

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC)
CORPORATION FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO)
CONSTRUCT A 161 KV TRANSMISSION LINE,)
AND A 345 KV TRANSMISSION LINE IN MEADE)
COUNTY, KENTUCKY)

CASE NO.
2019-00270

ORDER

On September 27, 2019, Big Rivers Electric Corporation (BREC) filed an application concerning the proposed construction of certain transmission facilities in Meade County, Kentucky. Citing expected load growth in its service territory due to a new steel mill and other growth that is likely to result from the new steel mill, BREC proposes to construct two new transmission lines, a 161-kV line terminal at the existing Meade County Substation, and two new greenfield substations.¹ The two new substations are the Otter Creek Substation and the Brandenburg Steel Mill (BSM) Substation. The first proposed transmission line is an 8.8-mile, 161-kV circuit that will connect the Meade County Substation to the Otter Creek Substation. The second proposed transmission line is an 8.6-mile, 345-kV circuit that will be added from the Otter Creek Substation to the BSM Substation. The estimated total cost of these proposed transmission projects is approximately \$64.8 million, which BREC anticipates will be

¹ BREC indicates that a new greenfield 345-kV Redmon Road Switching Station will also be needed along with a 2.5-mile, 345-kV transmission line that will connect from the Redmon Road Switching Station to the new Otter Creek substation. BREC notes that these two projects are still in the planning stages and will be included as part of a separate application.

financed by it through the Rural Utilities Service of the United States Department of Agriculture.

BREC's application requests a finding that no Certificate of Public Convenience and Necessity (CPCN) is required for the proposed transmission projects. In the alternative, BREC's application requests a CPCN for any of the projects that the Commission determines require a CPCN.

By Order dated October 8, 2019, the Commission extended the statutory deadline for this matter from 90 days to 120 days, pursuant to KRS 278.020(9), and established a procedural schedule for the processing of this matter. The procedural schedule provided for a deadline to request intervention; a deadline to request a local public hearing, pursuant to KRS 278.020(9) and 807 KAR 5:120, Section 3; and two rounds of discovery upon BREC's application. BREC filed responses to two rounds of discovery requests propounded by Commission Staff. There are no intervenors and this matter is now submitted for a decision based upon the existing record.

PROPOSED TRANSMISSION PROJECTS

BREC states that the proposed transmission projects are needed to enable it to provide safe and reliable electric service in the Meade County area.² In particular, BREC informs that Nucor Corp. (Nucor) is planning to construct a new \$1.35 billion steel plate manufacturing mill in Meade County. According to BREC, the Nucor steel mill will create more than 2,000 construction jobs and more than 400 full-time jobs. BREC indicates that

² BREC notes that it is the wholesale supplier for Meade County Rural Electric Cooperative Corporation (Meade County RECC) and that BREC is obligated to provide Meade County RECC with adequate voltage levels and acceptable facility loadings under all normal and single contingency conditions. Meade County RECC's service territory encompasses the area in which the proposed transmission projects will be located.

the new Nucor steel mill will likely drive additional load growth and that the proposed transmission facilities will provide BREC the ability to enhance reliability to its existing retail members.

BREC states that the two proposed transmission lines involve adding new circuits to existing transmission lines, which takes advantage of existing rights-of-way. The new transmission lines will also involve replacement of existing wooden poles with new monopole steel structures for tangent structures and new three-pole steel structures for angle structures and large angled dead-end structures. The estimated capital cost for each of the transmission projects is as follows: (1) the 8.8-mile, 161-kV transmission line is approximately \$7 million; (2) the 8.6-mile, 345-kV transmission line is approximately \$17 million; (3) the 161-kV line terminal at the Meade County Substation is approximately \$800,000; (4) the Otter Creek Substation is approximately \$14 million; and (5) the BSM Substation is approximately \$26 million. The estimated total cost of operation of the new transmission facilities is approximately \$248,000 per year.

