

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY	)	
KENTUCKY, INC. FOR A CERTIFICATE OF	)	
PUBLIC CONVENIENCE AND NECESSITY TO	)	CASE NO.
CONSTRUCT A 138-KV TRANSMISSION LINE	)	2022-00364
AND ASSOCIATED FACILITIES IN BOONE	)	
COUNTY, KENTUCKY	)	

ORDER

On April 6, 2023,<sup>1</sup> Duke Energy Kentucky, Inc. (Duke Kentucky) filed an application, pursuant to KRS 278.020(2) and 807 KAR 5:001, Sections 8 and 9, and 807 KAR 5:120, and other applicable law, and requested an Order granting a Certificate of Public Convenience and Necessity (CPCN) for approval to construct and operate a new single circuit 138-kilovolt (kV) transmission line. The new circuit will utilize portions of the existing #15268 circuit, 69 kV transmission line, and approximately 2.1 linear miles of proposed new 138 kV transmission line.

By Order issued on April 12, 2023, the Commission established a procedural schedule for the orderly processing of this matter and provided a deadline to request intervention. No requests to intervene were received. No public comments were

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<sup>1</sup> Duke Kentucky tendered an application on March 30, 2023. A deficiency letter was issued on April 5, 2023. Duke Kentucky resolved the deficiencies on April 6, 2023.

received. Duke Kentucky responded to three requests for information from Commission Staff.<sup>2</sup> The record is complete, and the matter stands ready for a decision.

### LEGAL STANDARD

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.<sup>3</sup> To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.<sup>4</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 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.<sup>5</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>6</sup> To demonstrate that a proposed facility does not

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<sup>2</sup> Duke Kentucky’s Response to Commission Staff’s First Request for Information (Staff’s First Request) (filed April 18, 2023); Duke Kentucky’s Response to Commission Staff’s Second Request for Information (Staff’s Second Request) (filed May 1, 2023); Duke Kentucky’s Response to Commission Staff’s Third Request for Information (Staff’s Third Request) (filed May 15, 2023).

<sup>3</sup> KRS 278.020(1). Although the statute exempts certain types of projects from the requirement to obtain a CPCN, the exemptions are not applicable.

<sup>4</sup> *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 252 S.W.2d 885 (Ky. 1952).

<sup>5</sup> *Kentucky Utilities Co.*, 252 S.W.2d at 890.

<sup>6</sup> *Kentucky Utilities Co.*, 252 S.W.2d at 890.

result in wasteful duplication, the Commission has held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.<sup>7</sup>

Although cost is a factor, selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.<sup>8</sup> All relevant factors must be balanced.<sup>9</sup>

As part of the CPCN process, 807 KAR 5:120 Section 2 (2)-(3) states that an application shall include

2) Three (3) maps of suitable scale, but no less than one (1) inch equals 1,000 feet for the project proposed.

(a) The map detail shall show the location of the proposed transmission line centerline and right of way, and boundaries of each property crossed by the transmission line right of way as indicated on the property valuation administrator's maps, modified as required.

(b) Sketches of proposed typical transmission line support structures shall also be provided.

(c) A separate map of the same scale shall show any alternative routes that were considered;

3) A verified statement that, according to county property valuation administrator records, each property owner over whose property the transmission line right-of-way is proposed to cross has been sent by first-class mail, addressed to the property owner at the owner's address as indicated by the county property valuation administrator records, or hand delivered...

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<sup>7</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 Sept. 8, 2005), Order at 11.

<sup>8</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), final Order.

<sup>9</sup> Case No. 2005-00089, Aug. 19, 2005 final Order at 6.

In conjunction with 807 KAR 5:120, KRS 278.020(9) states

In a proceeding on an application filed pursuant to this section, any interested person, including a person over whose property the proposed transmission line will cross, may request intervention, and the commission shall, if requested, conduct a public hearing in the county in which the transmission line is proposed to be constructed, or, if the transmission line is proposed to be constructed in more than one county, in one of those counties...

