



EAST KENTUCKY POWER COOPERATIVE
4775 Lexington Road
P.O. Box 707 (40392)
Winchester, Kentucky 40391

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AUG 30 2004

PUBLIC SERVICE
COMMISSION/
CASE 2004-00343

FAX COVER SHEET

DATE: 8/30/04
TO: Beth O'Donnell FAX: 502-564-7397
FROM: Mary Jane Weaney / (859) 744-4812 ext. 344
Sharon Goodpaster FAX: (859)744-6008
RE: Hearing of Proposed Regulation 807 KAR 5:120

Number of Pages Including Cover Sheet: 12

Please find EKPC's comments regarding the 8/31 Hearing.

Thank You
[Signature]

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

PUBLIC HEARING OF PROPOSED)
ADMINISTRATIVE REGULATION)
807 KAR 5:120)

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COMMENTS OF EAST KENTUCKY POWER COOPERATIVE, INC.
ON PROPOSED REGULATION TO KAR 5:120

- I. Requiring submittal of the location of all structures, facilities, rights of way, easements, environmental, historical and archeological assessments goes beyond the authorization of KRS 278.020 (7) & (18) statutory jurisdiction of the Commission.

KRS 278.020 (2), with certain exceptions, covered all 138 kV transmission lines greater than one mile in length from the ordinary course extension exception to the certificate of convenience and necessity requirement of KRS 278.020 (1). KRS 278.020 (8) allowed for intervention of affected landowners and provided for any hearings to be held locally. Nowhere did these amendments expand the jurisdiction of the Commission to include the routing, location, design of a transmission line or the environmental, historical or archeological aspects of such a project. The amendments merely made all 138 kV transmission lines, with certain exceptions, subject to the requirement of a certificate the same as all other projects that previously required a certificate. The criteria used by the Commission for granting certificates, i.e. whether the "public convenience and necessity require the service or construction" has not changed. The Commission must decide whether the public need for a project justifies the cost of the project and inclusion of that cost in the rate base. The jurisdiction of the Commission is "clearly and

unmistakably limited to the regulation of rates and services of utilities.” Public Service Commission, et al v. Blue Grass Natural Gas Co., Ky, 1975 U. 2d 765 (1946), citing KRS 278.040. KRS 278.040 (3) allows the Commission to adopt “reasonable regulations to implement the provisions of KRS Chapter 278 and investigate the methods and practices of utilities to require them to conform to the laws of this state. . .”

The proposed regulation goes beyond that delegation by requiring a utility to submit its design, easements, rights of way and environmental, historical and archeological reports for review by the Commission. This clearly goes beyond the regulation of rates and service or the determination of a public need for a given project. As a result, the requirements to submit these items should be removed from the final regulation.

It is true that the general route of a transmission line is sometimes an integral part of the project need itself. For instance, if a transmission line from location “A” to location “B” is proposed to address a particular problem in a given area, the general route from “A” to “B” is part and parcel of the project. A line from “A” to “C” would not necessarily alleviate the problem. Since the “A” to “B” line has to go from “A” to “B”, it would therefore not be unreasonable for the final regulation to require this general route to be shown and possibly the identification of the properties and property owners within a one-half mile corridor from “A” to “B”. That would allow the Commission to determine that those property owners who lie along the general route from “A” to “B” have been identified and notified of their right to intervene and request a hearing.

It is unreasonable, and EKPC would submit unlawful, for the Commission to require the final design, structure location, centerline location, and right of way to be

submitted for review. It is certainly well beyond any legislative delegation to the Commission to require the submission of environmental, historical and archeological assessments. The Commission stated in its December 30, 2003 order in Case Number 2003-00380 that it "lacks the authority to affect the precise siting of the proposed facilities." Nothing in the amendments to KRS 278.020 did anything to change this. The Commission should therefore remove the requirement of submission of the precise siting of rights of way and easements and substitute a one-half mile corridor within which the line is to be located. The Commission should remove altogether the requirement of submitting environmental, historical and archeological assessments.

