

J. GREGORY CORNETT

DIRECT DIAL 502-560-4210
DIRECT FAX 502-627-8710

gcornett@ogdenlaw.com

1700 PNC PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE, KENTUCKY 40202-2874
(502) 582-1601
FAX (502) 581-9564
www.ogdenlaw.com

August 23, 2005

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PUBLIC SERVICE
COMMISSION

VIA HAND DELIVERY

Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RE: Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Franklin, Woodford and Anderson Counties, Kentucky
Case No. 2005-00154

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten copies of Kentucky Utilities Company's Post-Hearing Brief in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me in the enclosed self-addressed stamped envelope.

Should you have any questions or need any additional information, please contact me at your convenience.

Very truly yours,



J. Gregory Cornett

JGC/ec

Enclosures

cc: Parties of Record (w/ encl)

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION **RECEIVED**

In the Matter of:

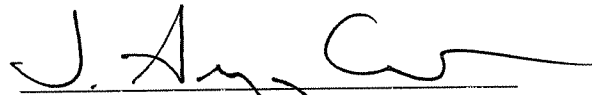
AUG 23 2005

APPLICATION OF)	
KENTUCKY UTILITIES COMPANY FOR)	
A CERTIFICATE OF PUBLIC CONVENIENCE)	CASE NO.
AND NECESSITY FOR THE CONSTRUCTION)	2005-00154
OF TRANSMISSION FACILITIES IN)	
FRANKLIN, WOODFORD AND)	
ANDERSON COUNTIES, KENTUCKY)	

PUBLIC SERVICE
COMMISSION

POST-HEARING BRIEF
OF KENTUCKY UTILITIES COMPANY

Respectfully submitted,



J. Gregory Cornett
Ogden Newell & Welch PLLC
1700 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
Telephone: (502) 582-1601

Robert M. Watt, III
Lindsey W. Ingram, III
Stoll, Keenon & Park, LLP
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507
Telephone: (859) 231-3000

Elizabeth L. Cocanougher
Senior Corporate Counsel
Louisville Gas and Electric Company
220 West Main Street
Post Office Box 32010
Louisville, Kentucky 40232
Telephone: (502) 627-4850

Counsel for Kentucky Utilities Company

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INTRODUCTION

This case involves the Application of Kentucky Utilities Company (“KU”) for a Certificate of Public Convenience and Necessity (“CCN”) for the construction of transmission facilities in portions of Franklin, Woodford and Anderson Counties. KU has established a need for those facilities beginning in 2010, in order to integrate the addition of new baseload generating capacity at the Trimble County Generating Station (“TC2”)¹ into the existing transmission system. KU has also established that the proposed transmission line is the most reasonable, least-cost method for meeting that need, utilizing existing utility corridors to the maximum extent feasible. The proposed construction, together with the construction of TC2, will allow KU to continue providing low-cost, reliable power to its native customers into the future. Accordingly, and for all of the reasons set forth below, the requested CCN should be granted.

PROCEDURAL HISTORY

KU filed its Application in this proceeding, together with supporting testimony and exhibits, on May 11, 2005.² As part of that Application, KU verified that it had provided notice of the proposed construction to each landowner over whose property the transmission line is proposed to cross, and that notice of the intent to construct the proposed line had been published in newspapers of general circulation in the affected counties, all in compliance with 807 KAR 5:120, Section 2.³ The Kentucky Public Service Commission (“Commission”) accepted the Application and subsequently issued a no-deficiency letter relating thereto on May 18, 2005.⁴

¹ That expansion is proposed through the construction of a 750 MW nominal net super-critical pulverized coal-fired base load generating unit. Direct Testimony of Mark S. Johnson (“Johnson Direct”) at 3. The need for that additional generating capacity is the subject of the proceeding pending before the Commission in Case No. 2004-00507.

² The notice of intent to file the Application was filed on April 11, 2005.

³ Application, ¶¶ 12, 13.

⁴ May 18, 2005 letter from Elizabeth L. O’Donnell.

On June 9, 2005, the Commission granted full intervention to a group of landowners who refer to themselves as Concerned Citizens Against Power Line Extension (“Citizens”). Upon the request of the Citizens and other landowners, the Commission held a local public hearing, for the purpose of taking public comment on the proposed construction, at the Commission’s offices on July 5, 2005.⁵

On June 15, 2005, The Liberty Consulting Group (“Liberty”), an independent consultant retained by the Commission, filed its final report, setting forth the findings of a focused need review. That report came after Liberty’s interviews with representatives of KU and of the Midwest Independent Transmission System Operator, Inc. (“MISO”), and the review of documentation provided by KU and MISO in response to Liberty’s requests.⁶

Thereafter, pursuant to a procedural schedule established by the Commission, KU, Commission Staff and the Citizens engaged in discovery. The Citizens also filed two motions for extensions of time to file their direct testimony, which motions were granted, and moved to dismiss KU’s Application on grounds that one landowner had not received notice of the proceeding and that the Application was premature. KU responded to the Citizens’ motion to dismiss and, on July 20, 2005, the Commission entered an order denying the motion, finding that KU had complied with the notice provisions of 807 KAR 5:120(3) and had presented sufficient

⁵ KU representatives were present at that local public hearing, and remained after the hearing to speak with interested landowners. The Companies have addressed landowner-specific concerns to the extent those concerns could be addressed at the present time, and will continue to communicate and work with landowners to try and address their concerns where possible. That is the reason that KU has requested flexibility in any order granting a CCN, as addressed in detail in argument subsection II below. Transcript of Evidence from Evidentiary Hearing of July 26-27, 2005 herein (“TE”), Vol. I at 97-102. KU had also previously held its own public information session in Lawrenceburg, which was attended by dozens of landowners, in order to fully inform the public about the proposed project. Direct Testimony of J. Nate Mullins (“Mullins Direct”) at 7.

⁶ June 14, 2005 Final Report Focused Review of Documentation Filed by LG&E/KU For a Proposed 138 kV Transmission Line Within Kentucky (“Liberty Report”) at I-3.

evidence to warrant a hearing on its Application.⁷ On July 21, 2005, the Citizens filed direct testimony from two witnesses, Janie Rice Brother (“Ms. Brother”) and Ottis Jones (“Mr. Jones”). The next day, July 22, 2005, the Citizens filed corrected direct testimony from Mr. Jones.

An evidentiary hearing occurred before the Commission on July 26 and 27, 2005. On the first morning of the hearing, the Citizens filed yet another motion to dismiss, arguing that KU’s Application should not be ruled upon until such time that certain environmental, historical and cultural review processes have been completed. While the Commission heard oral arguments on that motion at the beginning of the hearing, it provided KU the opportunity to file a written response as part of its post-hearing brief.⁸

Evidence was then taken in the hearing. No post-hearing data requests were issued. This brief is filed pursuant to the schedule established at the conclusion of the evidentiary hearing.