### BACKGROUND

Duke Kentucky is a Kentucky corporation originally incorporated on March 20, 1901, in good standing.<sup>10</sup> Duke Kentucky is engaged in the business of generation, purchasing, transmission, and distribution and sale of electric power, as well as furnishing natural gas utility services to various municipalities and unincorporated areas in Boone, Bracken, Campbell, Gallatin, Grant, Kenton, and Pendleton counties in the Commonwealth of Kentucky.<sup>11</sup>

### THE PROPOSED PROJECT

Duke Kentucky sought authority to construct and operate a new single circuit 138 kV transmission line.<sup>12</sup> The new circuit would utilize portions of the existing circuit 69 kV transmission line and approximately 2.1 linear miles of proposed new transmission line would be built.<sup>13</sup> To accommodate the new circuit, the current three-terminal circuit at the Hebron Substation will be split into two two-terminal circuits.<sup>14</sup> One two-terminal

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<sup>10</sup> Application at 1.

<sup>11</sup> Application at 2.

<sup>12</sup> Application at 3; Direct Testimony of John Hurd (Hurd Direct Testimony) (filed on Mar. 30, 2023) at 3.

<sup>13</sup> Application at 3; Hurd Direct Testimony at 3.

<sup>14</sup> Application at 3; Hurd Direct Testimony at 3.

circuit will connect the Hebron Substation to the Oakbrook Substation, and the other two-terminal circuit will connect the Hebron Substation to the Constance Substation.<sup>15</sup> The proposed new transmission line will connect Duke Kentucky's existing Hebron Substation to the existing #15268 circuit creating circuit #6763.<sup>16</sup> After the connection of the new transmission line, new circuit #6763 will follow the existing #15268 circuit to the existing Oakbrook Substation.<sup>17</sup> As part of the Project, approximately 1.5 miles of the existing circuit #15268 will be rebuilt in place to 138 kV capacity.<sup>18</sup> Once the rebuild is complete, the new circuit #6763 will connect the Hebron and Oakbrook Substations and the existing circuit #15268 will connect the Hebron and Constance Substations.<sup>19</sup> The new circuit will be energized at 69 kV initially with future plans to energize at 138 kV.<sup>20</sup>

As a result of the new circuit, the portion of existing circuit #6763 that currently feed the Oakbrook Substation will be retired.<sup>21</sup> Approximately six miles of this circuit from the Oakbrook Substation along KY 18 south towards I-71/75 along Weaver Road will be retired.<sup>22</sup> According to the testimony, the transmission conductor and insulators will be removed and the poles will be cut to allow the distribution circuits on the poles to remain.<sup>23</sup>

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<sup>15</sup> Application at 3; Hurd Direct Testimony at 3.

<sup>16</sup> Application at 3; Hurd Direct Testimony at 3.

<sup>17</sup> Application at 3; Hurd Direct Testimony at 3.

<sup>18</sup> Application at 3; Hurd Direct Testimony at 3.

<sup>19</sup> Application at 3; Hurd Direct Testimony at 3.

<sup>20</sup> Application at 3; Hurd Direct Testimony at 3.

<sup>21</sup> Direct Testimony of Yanthi Boutwell (Boutwell Direct Testimony) (filed Mar. 30, 2023) at 14.

<sup>22</sup> Boutwell Direct Testimony at 14.

<sup>23</sup> Boutwell Direct Testimony at 14.

## DISCUSSION AND FINDINGS

As part of this project, Duke Kentucky was required to give notice to all affected landowners of the project.<sup>24</sup> In its application,<sup>25</sup> Duke Kentucky provided a sworn statement<sup>26</sup> that it had complied with the notice requirements set out in the regulations and provided a list of all affected property owners.<sup>27</sup> However, upon review of the record, Duke Kentucky had not provided enough information for the Commission to verify that all property owners were given notice of the proposed project and the application filed at the Commission. The list of property owners and certified mailing cards did not correspond.<sup>28</sup> In Duke Kentucky's response to Staff's First Request, Duke Kentucky filed maps and tables depicting the right-of-way (ROW), centerline of project and corresponding landowner information.<sup>29</sup>

According to the testimony provided, notice was given to landowners within 125 feet of the selected route.<sup>30</sup> Duke Kentucky stated that the filing corridor is 200 feet.<sup>31</sup> According to Duke Kentucky, this would allow movement of the centerline 50 feet in either direction should a need arise.<sup>32</sup> Based upon Duke Kentucky's response to Staff's First

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<sup>24</sup> 807 KAR 5:120 Section 2 and KRS 278.020.

<sup>25</sup> As sworn to in the signed tendered application filed on April 6, 2023.