II. The requirement of submitting the final location of structures, facilities, rights of way and easements requires significant expenditures prior to submitting an application for a certificate.

In order to determine the location of structures, facilities, rights of way and easements, a utility must actually perform a full survey and final design of the transmission line. This would require the expenditure of a significant portion of the total cost of a transmission line before the application for a certificate is even filed. This is counter to the position the Commission has taken in the past when it has tried to minimize the expenditures of a utility prior to the issuance of a certificate. It is not reasonable to require these expenditures, especially in light of the fact that submission of a corridor instead of a final design would reasonably address the purposes of identifying and notifying property owners that will potentially be affected by a given project. The fact that the Commission would have to allow recovery of these costs from ratepayers if the certificate is denied is of little consequence to EKPC, since as a cooperative, its members would have to be responsible for these costs anyway.

Basing the issuance of a certificate on a final design and location also creates the problem of locking the utility in to the design and location approved. That would eliminate the possibility of accommodating property owners' requests to make slight changes to the design and location of structures on their property. When the Commission approves a particular design and location, the utility could not make such changes without coming back to the Commission for approval. This reduces, if not eliminates, the flexibility a utility now has to work with property owners and accommodate them with respect to changes they might request that would reduce the burden of the line on their property. This seems to be a step backward, not forward.

As a result, the requirement of a final location and design should be removed from the final regulation and replaced with a one-half mile corridor.

III. EKPC has several comments dealing with specific sections of the proposed regulation as follow:

Section 1 - Part (2) (b)

- In order to comply with this requirement, the site selection process must be complete. This means that open houses may have been held and will serve as the first notice of the project to the public, well in advance of the "Notice of Intent to File Application". In the case of larger projects, siting studies can require significant expenditure for the research, evaluation and documentation of alternatives.

Section 2 – Part (2)

- At a scale of 1" = 400', a 10 mile transmission line will require about 11 ft. of map length. This scale may be too small to be practical for longer projects.

- A great deal of effort must be expended in order to show the affected property boundaries and the location of all proposed structures and facilities. Property Valuation Administrator records must be researched and in sometimes updated, and the design of the transmission line must be complete.

Section 2 – Part (3)

- In order to notify each property owner, the owner(s) of record must be correctly identified and located for every affected parcel of land. Experience has shown that properties in trusts, multiple heirs, absentee owners, corporations, etc. make this information quite difficult to secure accurately in a short time period and can involve considerable resources.

Section 2 – Part (8)

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- Although not all utilities perform environmental, archaeological, and historical assessments of proposed transmission line projects, all such documentation must be completed prior to the Application per this requirement.

This process will require that all work up to the execution of easements, right of way clearing and construction be completed prior to the filing of an Application for a Certificate of Convenience and Necessity. And much of that work will need to be finished prior to the Notice of Intent to File Application. The result will be a significant increase in the time required to complete transmission lines, and the cost expended by utilities prior to the granting of a Certificate. This amounts to risk for the utility because, if the Commission should deny the request for a Certificate, all costs are sunk and significant time will have been lost toward addressing the system problem that was the basis for the project. For industries locating in our state that sometimes require a fast

track with little notice to utilities, this can be an unacceptable circumstance. At a time when improvements to the transmission system are needed, the regulations as proposed will serve to obstruct and delay their implementation.

EKPC has also prepared two timelines depicting how the proposed regulation as written will impact the timing of a "typical" transmission line. This comparison along with the assumptions upon which it is based is included as Attachment A hereto.

CONCLUSION

If it is the intent of the Commission that the proposed regulation establish a review of the routing, location, design and environmental compliance of a transmission line, then this exceeds the legislatively delegated authority of the Commission. If this is not the intent of the Commission, then the requirements of completing all routing, location, survey, design and environmental work prior to filing an application should be eliminated from the regulation. This requirement necessitates incurring significant costs on a project prior to the issuance of a certificate, and more importantly, could cause significant delays in completion of certain projects that are required to serve the public on a very short time line. Put more bluntly, the regulation, as currently written, could very well impact EKPC's ability to keep the lights on.