OVERVIEW OF PROPOSED PROJECT

KU is proposing the construction of a 138 kV transmission line to be located in portions of Franklin, Woodford and Anderson counties in Kentucky.⁹ The line will be approximately 12.4 miles in length and will run from KU’s Tyrone Substation in Woodford County, through parts of Anderson County, to KU’s West Frankfort substation in Franklin County (the “Tyrone to West Frankfort Line”).¹⁰ The proposed line will utilize approximately 4.7 miles of existing right-of-way, with the remainder, approximately 7.7 miles, of the line being constructed on new right-of-way through predominantly rural, agricultural land.¹¹ The route of the Tyrone to West

⁷ 807 KAR 5:120, Section 2(3) provides that notice be mailed, by first-class mail, to affected landowners at the addresses listed in county PVA records.

⁸ That response appears below at section IV.

⁹ Application, ¶ 3; Johnson Direct at 2.

¹⁰ Johnson Direct at 2; Mullins Direct at 1-2.

¹¹ Mullins Direct at 6.

Frankfort Line is depicted on Exhibit JNM-1.¹² Sketches of the typical structures proposed for use on the line are shown on Exhibit JNM-2.

KU reached the decision to propose construction of the Tyrone to West Frankfort line after a multi-level analysis. First, KU analyzed its ability to meet growing customer demand and determined there was a need for additional baseload generating capacity beginning in 2010.¹³ That analysis is set forth in detail in Case No. 2004-00507 presently pending before the Commission.

KU then turned to a determination of whether its existing transmission system was adequate to accommodate the addition of generating capacity, or whether upgrades or new facilities would be needed. Through an independent study and studies conducted by the Midwest Independent Transmission System Operator, Inc. (“MISO”), KU analyzed its transmission system in detail and determined that existing facilities were inadequate to support the planned new generating capacity, and that additional facilities would be required.¹⁴ Four options were identified as being feasible to support the addition of TC2, and KU then selected the option which met its needs at the least cost.¹⁵

Finally, KU studied potential corridors in which the needed new transmission facilities might be constructed. The route for the proposed line was selected through a detailed process undertaken by KU with the assistance of a consulting firm, Photo Science Geospatial Solutions (“Photo Science”).¹⁶ Photo Science assisted KU in utilizing the Electric Power Research Institute (“EPRI”) Standardized Method of Siting Overhead Transmission Lines.¹⁷ The EPRI

¹² All references to “JNM” exhibits are to those exhibits so marked and attached to Mr. Mullins’ pre-filed direct testimony.

¹³ Johnson Direct at 3.

¹⁴ Johnson Direct at 4-5. That analysis is discussed in detail in section I 1. below.

¹⁵ *Id.* at 5.

¹⁶ Mullins Direct at 5.

¹⁷ *Id.* That selection process is discussed in detail in section I 2. below.

methodology utilizes a numerical scoring system in the identification of constraints and the quantification of a preferred route which maximizes the use of existing utility corridors and minimizes the impact on people and the natural environment.¹⁸ That process resulted in the selection of the proposed route for the Tyrone to West Frankfort Line, utilizing both existing and proposed new utility corridors, as depicted on Exhibit JNM-1.¹⁹

KU has already commenced the process of consulting with the relevant state and federal agencies and undertaking appropriate environmental, historical and cultural studies and related surveys for the Tyrone to West Frankfort Line, to the extent such are required.²⁰ More detailed surveys requiring access to the properties in question will be undertaken after issuance of a CCN.²¹ If the requested CCN is issued, KU will obtain all necessary permits and approvals from other agencies, begin easement acquisition, and then commence with right-of-way clearing, final design, material acquisition and actual construction of the line.²²

Construction of the Tyrone to West Frankfort Line will be performed by qualified contractors selected through a competitive bidding process.²³ That construction, expected to be complete in 2009 for final testing, is estimated to cost approximately \$7.9 million.²⁴

¹⁸ *Id.* at 4-5.

¹⁹ *Id.*

²⁰ *Id.* at 2. The issue of the timing of those studies and surveys is addressed in more detail in argument section IV below.

²¹ *Id.* at 2-3.

²² *Id.* at 3.

²³ *Id.*

²⁴ *Id.* That figure is stated in 2009 dollars. TE, Vol. I at 198. It is undisputed in the record that it was necessary for KU to file its Application this year to allow for adequate time to secure any other necessary approvals, acquire right-of-way and materials, and construct the line to be ready when needed in 2010. TE, Vol. I at 68; 266.

ARGUMENT

I. **KU'S REQUEST FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE TYRONE TO WEST FRANKFORT LINE SHOULD BE GRANTED**

KRS 278.020 states:

No person, partnership, public or private corporation, or any combination thereof shall ... begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in KRS 278.010 ... until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.... [C]onstruction 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 require a certificate of public convenience and necessity.

KRS 278.020 (1), (2). Kentucky's highest court has construed "public convenience and necessity" to mean: (1) there is a need for the proposed facility or service; and (2) the new facility or service will not create wasteful duplication.²⁵

A finding of "need" is supported where there has been a showing of "a substantial inadequacy of existing service" due to a deficiency of service facilities beyond what could be supplied by normal improvements in the ordinary course of business.²⁶ However, it is important to recognize that "substantial inadequacy of existing service" is not required to be a currently-existing deficiency, but rather may be a deficiency expected a number of years into the future "in view of the long range planning necessary in the public utility field."²⁷ The prevention of "wasteful duplication" has been interpreted to mean not only a physical multiplicity of facilities, which includes a consideration of whether the use of existing utility corridors was analyzed, but also an avoidance of "excessive investment in relation to productivity or efficiency."²⁸ Here, as

²⁵ Kentucky Utilities Co. v. Pub. Serv. Comm'n, 252 S.W.2d 885, 890 (Ky. 1952).

²⁶ *Id.*

²⁷ Kentucky Utilities Co. v. Pub. Serv. Comm'n, 390 S.W.2d 168, 171 (Ky. 1965).

²⁸ Kentucky Utilities Co., 252 S.W.2d at 890.

explained in detail below, KU has demonstrated the need for the Tyrone to West Frankfort Line in order to support the integration of TC2 into the transmission system beginning in 2010, and has established that a CCN is needed now in order to meet a commercial operation date in 2010. Similarly, KU has established that the proposed construction will not constitute a wasteful duplication of facilities. For all of those reasons, the requested CCN should be granted.

1. The Tyrone to West Frankfort Line is Required to Allow KU to Meet the Needs of its Growing Native Loads

In Case No. 2004-00507, currently pending before the Commission, KU and Louisville Gas and Electric Company (“LG&E”) have presented evidence that they will need additional baseload capacity beginning in 2010, and will need between 401 MW and 552 MW of capacity by 2012, in order to maintain their present reserve margin range of 13% to 15%.²⁹ KU and LG&E have also presented proof that the construction of TC2 is the least-cost way to meet those baseload capacity needs.³⁰ The Tyrone to West Frankfort Line, together with the lines which are the subject of two other CCN proceedings filed concurrently herewith, is necessary to accommodate the integration of TC2 into the existing transmission system and allow KU to continue providing reliable, low-cost power to its native customers in Central Kentucky and across the Commonwealth.³¹ KU does not contend that the Tyrone to West Frankfort Line is presently needed absent the Commission granting a CCN for TC2, and agrees that, if a CCN is issued in this proceeding before a final order is issued in Case No. 2004-00507, it would be appropriate to issue that CCN contingent upon the award of a CCN for TC2.³²

²⁹ Johnson Direct at 3.

