

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY	)	
POWER COMPANY FOR A CERTIFICATE OF	)	
PUBLIC CONVENIENCE AND NECESSITY TO	)	CASE NO.
CONSTRUCT A 138 KV TRANSMISSION LINE	)	2018-00072
IN BOYD COUNTY, KENTUCKY	)	

ORDER

On June 27, 2018, Kentucky Power Company (Kentucky Power) filed an application, pursuant to KRS 278.020(2), 807 KAR 5:001, Section 14, 807 KAR 5:001, Section 15, and 807 KAR 5:120, for a Certificate of Public Convenience and Necessity (CPCN) authorizing Kentucky Power to: (1) construct an approximately 2.7 mile 138-kilovolt (kV) transmission line in Boyd County, Kentucky; (2) construct a new 138-kV substation near 297 South Commerce Drive in EastPark Industrial Center in Boyd County, Kentucky; and (3) upgrade certain facilities and equipment at Kentucky Power's existing Chadwick 138-kV Substation in Boyd County, Kentucky (collectively, Project). Pursuant to a procedural schedule, Kentucky Power responded to two rounds of discovery. There are no intervenors in this proceeding. This matter now stands submitted for a decision.

BACKGROUND

According to Kentucky Power, the Project is necessary to provide new 138-kV transmission electric service to the EastPark Industrial Center, while improving distribution service to the general area.<sup>1</sup> The EastPark Industrial Center is an established

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<sup>1</sup> Application of Kentucky Power Company, Page 1 (filed June 27, 2018).

industrial park located in Boyd, Carter, and Greenup counties. In addition to existing tenants, EastPark Industrial Center is the future site of the proposed \$1.3 billion aluminum rolling mill to be constructed by Braidy Industries, Inc. (Braidy Industries), beginning this year. Braidy Industries is expected to generate up to 1,000 jobs during the construction of the aluminum rolling mill and provide approximately 500 full-time skilled labor and administrative positions once it is in operation.<sup>2</sup>

The estimated peak load for the proposed Braidy Industries facility is 90 MW.<sup>3</sup> Kentucky Power contends that its existing transmission and distribution system in the area cannot support this additional load and that there are no other reasonable electrical alternatives to the proposed Project.<sup>4</sup> Kentucky Power maintains that, absent the construction of the Project, the proposed Braidy Industries aluminum mill will lack the required electrical service to permit it to operate, thereby jeopardizing the planned \$1.3 billion investment, the expected jobs, as well as consequent economic activity.<sup>5</sup> Kentucky Power submits that the Project will also strengthen distribution service by improving reliability to distribution customers currently served out of Princess Substation.<sup>6</sup> Finally, Kentucky Power maintains that there are no existing transmission lines in the vicinity of the proposed line that can be rebuilt or upgraded to provide 138-kV service to EastPark

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<sup>2</sup> *Id* at 12–13.

<sup>3</sup> Kentucky Power's Responses to the Commission Staff's First Set of Data Requests, Item 4 (filed Aug. 1, 2018).

<sup>4</sup> Application at 13.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

Industrial Center.<sup>7</sup> Kentucky Power anticipates commencing work, subject to the grant of the CPCN, in the first quarter of 2019. The anticipated in-service date for the Project is June 2020.<sup>8</sup>

### PROJECT

As noted above, the Project consists of three components: a new 138-kV, single-circuit transmission line to serve the planned Braidy Industries facility; a new 138-kV substation to serve the Braidy Industries facility; and upgrades to an existing substation that serves EastPark Industrial Center. Kentucky Power conducted 11 studies in developing the route for the proposed transmission line. The centerline of the new transmission line route crosses parcels owned by 11 landowners. Kentucky Power states that no property owners have opposed the Project. Kentucky Power requests authority to move the centerline and right-of-way, and to expand the right-of-way, as needed, to address potential issues that emerge during construction of the Project. Kentucky Power's request to move the centerline and right-of-way, or to expand the right-of-way, is expressly contingent upon Kentucky Power having notified and obtained a written agreement from owners of property that are subject to the move or expansion. Kentucky Power explains that this authority is similar to the authority granted to Kentucky Power by the Commission in Case No. 2011-00295.<sup>9</sup>

Kentucky Power anticipates using a total of fourteen 138-kV single-circuit, galvanized steel structures; three custom monopoles; six H-Frame structures; and five

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<sup>7</sup> Wohnhas Testimony at 7.