If it is the intent of the Commission to ensure that all affected property owners be notified of their rights under KRS 278.020 (2) and (8), then there is a reasonable alternative EKPC would propose that would satisfy this goal just as effectively. EKPC would propose that a map of the proposed corridor of the transmission line be submitted with the notice of intent to file an application. A reasonable width for this corridor would

be one-half mile, and the property lines from the local PVA office of those properties that lie within the corridor would be shown on the map as well. The applicant could then use the PVA data to send the notices to each property owner within the corridor advising each of them of their rights under the amendments to KRS 278.020.

This would allow the applicant to proceed simultaneously with any open house process the applicant may choose to conduct, the routing, location and design of the line, as well as the completion of any environmental compliance, and the initiation of right of way negotiations and acquisition. This would minimize the impact of any delays and allow the applicant to better meet construction deadlines in order to have the facilities in place in a timely manner. It would also implement the amendments to KRS 278.020 by identifying the affected property owners and notifying them of their intervention and hearing rights under the amendments.

This would minimize the adverse impact on the electric consumers of the Commonwealth while still fully implementing the amendments to the statute, which seems like a much more reasonable approach.


HERMAN GOODPASTER III

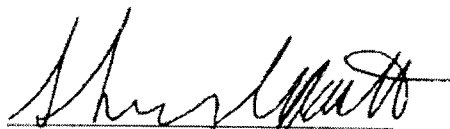
DALE W. HENLEY

EAST KENTUCKY POWER
COOPERATIVE, INC.
(359) 744-4812

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon
The Commonwealth Of Kentucky, Public Service Commission, at 211 Sower Boulevard,
PO Box 615, Frankfort, KY 40602-0615, by hand delivery.

Dated the 31st day of August, 2004.


SHERMAN GOODPASTER, III

H:\legal\psc-KAR comments)

Attachment A - page 1

Project Month	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
F Task/Activity																												
Schedule Currently																												
1	Research & Field Reconnaissance																											
2	Aerial Survey & Routing Open House																											
3	Environmental/Ground Survey & Design																											
4	RW Acquisition																											
5	Materials Acquisition																											
6	RW Clearing & Construction																											
Schedule per Proposed Regulations																												
1	Research & Field Reconnaissance																											
2	Aerial Survey & Routing Open House																											
3	Environmental/Ground Survey & Design																											
3a	Notice of Intent to File																											
4	RW Acquisition																											
4a	Application for CCN																											
4b	Commission Case Proceedings																											
5	Materials Acquisition																											
6	RW Clearing & Construction																											

Attachment A – page 2

Major Project Activities – see page 1

Activity #1

- Field Reconnaissance
- Route corridor development

Activity #2

- Aerial survey if applicable
- PVA research
- Hold open house
- Evaluate route alternatives and select proposed route
- Notify all property owners in corridor about whether or not they are affected by proposed location

Activity #3

- Secure property owner permission for ground survey
- Perform field biology and the environmental investigation, secure state approvals and write report
- Conduct the ground survey and mark the centerline
- Design the line
- Secure right of way clearing contracts and construction contracts

Activity #4

- Contact property owners to show them proposed centerline location and begin negotiations for an easement – make adjustments in design if feasible
- Conclude negotiations with property owners and make formal written final offers
- File the necessary condemnation actions

Activity #5

- Solicit bids for materials, evaluate and select a vendor
- Order materials (steel poles – 20+ weeks)

Activity #6

- Clearing and construction

Attachment A – page 3

Mock Project Assumptions

- Planning, justification, and corporate approval happen prior to the beginning of this schedule
- The sample project is 10 miles long
- The end points are known – tap point and substation site have been secured
- Property owner density averages 5 owners per mile = 50 owners total
- No special environmental or archaeological mitigation is required
- PVA information is available in electronic form (many PVA offices still have paper systems)
- Project is over moderate terrain with light clearing