³⁰ *Id.*

³¹ *Id.*; TE, Vol. II at 35-36. The other referenced CCN proceedings are Case No. 2005-00142 and 2005-00155.

³² However, as Mr. Johnson noted in his direct testimony, if the CCN for TC2 is not approved, KU will have to meet its baseload capacity needs in some other manner, which likely would still require additional transmission facilities. Johnson Direct at 5.

The specific need for the Tyrone to West Frankfort Line was determined through a number of studies performed or commissioned by KU. Those studies all analyzed whether existing facilities were adequate, or could be upgraded, to support the integration of TC2 into the transmission system, or whether additional transmission facilities would have to be built.³³ KU conducted an initial, high-level study to evaluate the impact which the addition of TC2 would have on the existing transmission system.³⁴ KU then requested that MISO perform more detailed studies.³⁵ MISO conducted a Transmission Service System Impact Study (“System Impact Study”) to identify constraints on the MISO transmission system, along with adjacent non-MISO transmission systems, that might limit the delivery of power from TC2, and to make recommendations to address any system limitations.³⁶ A copy of the System Impact Study is in the record as Exhibit MSJ-1.³⁷ MISO also performed a Generation Interconnection Evaluation Study (“Interconnection Study”) to determine the impact of a TC2 interconnection on power system stability, short circuit interruption requirements and potential contingency cascading problems.³⁸ A copy of the Interconnection Study was provided as Exhibit MSJ-2. Finally, MISO conducted a Facility Study Report (“Facility Report”) to set forth key events in the construction timelines for the four options identified in the System Impact Study.³⁹ A copy of the Facility Report was attached to Mr. Johnson’s direct testimony as Exhibit MSJ-3. KU worked closely with MISO as it conducted all of its studies, then reviewed the results of those studies to insure that they were accurate.⁴⁰

³³ *Id.*; Exhibit MSJ-1, MSJ-2; TE, Vol. I at 78, 220-22.

³⁴ TE, Vol. I at 80; Response to PSC Staff Data Request No. 10 (1), Attachment pp. 1-7.

³⁵ TE, Vol. I at 214; Johnson Direct at 3-4.

³⁶ Johnson Direct at 3.

³⁷ All references to “MSJ” exhibits are to those exhibits so marked and attached to Mr. Johnson’s pre-filed direct testimony.

³⁸ Johnson Direct at 4.

³⁹ *Id.*

⁴⁰ TE, Vol. I at 207-08, 214.

The MISO studies established, consistent with the conclusions of the initial evaluation performed by KU, that the existing transmission system in Franklin, Woodford and Anderson Counties is not adequate to support TC2 when it becomes operational, and that system expansions will be required.⁴¹ Specifically, the MISO studies identified four different transmission facility expansion options which could be used to alleviate thermal issues related to the delivery of power from TC2, and concluded that three of those four options (including the option ultimately selected) would result in continued system stability with the addition of TC2.⁴² KU then assessed each of the four options identified in the MISO studies, all of which involved a mix of upgrades to existing facilities and the construction of new facilities, and decided to pursue the fourth option presented by MISO.⁴³ That option, which includes the Tyrone to West Frankfort Line, was chosen because it would fully support the integration of TC2 into the existing transmission system at a lower cost than the other three options which were identified.⁴⁴

After this proceeding was initiated, the Commission retained Liberty to conduct an independent, focused review of the need for the Tyrone to West Frankfort Line. After engaging in written discovery and conducting several days of extensive interviews with representatives from KU and MISO, Liberty issued a Final Report to the Commission which concluded as follows:

Liberty concurred with LG&E/KU that the preferred alternative of constructing a new 138 kV line from West Frankfort to Tyrone is necessary to accommodate the integration of TC2 into the transmission system. Liberty did not identify other upgrades of the

⁴¹ TE, Vol. I at 71-72, 229; Johnson Direct at 4-5. Those studies looked at both the upgrade of existing facilities and the construction of new facilities. TE, Vol. I at 71-72, 220-21; Response to Citizens' Data Request No. 1.

⁴² Johnson Direct at 4-5.

⁴³ *Id.* at 5; Exhibit MSJ-1, MSJ-2.

⁴⁴ *Id.* The chosen option also includes the facility upgrades which are the subject of Case Nos. 2005-00142 and 2005-00155.

existing system that appear capable of providing the required system relief.⁴⁵

That conclusion was restated and affirmed by Liberty representative Michael Cannata in his testimony at the hearing.⁴⁶

The Citizens retained a retired engineer, Mr. Ottis Jones, to testify in their behalf in this proceeding.⁴⁷ Although Mr. Jones stated in his pre-filed testimony that there is no “immediate” need for the Tyrone to West Frankfort Line, he did not question the need for the line in connection with the planned commercial operation of TC2 in 2010.⁴⁸ Indeed, on cross-examination Mr. Jones acknowledged that there would be a need for transmission upgrades in Franklin, Woodford and Anderson counties when TC2 is operational, stating:

[t]hat’s my understanding from looking at the information that was presented.⁴⁹

It is clear, therefore, that the need for additional transmission facilities, including expansions in Franklin, Woodford and Anderson counties, to support TC2 in 2010 is not in dispute in this case.⁵⁰ Accordingly, the Commission should find that a need exists for additional

⁴⁵ Liberty Report at III-8.

⁴⁶ TE, Vol. II at 43.

⁴⁷ Mr. Jones’ qualifications to testify in this case are suspect, as he is not even aware of the standard for obtaining a CCN in Kentucky. TE, Vol. I at 264.

⁴⁸ Corrected Direct Testimony of Ottis Jones (“Jones Direct”) at A. 9-10. As noted above, Kentucky law does not require an “immediate” need for a CCN to be granted. Kentucky Utilities Co., 390 S.W.2d at 171. As Mr. Johnson testified, it is necessary for KU to seek approval for the line at issue at this point in order to be able to complete right-of-way acquisition, construction and all other required steps to have the line in service to support TC2 in 2010. TE, Vol. I at 68, 106. Indeed, Mr. Jones agreed that it was important for KU to be planning to meet its future transmission needs, and acknowledged that it “can take time for a utility to complete the process” to actually construct a line such as the Tyrone to West Frankfort Line. TE, Vol. I at 266.

⁴⁹ TE, Vol. I at 265.

⁵⁰ Through cross-examination during the hearing, the Citizens tried, unsuccessfully, to establish that the proposed Tyrone to West Frankfort Line would not benefit KU’s customers in Franklin, Woodford and Anderson counties. That argument belies a fundamental lack of understanding of the transmission grid and how it operates, as explained by the Commission’s consultant, Mr. Cannata. TE, Vol. II at 34-36. Moreover, it is undisputed that the line proposed by KU would in fact benefit its customers in Franklin, Woodford and Anderson counties. *Id.* at 35. Regardless, however, the standard for a CCN in no way requires that a utility facility may only be constructed in a county which will benefit from the service to be provided by that facility. Indeed, KRS 278.018(1) expressly states that a utility may extend facilities through areas where it does not even provide service “if such extension is

transmission facilities in Franklin, Woodford and Anderson counties as set forth in KU's Application.