<sup>26</sup> A sworn statement is all that is required in order to prevent an application deficiency pursuant to 807 KAR 5:120 section 2.

<sup>27</sup> Application at 7; Exhibit 11 and Exhibit 12.

<sup>28</sup> Exhibit 11 and 12.

<sup>29</sup> Duke Kentucky's Response to Staff's First Request.

<sup>30</sup> Boutwell Direct Testimony at 10.

<sup>31</sup> Boutwell Direct Testimony at 11.

<sup>32</sup> Boutwell Direct Testimony at 11.

Request, the Commission notes that Duke Kentucky was obligated to notify landowners up to 100 feet on each side of the centerline to encompass the requested corridor. The fact that landowners within 125 feet of the centerline received notice as asserted by Duke Kentucky would allow for Duke Kentucky to have complied with 807 KAR 5:120 Section 2 and KRS 278.020(9). However, the information subsequently provided by Duke Kentucky does not support this conclusion.

Duke Kentucky provided two Excel Attachments with a list of property owners.<sup>33</sup> According to the heading at the top of each table, the table is a “list of parcels within 100 feet of centerline of new line preferred route” and a “list of parcels within 100 feet centerline for rebuild section”.<sup>34</sup> However, in the last column of each table, Duke Kentucky indicated whether or not that property owner received notice of the proposed project, and not every property owner received notice.<sup>35</sup> According to the statement provided by Duke Kentucky in the application<sup>36</sup>, the parcel owners did receive notice of the proposed project, but according to Duke Kentucky’s filings, several property owners within 100 feet of the proposed centerline of both the new transmission line and the rebuild portion did not.

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<sup>33</sup> Duke Kentucky’s Response to Staff’s First Request Staff DR-01-002, Attachment 1 and Attachment 2.

<sup>34</sup> Duke Kentucky’s Response to Staff’s First Request Staff DR-01-002, Attachment 1 and Attachment 2.

<sup>35</sup> Duke Kentucky’s Response to Staff’s First Request Staff DR-01-002, Attachment 1 and Attachment 2.

<sup>36</sup> Application at 7.

The Commission notes that Duke Kentucky reiterated that the requested ROW in this case is 100 feet on either side from the centerline on May 2, 2023.<sup>37</sup> Duke Kentucky subsequently claimed that for each property owner listed in the Excel Attachments provided in Duke Kentucky's Response to Staff's First Request, ". . . each party listed which no notice was provided, notice of this application was not given because those parties were not anticipated to be impacted by the proposed right-of-way for the new line and the existing right-of-way for the rebuild line."

Duke Kentucky has the burden to demonstrate that pursuant to 807 KAR 5:120 Section 2 and KRS 278.020, each affected landowner was notified of the proposed project and the application to be filed before the Commission. Duke Kentucky has failed to demonstrate that each affected landowner was properly notified in this matter. The Commission strives for transparency in order to enable the public in obtaining information that directly affects them. Landowners deserve due process, and the Commission cannot find sufficient evidence that Duke Kentucky provided the proper notice to all affected landowners.

The Commission will not address the merits of the application based on Duke Kentucky's failure to provide sufficient evidence that all required parties were provided notice of this application as discussed above.

IT IS THEREFORE ORDERED that:

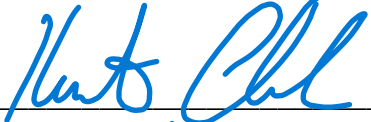
1. Duke Kentucky's application for a CPCN to construct a 138 kV line and rebuild a portion of a 69 kV line is denied without prejudice.
2. This case is closed and removed from the Commission's docket.

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<sup>37</sup> Duke Kentucky's Response to Staff's Second Request, Item 10.



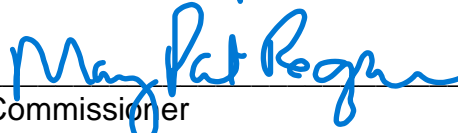
PUBLIC SERVICE COMMISSION

  
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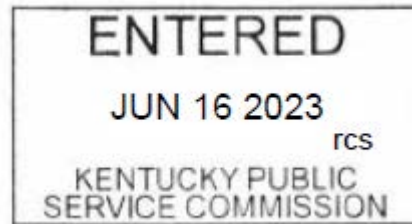
Chairman

  
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Vice Chairman

  
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Commissioner



ATTEST:

  
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