number and shall be maintained in Duke's general correspondence file.

4. Duke's application is considered filed as of the date of this Order.

By the Commission



ATTEST:


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