2. KU's Route-Selection Process Resulted in a Reasonable Proposal for the Tyrone to West Frankfort Line, and Construction of that Line Will Not Create a Wasteful Duplication of Facilities

In addition to considering the need for the Tyrone to West Frankfort Line, the Commission must also evaluate whether construction of the line would result in a wasteful duplication through an unnecessary multiplicity of facilities or an "excessive investment in relation to productivity or efficiency."⁵¹ That evaluation includes a review of whether existing utility corridors were analyzed as part of the utility's route-selection process.⁵²

As discussed above, KU and MISO studied whether existing transmission facilities were adequate to support, or could be upgraded to support, TC2 when it becomes operational.⁵³ Those studies concluded that existing transmission facilities were inadequate to meet KU's needs when TC2 comes on line, and that construction of new facilities would be required to allow TC2 to be integrated into the transmission system.⁵⁴ That finding was supported by Liberty in its Final Report, when it stated that it "did not identify other upgrades of the existing system that appear capable of providing the required system relief."⁵⁵

Furthermore, once the need for additional transmission facilities in Franklin, Woodford and Anderson counties was determined, and the decision was made to meet that need by constructing a new 138 kV line, KU undertook a comprehensive consideration of possible routes,

necessary for such supplier to connect any of its facilities or to serve its consumers within its own certified territory."

⁵¹ *Kentucky Utilities Co.*, 252 S.W.2d at 890.

⁵² *Id.*; *In the Matter of The Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity to Construct a 138 kV Transmission Line in Rowan County, Kentucky*, Case No. 2005-00089 (PSC Order of August 19, 2005).

⁵³ TE, Vol. I at 71-72, 220-21; Response to Citizens' Data Request No. 1.

⁵⁴ TE, Vol. I at 71-72, 229.

⁵⁵ Liberty Report at III-8.

including routes utilizing existing utility corridors. Working with Photo Science, KU utilized a highly sophisticated methodology, known as the EPRI Standardized Method of Siting Overhead Transmission Lines, to develop alternatives and choose a preferred route which would maximize the use of existing utility corridors and minimize the impact on people and the natural environment.⁵⁶

KU's route-selection process began in the summer of 2003, when Photo Science, on KU's behalf, conducted a macro corridor analysis using a land cover map prepared by the United States Geological Survey.⁵⁷ Photo Science utilized the EPRI methodology, which calls for the assignment of suitability values to land cover types, and applied a least-cost path algorithm to generate a map that illustrated the corridors of least resistance between the start and end points.⁵⁸ As part of that macro corridor planning, KU and Photo Science analyzed existing corridors as opportunities for co-location of the proposed facilities where feasible.⁵⁹ As a result, six (6) alternative routes were identified as maximizing the use of existing utility corridors and minimizing the impact on people and the natural environment.⁶⁰ Aerial photography was then used to map built, environmental and engineering constraints in proximity to those alternative routes, field surveys were conducted to identify types of buildings and other important criteria, and route alternatives were viewed and evaluated by helicopter fly-overs.⁶¹ Next, detailed cost estimates were completed for each of the alternatives, detailed planimetric and topographic maps

⁵⁶ Mullins Direct at 2, 4-5.

⁵⁷ *Id.*

⁵⁸ *Id.* Examples of land cover types considered and weighted by the EPRI methodology are residences, proposed developments, commercial buildings, industrial buildings, schools, day care centers, churches, cemeteries, parks, structures and districts listed with the National Register of Historic Places, natural forests, stream/river crossings, and wetland woodplain and floodplain areas. See Companies' Response to the Citizens' Data Requests and Requests for Production of Documents, Question No. 2.

⁵⁹ Mullins Direct at 6.

⁶⁰ *Id.*

⁶¹ *Id.* As part of that process, KU was able to identify, among other things, any buildings of historical or cultural relevance that might be impacted by the alternative routes, and those factors were taken into account in selecting the proposed alternative. TE, Vol. I at 153-54.

and aerial photographs were created, and data from the records of county property valuation administrators was used to identify property lines along the routes.⁶²

All of that information was then analyzed, using the EPRI siting methodology, and the preferred route for the Tyrone to West Frankfort Line, as proposed in this proceeding, was revealed as the optimum route.⁶³ Importantly for purposes of this analysis, that preferred route, depicted on Exhibit JNM-1, utilized the most existing utility corridor of any of the six alternative routes which were identified.⁶⁴ In fact, thirty seven percent (37%) of the proposed route will be constructed in an existing utility corridor, utilizing existing right-of-way.⁶⁵

The Citizens offered no evidence on alternative routes for the Tyrone to West Frankfort Line. Instead, the Citizens contended, through Mr. Jones, that existing facilities could be upgraded, in lieu of building a new line, to serve KU's needs when TC2 becomes operational.⁶⁶ Specifically, Mr. Jones offered an alternative, referred to as "D-1," which he labeled as "preferred" over construction of the Tyrone to West Frankfort Line.⁶⁷ Mr. Jones contended that the construction proposed by KU would result in an "unnecessary duplication of facilities" because D-1 could provide the same benefits as the Tyrone to West Frankfort Line.⁶⁸

Mr. Jones' alternative D-1 is in fact not a "new" proposal. Both KU and Liberty considered and rejected an upgrade of the lines involved in D-1 as less favorable from an

⁶² Mullins Direct at 6.

⁶³ *Id.*

⁶⁴ *Id.* at 7.

⁶⁵ *Id.*

⁶⁶ Jones Direct at A. 17.

⁶⁷ Jones Direct at A. 13, 19. Mr. Jones also discussed a second alternative, D-2, which was significantly more expensive than D-1, but he did not recommend that alternative D-2 actually be pursued. *Id.* For that reason, alternative D-2 will not be discussed in detail here. However, for all of the same reasons that alternative D-1 is not feasible or cost-effective, as discussed herein, alternative D-2 is also not an acceptable alternative to the Tyrone to West Frankfort Line.

⁶⁸ *Id.* Mr. Jones offered that sworn testimony even though he is unaware of the standard for determining duplication of facilities as defined by Kentucky law. TE, Vol. I at 264.

engineering standpoint, and more costly, than the Tyrone to West Frankfort Line.⁶⁹ Moreover, in considering the Citizens' preference for D-1, it is important to recognize that Mr. Jones did no studies whatsoever to determine how best to meet the transmission needs that will arise when TC2 becomes operational.⁷⁰ Instead, Mr. Jones simply came up with his alternative after he "observed the physical facilities located in Franklin County" and reviewed KU's Application and the discovery in this case.⁷¹ Accordingly, the Citizens did not establish, by way of any empirical data, that their proposed alternative would actually support the integration of TC2 into the transmission system without causing any other problems on the system.⁷² And, as became evident at the hearing, D-1 is not an acceptable alternative, for two reasons.