Applicability of KRS 278.020

BREC contends that the five proposed transmission projects are ordinary extensions of its existing transmission system in the usual course of business for which no CPCN is required under KRS 278.020(1)(a)(2). BREC points out that KRS 278.020(a) provides that the replacing or upgrading of an existing electric transmission line is considered an ordinary extension of existing systems in the usual course of business that does not require a CPCN. BREC, thus, asserts that the two transmission line projects falls under the CPCN exemption set forth in KRS 278.020(2)(a) because these projects

involve the upgrading of existing transmission lines through the overbuilding of the existing lines by adding a circuit.

BREC also relies upon 807 KAR 5:001, Section 15(3), for the proposition that all of the proposed transmission projects are extensions in the ordinary course of business and do not require a CPCN. BREC contends that the investment required is insufficient to cause a material financial impact to BREC and will not result in increased electric service rates to retail customers on BREC's system. BREC also claims that the proposed transmission projects do not create wasteful duplication of facilities nor do they conflict with the existing certificates or service of other jurisdictional utilities operating in the same area.

The Commission finds that the five transmission projects at issue in this case cannot be deemed an extension in the ordinary course of business, and that these five projects require a CPCN. We note that the construction of any transmission line with voltage of 138 kV or more and spanning more than 5,280 feet requires a CPCN pursuant to KRS 278.020(2).³ The statute also sets forth the following three distinct electric

³ KRS 278.020(2) provides in full as follows:

For purposes of this section, construction of any electric transmission line of one hundred thirty-eight (138) kilovolts or more and of more than five thousand two hundred eighty (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 certificate of public convenience and necessity. However, ordinary extensions of existing systems in the usual course of business not requiring such a certificate shall include:

- (a) The replacement or upgrading of any existing transmission line; or
- (b) The relocation of any existing electric transmission line to accommodate construction or expansion of a roadway or other transportation infrastructure;
or
- (c) An electric transmission line that is constructed to serve a single customer and that will pass over no property other than that owned by the customer to be served.

transmission line construction scenarios as being exempt from the CPCN requirement, characterizing each as an ordinary extension of existing systems in the usual course of business: (i) replacing or upgrading of any existing transmission line; (ii) relocating any existing transmission line due to the construction or expansion of a roadway or other transportation infrastructure; or (iii) constructing an electric transmission line to serve a single customer when the line is located solely on that customer's property.

Here, BREC argues that the proposed transmission lines fall under the exemption that pertains to replacing or upgrading an existing transmission line based upon the fact that the proposed transmission lines involve adding new circuits to existing transmission lines and replacing existing poles. The Commission finds, however, that the impetus for the proposed transmission lines is not to replace or upgrade BREC's existing transmission system. Rather, the need for the transmission line projects is driven by the power requirements of a new customer (the Nucor steel mill), rather than a need to upgrade or replace aging or deteriorating equipment done in the ordinary course of business. The addition of new circuits to existing transmission lines and associated pole replacements was simply the optimal alternative selected by BREC to address the power service requirements of this new load. Accordingly, the Commission finds that the proposed transmission line projects do not fall under the CPCN exemption set forth in KRS 278.020(2), and that they will require a CPCN.

With respect to the three other projects in the instant matter (the 161-kV line terminal at the Meade County Substation and the new Otter Creek and BSM Substations), the Commission finds that these projects are part and parcel of a multi-faceted plan to provide electric service to the new Nucor steel mill. In addition to the five projects at issue

in this matter, BREC states that there are two other projects that will be needed for BREC to provide electric service to the Nucor steel mill. These two other projects consists of a new 345 -kV switching station (Redmond Road Switching Station) and a 2.5-mile, 345- kV transmission line that will connect the Redmond Road Switching Station to the Otter Creek Substation. Given that BREC will file a CPCN application requesting approval to construct these two related transmission projects, it would be consistent to find that construction of the 161-kV terminal line, the Otter Creek Substation, and the BSM Substation cannot be considered ordinary extensions in the usual course of business, and all of these projects will require a CPCN.