<sup>8</sup> Application at 16.

<sup>9</sup> Case No. 2011-00295, *Application of Kentucky Power Company for a Certificate of Public Convenience and Necessity to Construct a 138 kV Transmission Line in and Associated Facilities in Breathitt, Knott and Perry Counties, Kentucky (Bonnyman-Soft Shell Line)* (Ky. PSC Jan. 26, 2012).

lattice towers in order to complete the Project.<sup>10</sup> The average above ground height of the proposed structures will be approximately 90 feet.<sup>11</sup> The proposed new 138-kV Substation will serve as a transmission-service delivery point to industrial customers at EastPark Industrial Center and is required to step down the voltage and provide protection and controls to serve industrial customers.<sup>12</sup> The proposed new substation will be constructed on land to be acquired from Braidy Industries. Improvements to the existing substation consist of replacing an existing relay panel with an upgraded version.<sup>13</sup> Kentucky Power does not anticipate it will need to acquire right-of-way or property to construct the upgrades to the existing substation.

The total estimate of the Project is approximately \$22.4 million, consisting of: \$8.4 million for transmission line work; \$13.6 million for construction of the Moore Hollow 138-kV Substation; and \$0.4 million for remote work at the existing Chadwick 138-kV Substation.<sup>14</sup> Kentucky Power avers that the Project does not involve sufficient capital outlay to affect its existing financial condition. Kentucky Power anticipates funding the Project through its operating cash flow and other internally generated funds.<sup>15</sup>

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<sup>10</sup> Application at 5.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 5–6.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 7.

Kentucky Power projects annual operating cost of approximately \$7,000 for general maintenance and inspection and annual additional ad valorem taxes resulting from the Project of approximately \$158,000.<sup>16</sup>

Kentucky Power was not required to obtain a franchise from any public authority. Kentucky Power states that it will obtain all required environmental compliance permits and complete the required studies prior to beginning Project construction.<sup>17</sup> Kentucky Power states that it will submit the final line design to the Federal Aviation Authority and the Kentucky Transportation Cabinet. Kentucky Power anticipates obtaining several road and railroad crossing permits, which will be submitted to the Commission once the final engineering has been completed.<sup>18</sup>

Kentucky Power employed GAI Consultants, Inc. (GAI), to perform a study to develop and evaluate alternative transmission line routes for the Project. The area consists of undeveloped land on former surfacing mining sites, forested areas on slopes, and scattered residential development. GAI identified four alternative routes, and ultimately selected the proposed route because it is the shortest alternative, which: reduces the potential for impacts; crosses the fewest number of parcels of land; requires the fewest number of access roads and structures; has only four residences within 250 feet of the route; requires the least amount of forest clearing; had the fewest stream crossings; and was not opposed by any landowners.

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 11.

<sup>18</sup> *Id.*

## DISCUSSION

KRS 278.020(2) states that construction of any electric transmission line of 138 kV or more and of more than 5,280 feet in length shall not be considered an ordinary extension of an existing system in the usual course of business, and shall require a CPCN. To establish the requirement of public convenience and necessity, an applicant must demonstrate the need for the proposed facilities and that the proposed construction will not result in the wasteful duplication of facilities.<sup>19</sup>

“Need” requires:

[A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed and 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.<sup>20</sup>

“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.”<sup>21</sup> To demonstrate that the proposed construction does not result in wasteful duplication, this Commission has held that the applicant must

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<sup>19</sup> *Kentucky Utilities Company v. Public Service Commission*, 252 S.W.2d 885 (Ky. 1952).

<sup>20</sup> *Id.* at 890.

<sup>21</sup> *Id.*

demonstrate that a thorough review of all reasonable alternatives has been performed.<sup>22</sup> Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.<sup>23</sup> All relevant factors must be balanced.<sup>24</sup> The statutory touchstone for ratemaking in Kentucky is the requirement that the rates set by the Commission must be fair, just, and reasonable.<sup>25</sup>

### FINDINGS

Based on the evidence of record, the Commission finds that the Project as proposed is necessary to serve the planned Braidy Industries facility and will not result in a duplication of services. Kentucky Power's existing infrastructure is not capable of serving the planned Braidy Industries facility, and therefore, a new transmission line and substation are necessary to provide service to it.<sup>26</sup> The Project also will enable Kentucky Power to serve potential future industrial load in the area in addition to the 90 MW of peak load associated with the Braidy Industries aluminum rolling mill.<sup>27</sup> Additionally, upgrading the existing substation is necessary to provide the required protection and controls associated with the Project.<sup>28</sup>

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<sup>22</sup> 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 Dec. 8, 2005).