First, and most importantly, the Citizens' proposed alternative is not the electrical equivalent of the Tyrone to West Frankfort Line proposed by KU, and utilizing that alternative would create additional problems. That is so for a number of reasons. As Mr. Cannata explained on cross-examination, construction of the Tyrone to West Frankfort Line is preferable to alternative D-1 because it provides a more direct path for the flow of power, with fewer line losses.⁷³ The line proposed by KU would also bring an additional transmission line into the system, which would increase overall system reliability in the area and provide a further avenue for satisfying the contingency planning requirements of the North American Electric Reliability

⁶⁹ TE, Vol. I at 220-22; TE, Vol. II at 23-25.

⁷⁰ TE, Vol. I at 265.

⁷¹ Jones Direct at A. 7. Mr. Jones' testimony only spoke of "observing" KU's existing transmission lines in "Franklin County," even though his own proposed alternative, as well as KU's proposed Tyrone to West Frankfort Line, involves facilities in counties other than Franklin. *Id.*; TE, Vol. I at 265. Moreover, at the hearing, Mr. Jones testified that he only "generally rode the lines" and did not even take any field measurements of any kind. TE, Vol. I at 265.

⁷² TE, Vol. I at 265.

⁷³ TE, Vol. II at 24-26, 28, 36. Mr. Cannata said D-1 would create "a much higher load system with higher losses." *Id.* at 25.

Council (“NERC”).⁷⁴ In addition, KU’s proposal involves an upgrade of an existing 69 kV line near Florida Tile (reflecting that 37% portion of the line which will utilize an existing corridor), thereby “improving the reliability in that area and provid[ing] a platform for further improvement and reliability in other areas.”⁷⁵ None of those benefits would be achieved with alternative D-1.⁷⁶

In addition, construction of alternative D-1 would require existing transmission lines, which are critical to the provision of service to Franklin County, to be out of service for extended periods of time while upgrade work was being done, thus creating a risk of an outage if one of the other existing lines in the area were to go out of service for any reason.⁷⁷ Although it would be possible to minimize the risk of an outage by limiting construction to certain times of the year, the risk could not be altogether eliminated.⁷⁸

And, finally, alternative D-1 would result in an existing 69 kV line being permanently removed from service in Franklin County, thereby decreasing facilities available to readily serve the 69 kV load in that area.⁷⁹ As a result, additional 69 kV transformers, and perhaps other 69 kV facilities, would have to be added in the future, sooner than they otherwise would have been required.⁸⁰ On the other hand, if the Tyrone to West Frankfort Line proposed by KU were constructed, there would be no decrease in the 69 kV facilities, the overall system would not be

⁷⁴ *Id.* The Citizens will no doubt point to the fact that Mr. Toll labeled D-1 as being “reasonable.” TE, Vol. I at 203. However, Mr. Toll also testified that D-1 was not the electrical equivalent of the Tyrone to West Frankfort Line. *Id.* at 230, 240-41. Moreover, as discussed below, Mr. Toll set forth other concerns he had about use of D-1 as an alternative to the Tyrone to West Frankfort Line, which concerns had led KU to discount and ultimately reject such upgrades as part of its earlier study process. *Id.* at 217-22. *See also id.* at 81-82. Those same concerns led Liberty to reject D-1 as a feasible alternative early in its review. TE, Vol. II at 23-25.

⁷⁵ TE, Vol. II at 25-26.

⁷⁶ *Id.* at 24-26.

⁷⁷ TE, Vol. I at 215-20. KU is required to operate its system in such a way that it is able to handle certain contingencies. *Id.* at 219, 272.

⁷⁸ TE, Vol. I at 215-20, 231.

⁷⁹ *Id.* at 240. Mr. Toll testified that “the load at the city of Frankfort is all served from the 69 kV system.” *Id.*

⁸⁰ *Id.* at 240-42; TE, Vol. II at 36.

loaded as heavily as it would be with alternative D-1 and, in the words of Mr. Cannata, the “system would last longer than the system” proposed by the Citizens.⁸¹

Second, the Citizens’ alternative would be significantly more expensive to construct than KU’s proposed Tyrone to West Frankfort line.⁸² The estimated cost for KU’s proposed line, in 2009 dollars, is \$7.9 million.⁸³ In his direct testimony, Mr. Jones estimated the cost for alternative D-1 to be \$5.9 million.⁸⁴ However, that estimate was not stated in 2009 dollars and therefore had to be escalated to 2009 values in order to be directly compared to the estimated cost for the Tyrone to West Frankfort Line.⁸⁵ In addition, Mr. Jones made incorrect assumptions in his work which further resulted in a significant undervaluation of the cost to construct alternative D-1.⁸⁶

Alternative D-1 proposes the upgrade of KU’s existing West Frankfort to East Frankfort transmission line, and the rebuild of KU’s existing 138 kV line between the East Frankfort Substation and the Tyrone Substation.⁸⁷ In reaching his cost estimates for that alternative, Mr. Jones assumed that KU’s existing West Frankfort to East Frankfort line was designed and intended to operate as a double circuit 138 kV line, and that therefore the line could be upgraded

⁸¹ TE, Vol. II at 36.

⁸² KU Hearing Exhibit 3. Although cost is not an express component of the determination of whether a proposed project will meet the public convenience and necessity under KRS 278.020, it is well settled in Kentucky that regulated utilities have the obligation to pursue a “least-cost strategy” for meeting future capacity needs. *See* 807 KAR 5:058, Section 8; *Re: Small Power Producers*, 60 PUR4th 574 (PSC Order of June 28, 1984).

⁸³ Mullins Direct at 3; TE, Vol. I at 198. Liberty found that “the economic analysis performed by LG&E/KU was comprehensive, adequate, and reasonable....” Liberty Report at III-8.

⁸⁴ Jones Direct Exhibit 3.

⁸⁵ TE, Vol. I at 199. At multiple times during the hearing, counsel for the Citizens implied through cross-examination that KU’s cost estimates might change. *E.g.*, TE, Vol. II at 32. While the \$7.9 million cost for the Tyrone to West Frankfort Line is indeed an estimate, that estimate is based upon actual experiences with other line construction, and actual construction plans, thereby providing “a higher degree of confidence” as to its accuracy. *Id.* at 33. Moreover, to the extent that any cost estimate might change some over time as a project is actually constructed, there is no evidence that the estimates for the Tyrone to West Frankfort Line and for alternative D-1 as corrected at the hearing, would differ dramatically in the extent of any change. Thus, the Tyrone to West Frankfort Line will still be significantly less costly to construct than would alternative D-1.

⁸⁶ *Id.*; Jones Direct Exhibit 3; TE, Vol. I at 196-205.

