

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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SEP 29 2005

PUBLIC SERVICE
COMMISSION

In the Matter of:

THE APPLICATION OF EAST KENTUCKY)
POWER COOPERATIVE, INC. FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY FOR) **CASE NO**
FOR THE CONSTRUCTION OF A 138 kV ELECTRIC) **2005-00089**
TRANSMISSION LINE IN ROWAN COUNTY, KENTUCKY)

APPLICANT’S MOTION FOR CLARIFICATION OF COMMISSION’S ORDER
SETTING ORAL ARGUMENT

Comes the Applicant, East Kentucky Power Cooperative, Inc., (“East Kentucky” or “Applicant”) and hereby files its motion for clarification of the Public Service Commission’s (“Commission”) Order setting oral argument in the above referenced matter. In support of this motion, the Applicant states as follows:

On August 19, 2005, the Commission entered an Order denying East Kentucky’s application for a certificate in this matter. On September 12, 2005, the Applicant timely filed its Application for Rehearing and within the text of that Application for Rehearing, requested the opportunity for oral arguments on the issues presented in the Application. On September 22, 2005, the Intervenor, Doug Doerrfeld, filed his Response in Opposition to the Application for Rehearing. On September 27, the Commission entered an Order granting East Kentucky’s request for Oral Argument.

KRS 278.400 requires the Commission to “either grant or deny the application for rehearing within twenty (20) days after it is filed...” The statute adds that, “failure of the Commission to act upon the application within that period shall be deemed a denial of the

application.” The Commission’s Order granting oral argument “on [East Kentucky’s] application for rehearing” sets oral argument for October 13, 2005. The application for rehearing was filed on September 12, 2005, thereby making the expiration of the 20-day period within which the Commission must “either grant or deny the application” on October 3, 2005.

The obvious dilemma the Applicant faces, therefore, is that the Commission will not have either granted or denied the application for rehearing within the statutorily prescribed 20 days. As a result, the Applicant may be at risk of having its application for rehearing deemed to have been denied.

Accordingly, counsel for Applicant on September 28 contacted counsel for the Intervenor to discuss the foregoing issue. Counsel for Intervenor has authorized EKPC to represent that while Intervenor maintains his opposition to the application for rehearing, in light of the Commission’s decision to grant the request for oral argument on whether the application for rehearing should be granted, he will not assert as a claim or defense in any proceeding involving this application that the failure of the Commission to act within the 20-day period to grant or deny the application within the statutorily prescribed 20-day period is a denial of the application for rehearing.

However, in an abundance of caution, the Applicant is filing this motion for clarification as to whether the Application for Rehearing filed by the Applicant must be either granted or denied by the Commission by Monday, October 3, 2005. The Applicant hereby moves the Commission for an Order reconciling the apparent conflict between the September 27, 2005, Order granting the Applicant’s request for oral argument and the

requirement contained in KRS 278.400 requiring the Commission to either “grant or deny” the application by October 3, 2005.

A proposed Order is hereby tendered by the parties, which reflects the agreement and understanding of the parties hereto that there will be no contention, and the Intervenor will not assert as a defense in any proceeding, that the failure of the Commission to grant or deny the application within the statutorily prescribed 20-day period, prior to the date and time scheduled for oral argument, is deemed to be a denial of the application for rehearing.

Respectfully submitted,

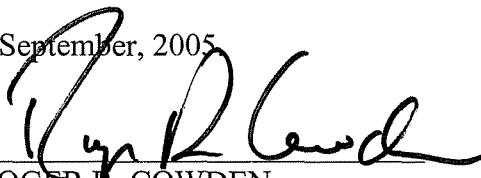
DALE W. HENLEY
SHERMAN GOODPASTER III
ROGER R. COWDEN



ATTORNEYS FOR EAST KENTUCKY
POWER COOPERATIVE, INC.
PO BOX 707
WINCHESTER, KY 40392-0707
859-744-4812

CERTIFICATE OF SERVICE

This is to certify that an original and 10 copies of the foregoing Motion for Clarification of the Commission’s Order Setting Oral Argument and tendered Agreed Order, in the above styled case were hand delivered to the office of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, and one copy was mailed to each party of record, this 29th day of September, 2005.


ROGER R. COWDEN

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AGREED ORDER

The Applicant, East Kentucky Power Cooperative, Inc., by and through counsel, having heretofore filed a Motion for Clarification of the Commission's Order Setting Oral Argument, and the Intervenor being in agreement that he will not assert as a claim or defense in any proceeding involving this application, that the failure of the Commission to grant or deny the application within the statutorily prescribed 20-day period, is deemed to be a denial of the application for rehearing, and the Commission be otherwise sufficiently advised,

IT IS NOW THEREFORE ORDERED that the Applicant's Motion for Clarification is hereby granted. The 20-day requirement for the Commission to grant or deny the Application for Rehearing contained in KRS 278.400 shall be deemed to have been tolled by the Commission's Order granting oral argument on the question of whether the Application for Rehearing should be granted, that was entered on September 27, 2005. Said Order also constituted an action by the Commission on the Application for Rehearing within the required 20-day period and as such, the Application for Rehearing cannot be deemed to be denied by reason of the Commission's failure to act.

Done at Frankfort, Kentucky, this _____ day of _____, 2005.

By the Commission.

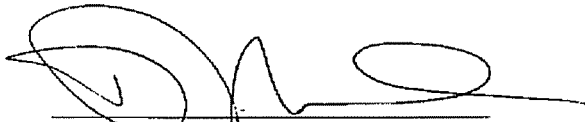
ATTEST:

Executive Director

SEEN AND AGREED TO:



COUNSEL FOR APPLICANT



COUNSEL FOR INTERVENOR

res.