CPCN

To establish that the public convenience and necessity require the construction of a new facility, an applicant must demonstrate the need for the proposed facilities and that the proposed construction will not result in the wasteful duplication of facilities.⁴

“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 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.⁵

⁴ *Kentucky Utilities Company v. Public Service Commission*, 252 S.W.2d 885 (Ky. 1952).

⁵ *Id.* at 890.

“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.”⁶ 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.⁷ Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.⁸ All relevant factors must be balanced.⁹ The statutory touchstone for ratemaking in Kentucky is the requirement that rates set by the Commission must be fair, just, and reasonable.¹⁰

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that BREC has established sufficient evidence to demonstrate that the proposed transmission projects are needed to provide service to anticipated load growth in the local area, particularly the new Nucor steel mill. The Commission further finds that construction of the proposed 161-kV transmission line, the 345-kV transmission line, the 161-kV line terminal at the existing Meade County Substation, the 345/161-kV Otter Creek Substation, and the 345/34.5-kV BSM Substation are reasonable and will not result

⁶ *Id.*

⁷ See 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).

⁸ 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.

⁹ Case No. 2005-00089, *East Kentucky Power Cooperative, Inc.* (Ky. PSC Aug. 19, 2005), final Order at 6.

¹⁰ KRS 278.190(3).

in the wasteful duplication of facilities. The evidence also supports BREC's selection of the preferred routes for the two new transmission lines. The 8.8-mile, 161-kV transmission line will be built above the existing 69-kV Garrett transmission line. The 8.6-mile, 345-kV transmission line will be built above the existing 69-kV transmission lines extending from the Garrett Substation to the Buttermilk Falls Substation. The co-location use of existing transmission lines allows BREC to minimize the overall costs of the transmission line projects while also mitigating impacts to nearby property owners as BREC does not need to acquire additional rights-of-way.

Outstanding Motion for Deviation

BREC filed its responses to Commission Staff's First Request for Information on November 14, 2019. Accompanying the responses was a motion in which BREC requested a deviation from the requirement set forth in Staff's discovery requests requiring BREC to file an original and six copies of its responses in paper medium. BREC states that Item 14.a. requests BREC to provide a more detailed, higher resolution map depicting the proposed routes of the two transmission line projects. BREC asserts that the attachment to its response to Item 14.a. are two electronic files containing maps with the detail and resolution requested. BREC requests a deviation to provide the attachment in electronic format on a compact disc rather than providing them in paper medium.

The Commission finds that BREC has established good cause to permit it a deviation to submit the attachment to its response to Item 14.a. of Commission Staff's First Request for Information on a compact disc as opposed to providing the attachment in paper medium.

IT IS THEREFORE ORDERED that:

1. BREC is granted a CPCN to construct and operate the proposed transmission facilities as set forth in its application.
2. BREC shall file a survey of the final location of the transmission facilities after any modifications are finalized as authorized herein and before construction begins.
3. BREC shall file "as-built" drawings or maps within 60 days of the completion of the construction authorized by this Order.
4. BREC's request for authority to move the substations from the locations shown on the maps filed with the application so long as the substations are not moved onto different property owners is granted.
5. BREC's motion for a deviation regarding the filing of the attachment to its discovery response on electronic format is granted.
6. BREC shall immediately notify the Commission upon knowledge of any material changes to the scope of the transmission projects, including, but not limited to, increase in cost, any significant delays in the construction of the transmission line, or any changes in the route of the transmission line or the location of the substations.
7. Any documents filed pursuant to ordering paragraphs 2, 3, and 6 of this Order shall reference the case number of this matter and shall be retained in the post-case correspondence files.
8. This case is closed and removed from the Commission's docket.

By the Commission

ENTERED
JAN 23 2020
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2019-00270

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