⁸⁷ Jones Direct at A. 13.

to a double circuit 138 kV line with only “minor changes.”⁸⁸ That assumption, however, is flatly incorrect. Both Mr. Mullins and Mr. Toll testified that the West Frankfort to East Frankfort line was designed and constructed to operate as a double circuit 69 kV and 138 kV line, not as a double circuit 138 kV line.⁸⁹ As a result, and contrary to the characterization that only “minor changes” would be required, significant portions of the line would in fact have to be torn down and reconstructed in order to achieve the “upgrade” proposed by Mr. Jones.⁹⁰ Mr. Toll testified that the cost to upgrade the West Frankfort to East Frankfort line would be four times that estimated by Mr. Jones.⁹¹

In addition, Mr. Jones assumed that KU’s existing 138 kV line between the East Frankfort Substation and the Tyrone Substation could be rebuilt at a cost of only 50% of the cost to construct a new line.⁹² However, Mr. Mullins and Mr. Toll testified that, in light of the fact that the line would have to be reconducted, the upgrade would cost approximately 75% of new construction costs, or 25% more than the cost assumed by Mr. Jones in his direct testimony.⁹³

Finally, Mr. Jones estimated a cost of only \$750,000 to install a transformer at the West Frankfort substation as part of his proposed alternative. However, Mr. Toll testified that the cost

⁸⁸ Jones Direct at A. 12-13.

⁸⁹ TE, Vol. I at 127-28, 196-97. Because he made an incorrect assumption about the design and construction of the West Frankfort to East Frankfort line, Mr. Jones also was incorrect in labeling that line as “underutilized.” Jones Direct at A. 17. As Mr. Toll explained, that characterization is “not correct and, as the studies show, [the line is] inadequate for its needs at the time of Trimble County 2, and that’s why [KU is] proposing” to construct the Tyrone to West Frankfort Line. TE, Vol. I at 197.

⁹⁰ TE, Vol. I at 128, 136-41.

⁹¹ *Id.* at 199; KU Hearing Exhibit 3. In an attempt to make D-1 appear to be a more attractive option, counsel for the Citizens tried repeatedly to imply that KU might have to rebuild or upgrade all or some portions of the West Frankfort to East Frankfort and East Frankfort to Tyrone lines in the future, regardless of the outcome of this proceeding. However, the evidence is to the contrary. Mr. Mullins testified emphatically that there is no need, and no plan, to replace or upgrade any portions of the West Frankfort to East Frankfort line, or the East Frankfort to Tyrone line, as part of KU’s regular system planning process. TE, Vol. I at 130, 176-77.

⁹² Jones Direct at A. 13.

⁹³ TE, Vol. I at 174-76, 201, 232; KU Direct Exhibit 3. Mr. Jones apparently assumed that the line insulator could be increased without the need to replace the conductor. However, Mr. Toll testified that such a change was not feasible because the line was already operated at 138 kV. TE, Vol. I at 232.

for this transformer would be approximately \$1.4 million.⁹⁴ That estimate was based upon KU's recent actual experience with the installation of similar transformers.⁹⁵

When all of Mr. Jones' errors were corrected, and the cost estimate was stated in 2009 dollars, the correct estimate for alternative D-1 is \$9.74 million dollars, compared to \$7.9 million estimated for KU's proposal.⁹⁶ In other words, in directly comparable terms, alternative D-1 is estimated to cost nearly 25% more than KU's proposed Tyrone to West Frankfort Line.⁹⁷ Mr. Jones was questioned about his errors, and KU's correction of those errors as set forth on KU Hearing Exhibit 3, during cross examination. Mr. Jones candidly admitted that he had made certain incorrect assumptions, and stated that he did not "have any evidence to contradict" the corrected cost estimates provided by KU and set forth on KU Hearing Exhibit 3.⁹⁸

As noted above, there is no dispute that KU's transmission facilities, as they presently exist in Franklin, Woodford and Anderson counties, are not sufficient to support the integration of TC2 into the transmission system. KU evaluated all available options for meeting the need for further transmission facilities in the area, including the use of existing transmission facilities and the location of new facilities in existing utility corridors, and concluded that the best option is the construction of a new 138 kV line in a location which utilizes nearly five (5) miles of existing right-of-way. While the Citizens have proposed an alternative to that construction, it is clear that the alternative is electrically inferior to, and more expensive than, the line proposed by KU. For those reasons, the Tyrone to West Frankfort Line would result in neither an unnecessary multiplicity of facilities nor an excessive investment in relation to productivity or efficiency.

⁹⁴ *Id.* at 232-33.

⁹⁵ *Id.*

⁹⁶ *Id.* at 202; KU Hearing Exhibit 3. The corrected estimate for alternative D-2, which was presented but not recommended by Mr. Jones, is \$14.6 million. KU Hearing Exhibit 3.

⁹⁷ *Id.* at 202; KU Hearing Exhibit 3.

⁹⁸ *Id.* at 268-70, 274-75.

Accordingly, the Commission should find that construction of the Tyrone to West Frankfort Line would not create a wasteful duplication of facilities and, in conjunction with the finding of need discussed above, should grant KU the CCN requested in the Application.

II. THE COMMISSION SHOULD ALLOW FOR KU TO MAKE UNSUBSTANTIAL ROUTE ADJUSTMENTS, WITHIN THE CORRIDOR PROPOSED, AS NEEDED DURING FINAL PLANNING AND CONSTRUCTION

KU has presented the Commission with a map outlining the proposed route for the Tyrone to West Frankfort Line.⁹⁹ Although KU fully intends to construct the line as depicted on that map, it has requested that the Commission provide flexibility in any order granting a CCN for the Tyrone to West Frankfort line, so that KU may “make unsubstantial modifications to the route chosen if conditions justify or compel such modifications without the need for further orders from the Commission.”¹⁰⁰

At the hearing, Mr. Johnson explained that KU was seeking such flexibility so that it could make “reasonable accommodations” for property owners once actual field surveys determine the specific locations of proposed structures.¹⁰¹ In addition, the requested flexibility will also aid KU in working with other agencies to avoid or mitigate any adverse impacts on the environment or historic properties which might be identified through the completion of any required environmental, historical or cultural resource studies and related surveys.

KU’s request for flexibility is consistent with the Commission’s statutory authority over the siting of transmission lines. Although KRS 278.020, as recently amended, is silent with regard to the Commission’s authority as to the exact location of a new transmission line, it does require that landowners, over whose property the proposed line would cross, be notified of, and

⁹⁹ Exhibit JNM-1.

¹⁰⁰ TE, Vol. I at 149; Mullins Direct at 7.

¹⁰¹ TE, Vol. I at 99-100.

given the opportunity to participate in, transmission CCN proceedings before the Commission. It is thus apparent that the Commission, by necessity or fair implication, has the authority to approve or deny routing of a proposed line within a specific corridor of affected landowners. On the other hand, however, there is nothing within the grant of authority to the Commission which mandates, or even authorizes, approval of a transmission line to a level of absolute precision on any given parcel of affected land.¹⁰²

KU acknowledges the need for certainty in the Commission's orders, and concedes that, without additional Commission authorization, it would not be able to make any modifications which would result in a routing of the line onto the properties of landowners other than those identified and provided notice of this proceeding as set forth in KU's Application.¹⁰³ However, it will certainly further the interests of administrative efficiency if KU is given flexibility, within the corridor of properties identified in the Application, to make unsubstantial modifications to the proposed line as its design is finalized. For that reason, the requested flexibility should be granted.

