

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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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 161 kV ELECTRIC ) **2005-00207**  
TRANSMISSION PROJECT IN BARREN, WARREN, )  
BUTLER, AND OHIO COUNTIES, KENTUCKY )

**MOTION FOR AN ORDER DECLARING AND AFFIRMING THE  
COMMENCEMENT DATE OF THE ONE-YEAR PERIOD WITHIN WHICH  
CONSTRUCTION MUST BEGIN UNDER THE CERTIFICATE OF  
CONVENIENCE AND NECESSITY**

Comes the Applicant, East Kentucky Power Cooperative, Inc., and moves the Commission for an Order declaring that the one-year period within which construction must begin under the Certificate of Convenience and Necessity issued herein on October 31, 2005, begins to run only after receipt by the Applicant of all environmental and other approvals required under state and federal law.

The last sentence of KRS 278.020(1) states that:

“Unless exercised within one (1) year from the grant thereof, exclusive of any delay due to the order of any court or failure to obtain any necessary grant or consent, the authority conferred by the issuance of the certificate of convenience and necessity shall be void, but the beginning of any new construction or facility in good faith within the time prescribed by the commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate.”

The language is clear that the one-year period within which construction must begin is “exclusive of”, or, *inter alia*, “in addition to” the period of time necessary for the

Applicant to obtain the governmental or other approvals required by law before any construction may begin.

Applicant's Response to Item 13 of the Commission's First Data Requests identifies the federal environmental requirements with which the Applicant must comply before beginning construction of this project. These laws and regulations include the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA) and the regulations of the United States Department of Agriculture, Rural Utilities Service (RUS) for implementation of these laws contained in 7 CFR Part 1794. These laws and regulations require the preparation and approval of an Environmental Assessment, the issuance of a Findings of No Significant Impact (FONSI), and approvals pursuant to Section 106 of the NHPA, all to be made by RUS. While the Applicant has been diligently pursuing these requirements, the necessary approvals have not yet been obtained, nor has RUS issued a FONSI, (see Affidavit of Mary Jane Warner attached hereto and made a part hereof). Under law, the Applicant cannot begin the construction of the project until these approvals have been received. The process for issuance of these approvals has been ongoing for eighteen (18) months and continues to this date with the Intervenor, the Tichenor's, the Perkins', and Colliver's participating as Consulting Parties.

Pursuant to the language of KRS 278.020(1), the one-year period within which the Applicant must begin construction of the project is exclusive of the time it takes to obtain these approvals, and will begin only after these approvals have been granted.

Accordingly, for purposes of clarification and affirmation, the Applicant is requesting that the Commission issue an Order so stating. This is not a motion for an

extension of the one-year period, since this one-year period is essentially tolled until receipt by the Applicant of all necessary grants and approvals.

Wherefore, the Applicant respectfully requests that the Commission issue an Order affirming that the one-year period set forth in KRS 278.020(1) within which the Applicant must begin construction of the project is exclusive of the period of time necessary to acquire all approvals required for construction and will begin to run upon receipt by the Applicant of such approvals.

Respectfully submitted,

DALE W. HENLEY



SHERMAN GOODPASTER III  
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 a true and correct copy of the foregoing was filed and that the original and 10 copies have been mailed this day to the Commission and served herein by mailing such copy thereof via U.S. Mail, first-class postage prepaid to the Honorable AW Turner, Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, KY 40602; and to each person designated on the official service list compiled by the Secretary for this proceeding, this the 30th day of October 2006.



SHERMAN GOODPASTER III

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

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THE APPLICATION OF EAST KENTUCKY	)
POWER COOPERATIVE, INC. FOR A CERTIFICATE	)
OF PUBLIC CONVENIENCE AND NECESSITY FOR	) <b>CASE NO</b>
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TRANSMISSION PROJECT IN BARREN, WARREN,	)
BUTLER, AND OHIO COUNTIES, KENTUCKY	)

**AFFIDAVIT OF MARY JANE WARNER**

Comes the Affiant, Mary Jane Warner, and after having been duly sworn, states as follows:

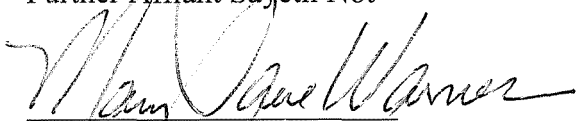
1. That before the Applicant can begin construction of the Warren transmission project for which a Certificate of Convenience and Necessity was received from the Commission on October 31, 2005, approvals must be received from the United States Department of Agriculture, Rural Utilities Service, ("RUS") which include approvals pursuant to Section 106 of the National Historic Preservation Act, approval of an Environmental Assessment pursuant to the National Environmental Policy Act and the issuance by RUS of a Finding of No Significant Impact ("FONSI"), in addition to permits for highway crossings, etc.

2. That as of the date of this Affidavit, these approvals and permits have not been received nor has a FONSI been issued, and it is not anticipated that these approvals, permits, and issuances will be received for several more months.

3. That the process to obtain these approvals and issuances has been ongoing for some eighteen months (since May of 2005), and is proceeding this date with the

Intervenors, the Tichenors, the Perkins and the Collivers as Consulting Parties, among others.

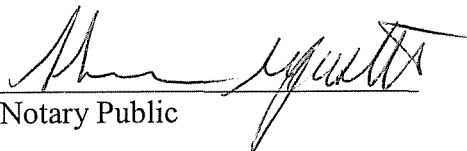
Further Affiant Sayeth Not

  
MARY JANE WARNER

STATE OF KENTUCKY )  
  )  
COUNTY OF CLARK    )

Subscribed and sworn before me by Mary Jane Warner on this 27<sup>th</sup> day of October, 2006,

My Commission expires: October 28, 2010

  
Notary Public