<sup>23</sup> 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).

<sup>24</sup> Case No. 2005-00089, *East Kentucky Power Cooperative, Inc.*, final Order at 6.

<sup>25</sup> KRS 278.030(1).

<sup>26</sup> Lasslo Testimony at 9–10.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 12.

The Commission recognizes the significant economic benefits that Braidy Industries will bring to the Northeast Kentucky area and to Kentucky Power's territory. As indicated in recent press stories, Braidy Industries is currently in the process of raising a mix of equity and debt to finance \$1.68 billion for its facilities in the EastPark Industrial Center.<sup>29</sup> Since Kentucky Power's need for the Project is based on the planned Braidy Industries facility, the CPCN should be conditioned upon Kentucky Power's receipt of reasonable assurance in writing from Braidy Industries that sufficient financing has been secured to complete construction of the planned facility.

The Commission finds that the manner in which Kentucky Power intends to finance the Project is reasonable. Finally, it appears that Kentucky Power has reviewed all reasonable alternatives in arriving at the proposed route for relocation of the transmission line.

The Commission understands the need, in limited circumstances, to give a utility flexibility to address last minute or unanticipated issues regarding the construction of a transmission line. Kentucky Power may, therefore, move the approved centerline and right-of-way, or expand the right-of-way, 250 feet in either direction (i.e., within a 500-foot corridor) as long as (1) the property owner onto whose property the line is moved was notified of this proceeding in accordance with 807 KAR 5:120, Section 2(3); and (2) the property owner who is subject to the move agrees in writing to the requested move. So that the Commission will have a record, Kentucky Power must file a survey of the final

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<sup>29</sup> Watkins, M. (2018, September 21). Braidy Industries needs \$1.5B from government for Kentucky aluminum mill. *Louisville Courier Journal*. Retrieved from <https://www.courier-journal.com/story/news/2018/09/20/braidy-industries-financial-filings-aluminum-mill-lacks-financing/1366453002/>



location of the line after all such moves are completed and before construction begins. Any changes greater than 250 feet or involving other landowners not identified in Exhibit 13 to the application will require Kentucky Power to come back to the Commission to request an amendment of the CPCN granted herein. Likewise, if another agency requires an alteration of the line that does not meet all conditions set forth in this section, that action would also necessitate an amendment of the CPCN granted herein.

IT IS HEREBY ORDERED that:

1. Kentucky Power is conditionally granted a CPCN to construct and operate the Project as set forth in its application subject to reasonable assurance in writing from Braidy Industries that sufficient financing has been secured to complete construction of its planned facility.

2. The conditional CPCN granted in this Order shall become unconditional upon Kentucky Power's filing in the post-case correspondence file a copy of the written statement from Braidy Industries providing reasonable assurance that sufficient financing has been secured to complete construction of its planned facility.

3. Kentucky Power shall file a survey of the final location of the construction of the electric transmission line after any changes to the route authorized by the Order and before construction begins.

4. Kentucky Power shall file "as built" drawings or maps within 60 days of the completion of the construction of the electric transmission line and substation authorized by this Order.

5. In the event Kentucky Power moves the centerline of the right-of-way in either direction, Kentucky power shall provide evidence to the Commission that the

affected property owner, or owners, onto whose property the line is moved, was notified of this proceeding in accordance with 807 KAR 5:120, Section 2(3). In addition, Kentucky Power shall obtain the written permission of the property owner, or owners, onto whose property the line is moved, and shall provide the Commission a copy of any such documentation within 30 days after such documentation becomes available.

6. In the event Kentucky Power desires any changes in the transmission line route greater than 250 feet in either direction (i.e., within a 500-foot corridor), or involving landowners not identified in Kentucky Power's application, Kentucky Power shall apply for an amendment of the CPCN granted herein.

7. In the event another agency requires an alteration of the line that does not meet all of the conditions identified in the findings paragraphs, Kentucky Power shall apply for an amendment of the CPCN granted herein for the modified route.

8. Any documents filed in the future pursuant to ordering paragraphs 2, 3, 4, or 5 herein shall reference this case number and shall be retained in the post-case correspondence file.

9. This case is hereby closed and removed from the Commission's docket.

By the Commission



ATTEST:

  
Executive Director

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