III. THE COMMISSION SHOULD REJECT THE CITIZENS' REQUEST TO EXPAND ITS JURISDICTION AND UNDERTAKE REGULATION PURSUANT TO FEDERAL LEGISLATION

At the beginning of the hearing in this proceeding, counsel for the Citizens argued that this Commission should begin to expand its jurisdiction to review matters of environmental, historical or cultural relevance pursuant to federal law.¹⁰⁴ Specifically, counsel cited to a Tenth Circuit Court of Appeals case as recognizing what counsel labeled "widely-accepted precedent" holding that a "commission must consider all factors bearing on the public interest, not simply

¹⁰² Croke v. Pub. Serv. Comm'n, 573 S.W.2d 927, 929 (Ky. App. 1978) (recognizing that, as a creature of statute, the PSC "has only such powers as are conferred expressly or by necessary or fair implication").

¹⁰³ TE, Vol. I at 100-01; Application, ¶ 12.

¹⁰⁴ The actual argument came from counsel for Dennis and Cathy Cunningham (the "Cunninghams"), intervenors in Case No. 2005-00142, but was adopted by counsel for the Citizens. TE, Vol. I at 11-12, 18-22.

those immediately relating to the objects of this jurisdiction” in ruling upon an application for a CCN.¹⁰⁵ However, the “commission” referred to in that case, and in others cited by the Citizens, is the Federal Energy Regulatory Commission (“FERC”), not this Commission, and the cited case involved a natural gas line as opposed to a transmission line.¹⁰⁶ Not a single one of the federal cases cited by the Citizens in any way deals with the jurisdiction of this Commission.¹⁰⁷ That jurisdiction, of course, is well-defined under state law, and does not in any way authorize the Commission to address environmental, historical or cultural issues in ruling upon whether a proposed project will serve the public convenience and necessity.¹⁰⁸

The Citizens also offered the testimony of Ms. Brother to suggest that KU may have to comply with the National Historic Preservation Act, 16 U.S.C. § 470, et seq. (“NHPA”) and that this Commission should take that potential compliance into its consideration of this case.¹⁰⁹ Of course, as discussed at p. 5, *supra*, KU intends to fully comply with NHPA and any other federal laws, to the extent required, before commencing construction of the proposed line. Indeed, KU has already commenced the process of consulting with the relevant state and federal agencies and undertaking appropriate environmental, historical and cultural studies and related surveys for the Tyrone to West Frankfort Line, to the extent such are required.¹¹⁰ More detailed surveys requiring access to the properties in question will be undertaken after issuance of a CCN.¹¹¹

¹⁰⁵ *Id.* at 20-21. The case being referred to is Cascade Nat. Gas Corp. v. Federal Energy Reg. Comm’n, 955 F.2d 1412 (10th Cir. 1992).

¹⁰⁶ Cascade, 955 F.2d 1412.

¹⁰⁷ The other cases cited by the Citizens are Federal Power Comm’n v. Transcontinental Gas Pipe Line Corp., 365 U.S. 1 (1961); United States v. Detroit & Cleveland Navigation Co., 326 U.S. 236 (1945); and Henry v. Federal Power Comm’n, 513 F.2d 395 (D.C. Cir. 1975).

¹⁰⁸ Kentucky Utilities Co., 252 S.W.2d at 890. A more detailed discussion of the Commission’s authority in this proceeding is set forth at p. 6, *supra*.

¹⁰⁹ Direct Testimony of Janie Rice Brother at 2-3.

¹¹⁰ Mullins Direct at 2.

¹¹¹ *Id.* at 2-3. *See also* TE, Vol. I at 68-69.

Those issues, however, are not properly raised here, as the Commission has not been empowered by either the Kentucky General Assembly or the U.S. Congress to enforce the NHPA.¹¹²

Because the Commission is a creature of statute, it cannot act outside the bounds of its statutory authority as expressly conferred or arising therefrom by necessary or fair implication.¹¹³

The only statutes which the Commission is empowered to enforce are those found within the provisions of KRS Chapter 278, and that Chapter contains no delegation of power authorizing the Commission to address NHPA claims.¹¹⁴

It is also well recognized in other jurisdictions that the express authority to regulate utility rates and services does not authorize a commission to consider issues such as those raised by the Citizens:

The jurisdiction of the P.U.C. is derived from the powers conferred by §16-243 of the General Statutes. That section confers on the P.U.C. exclusive jurisdiction over ‘technical matters such as the quality and finish of the materials, wires poles, conductors, fixtures and the method of their use.’ (citation omitted). This section does not expressly or by implication require the commission to consider the environmental, recreational or aesthetic impact of its findings and order.¹¹⁵

¹¹² See KRS 278.040; 42 U.S.C. §4331; 16 U.S.C §470f.

¹¹³ Croke, 573 S.W.2d at 929. See also City of Olive Hill v. Public Service Commission, 305 Ky. 248, 203 S.W.2d 68, 71 (1947) (stating that “[t]he manifest purpose of a public service commission is to require fair and uniform rates, prevent unjust discrimination and unnecessary duplication of plants, facilities and service and to prevent ruinous competition”); Public Service Commission v. Blue Grass Natural Gas Co., 303 Ky. 310, 197 S.W.2d 765, 768 (1946) (recognizing that the Commission’s powers are “clearly and unmistakably limited to the regulation of rates and service of utilities”).

¹¹⁴ See KRS 278.040(1) (“The Public Service Commission shall regulate utilities and enforce the provisions of this chapter”). See also City of Catlettsburg v. Public Service Commission, 486 S.W.2d 62, 63 (Ky. 1992) (Commission has no jurisdiction to determine whether the statutes governing municipalities empower such entities to operate a water system).

¹¹⁵ City of New Haven v. Public Utilities Commission, 345 A.2d 563, 579 (Conn. 1974). See also Country Place Waste Treatment Co. v. Pennsylvania Public Utility Commission, 654 A.2d 72, 75 (Pa. 1995) (holding that the state commission had no jurisdiction to address complaint that sewage treatment plant was emitting offensive odors); Massachusetts Electric Co. v. Department of Public Utilities, 643 N.E.2d 1029, 1033 (Mass. 1994) (recognizing that the “department does not have responsibility for the protection of the environment.”); Borough of Moosic v. Pennsylvania Public Utility Commission, 429 A.2d 1237, 1240 (Pa. 1981) (providing that the Pennsylvania Commission is not empowered to consider the environmental impact which might result from permitting a public utility to transfer property to a grantee outside the commission’s administrative control).

Likewise, the NHPA does not purport to expand the Commission's powers to include a consideration of the federal policies embodied therein. Instead, that statute is directed at federal agencies and imposes no obligations whatsoever on state utility commissions.¹¹⁶ And, in fact, Congress would be barred by the Tenth Amendment to the United States Constitution from attempting to impose upon the Commission any obligation to enforce the federal policies set forth in the NHPA.¹¹⁷

This Commission's jurisdiction is established by Kentucky law, and there is no authority for the Commission to consider environmental, historical or cultural matters in ruling upon KU's Application in this proceeding. Moreover, the NHPA is to be interpreted and applied by federal, and not state, agencies. For all of those reasons, the Commission must reject the Citizens' request that it expand its authority in this proceeding.¹¹⁸

IV. KU'S REQUEST FOR A CCN IS PROPER AT THIS TIME AND THE CITIZENS' MOTION TO DISMISS SHOULD BE DENIED

On the morning of the first day of the evidentiary hearing in this matter, the Citizens filed their second motion to dismiss this case, claiming that KU's Application is not ripe for decision

¹¹⁶ Ely v. Velde, 451 F.2d 1130, 1139 (4th Cir. 1971) (holding that "NHPA ... impose[s] no duties on the states and operate only upon federal agencies"). See also The Woonsocket Historical Society v. City of Woonsocket, 387 A.2d 530, 532 (R.I. 1978) (recognizing that NHPA's "mandate is directed towards heads of federal agencies and departments, not toward state or municipal officers"). In fact, NHPA was "designed to assure to the fullest extent possible that the expenditure of federal funds would not ... adversely affect property which has been officially designated as historically or architecturally significant." Because the Tyrone to West Frankfort Line does not involve the expenditure of any federal funds, there is no legitimate argument that this Commission, in reviewing KU's Application, is acting in partnership with the federal government and thus has been empowered to enforce federal policies.

¹¹⁷ See Petersburg Cellular Partnership v. Board of Supervisors of Nottoway County, 205 F.3d 688, 702 (4th Cir. 2000) (stating that the "Tenth Amendment categorically bars the federal government from compelling state and local governments to administer a federal regulatory program"); Environmental Defense Center, Inc. v. United States Environmental Protection Agency, 344 F.3d 832, 847 (9th Cir. 2003), cert. denied, 124 S. Ct. 2811 (2004) (recognizing that under "the Tenth Amendment, 'the Federal Government may not compel States to implement, by legislation or executive action, federal regulatory programs'"). Congress may of course use its spending powers to encourage the state to follow federal programs without violating the Tenth Amendment. West Virginia v. U.S. Department of Health and Human Services, 289 F.3d 281, 296 (4th Cir. 2002). Again, though, no federal funds are at issue here.

¹¹⁸ See Boone County Water and Sewer District v. Public Service Commission, 949 S.W.2d 588, 591 (Ky. 1997) (holding that as a statutory agency of limited authority, the PSC cannot add to its enumerated powers).

by this Commission because various federal laws possibly require KU to obtain permission before actually constructing the transmission line in question. In other words, the Citizens argue that, until those other permits have been obtained, the Commission cannot properly rule in this case.¹¹⁹

The Citizens' motion was not original, but rather adopted and incorporated by reference the third motion to dismiss filed by the Cunninghams, intervenors in Case No. 2005-00142. Accordingly, as a response to the Citizens' second motion to dismiss, KU adopts and incorporates herein by reference the response of KU and LG&E to the Cunninghams' third motion to dismiss, which response will be filed in the record in Case No. 2005-00142 on or before August 26, 2005 in accordance with the briefing schedule established by the Commission in that proceeding.¹²⁰ For all of the reasons set forth in that response, the Citizens motion to dismiss should be dismissed and the Commission should rule on the merits of KU's Application in this proceeding.

CONCLUSION

There is no dispute that KU's existing transmission facilities in Franklin, Woodford and Anderson counties are inadequate to support the integration of TC2 into the transmission system. There is a dispute, however, regarding the best way to meet the need for additional transmission facilities in those counties.

KU has presented the Commission with detailed studies which establish that the most reasonable, least-cost method for meeting that need is through construction of the Tyrone to West Frankfort Line, utilizing both existing and new utility corridors, and that conclusion is

¹¹⁹ Although the Commission heard oral argument on the Motion to Dismiss from counsel on beginning of the July 26, 2005 evidentiary hearing, the Commission permitted the Companies to respond in writing to the Motion to Dismiss within this post-hearing brief in light of the timing of the Citizens' filing.

¹²⁰ The undersigned counsel discussed this procedure with counsel of record for the Citizens, and then with Counsel for Commission Staff, both of whom indicated they had no objection to this procedure.

supported by the Commission's consultant in this proceeding. While the Citizens, through their witness, Mr. Jones, contended that an upgrade of existing facilities would be preferable to construction of the Tyrone to West Frankfort Line, the evidence at the hearing revealed that the alternative proposed by the Citizens would not meet the same engineering needs as, and is more expensive than, KU's proposed line.

It is clear, therefore, that construction of the Tyrone to West Frankfort Line is required by the public convenience and necessity, as set forth in KRS 278.020 and applicable case law, and the requested CCN should be granted for that reason. In addition, in order to provide for greater flexibility in working with landowners and other agencies, and to minimize further administrative proceedings before this Commission, KU should be given the authority to make unsubstantial modifications to the route of the Tyrone to West Frankfort Line as final line design is completed through actual field surveys.

Accordingly, KU respectfully requests that the Commission enter an order providing the following relief:

1. Finding that a need exists for additional transmission facilities in Franklin, Woodford and Anderson counties in connection with the addition of a new baseload generating unit at the Trimble County Generating Station ("TC2") beginning in 2010;
2. Finding that construction of a 138 kV transmission line, approximately 12.4 miles in length and running from KU's Tyrone Substation in Woodford County, through parts of Anderson County, to KU's West Frankfort substation in Franklin County (the "Tyrone to West Frankfort Line") is the most reasonable, least-cost resource

for meeting KU's transmission needs in Franklin, Woodford and Anderson counties in connection with the construction of TC2;

3. Finding that construction of the Tyrone to West Frankfort Line as proposed by KU in this proceeding will serve the public convenience and necessity;
4. Granting KU a CCN for the Tyrone to West Frankfort Line as proposed in this proceeding; and
5. Allowing KU the flexibility to make unsubstantial modifications to the specific route of the Tyrone to West Frankfort line, within the corridor of properties identified in KU's Application, without the need to seek any further approval from this Commission.

Dated: August 23, 2005

Respectfully submitted,



J. Gregory Corbett
Ogden Newell & Welch PLLC
1700 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
Telephone: (502) 582-1601

Robert M. Watt, III
Lindsey W. Ingram, III
Stoll, Keenon & Park, LLP
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507
Telephone: (859) 231-3000

Elizabeth L. Cocanougher
Senior Corporate Counsel
Louisville Gas and Electric Company
220 West Main Street
Post Office Box 32010
Louisville, Kentucky 40232

Counsel for Kentucky Utilities Company

CERTIFICATE OF SERVICE


This is to certify that the foregoing Post-Hearing Brief has been served by mailing a copy of same, via U.S. mail, postage prepaid, to the following persons on this 23rd day of August 2005:

Mike Cannata
Senior Consultant
Liberty Consulting Group
65A Ridge Road
Deerfield, NH 03037

Laurie K. Dudgeon
Robert C. Moore
Hazelrigg & Cox, LLP
415 West Main Street
Post Office Box 676
Frankfort, KY 40602

Mark Lautenschlager
Senior Consultant
819 Chipaway Drive
Apollo Beach, FL 33572

Donald T. Spangenberg, Jr.
Project Manager
Liberty Consulting Group
633 Fairfax Street
Denver, CO 80220



Counsel for Kentucky Utilities Company