

**COMMONWEALTH OF KENTUCKY**

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**BEFORE THE PUBLIC SERVICE COMMISSION**

OCT 18 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 161 kV ELECTRIC ) **2005-00207**  
TRANSMISSION LINE IN BARREN, WARREN, )  
BUTLER, AND OHIO COUNTIES, KENTUCKY )

**PROPOSED ORDER SUBMITTED BY EAST KENTUCKY POWER**

This matter is before the Commission on the application of East Kentucky Power Cooperative, Inc. (“East Kentucky Power”) for a Certificate of Public Convenience and Necessity (“CPCN”) to construct a 97.55 mile 161 kV transmission line through Barren, Warren, Butler and Ohio counties. The proposed transmission facilities will allow East Kentucky Power to provide electric service to Warren Rural Electric Cooperative Corporation (“WRECC”) when it becomes a member of East Kentucky Power. WRECC will cease to be a Tennessee Valley Authority (“TVA”) distributor and will become a member of East Kentucky Power as of April 1, 2008. As such, WRECC will come under the jurisdiction of the Commission as a Retail Electric Supplier, and East Kentucky Power will have the obligation to provide electric power and energy as well as transmission service to WRECC. However, the Commission has no authority to review the reasonableness of the decision by WRECC to become a member of East Kentucky Power.

Currently, WRECC, as a TVA distributor, is being provided transmission service by TVA and East Kentucky Power has requested that TVA provide transmission service

to East Kentucky Power over TVA's existing transmission system so that East Kentucky Power can provide power and energy to WRECC. As TVA has refused to provide this transmission service to East Kentucky Power, and the Federal Energy Regulatory Commission does not have the authority under the Federal Power Act to order TVA to provide such transmission service, East Kentucky Power has requested a CPCN to build these transmission facilities in order to fulfill its obligation to transmit power and energy to WRECC. To ensure that there are no adverse impacts to East Kentucky Power's existing cooperatives, the agreement with WRECC requires WRECC to pay the incremental costs of the generation and transmission needed to serve its load.

On September 13, 2005, the Commission granted East Kentucky Power a CPCN and a site compatibility certificate to construct a 278 MW CFB generating unit, known as Spurlock 4, at its Spurlock Station in Maysville, Kentucky. This unit will provide the generation required to serve the projected load to WRECC in 2008.

The projected cost of the proposed transmission facilities to WRECC is Fifty Million Seven Hundred Thousand Dollars (\$50,700,000.00) in 2008 dollars. The General Assembly amended KRS 278.020 in 2004 to require that a utility obtain a CPCN before constructing any electric transmission line of 138 kilovolts or more and of more than 5,280 feet in length.

### **PROCEDURAL BACKGROUND**

East Kentucky Power submitted its application to the Commission on July 1<sup>st</sup>, 2005. The Commission entered procedural Orders on July 12, July 14, August 4 and

August 19, 2005, setting, among other deadlines, dates for interventions, the filing of testimony, and public hearings. The July 12, 2005 Order also extended the time for the Commission to process the case from 90 to 120 days, pursuant to KRS 278.020(8). The Commission granted full intervention to Big Rivers Electric Corporation, John H. Colliver, Joey Roberts, Hugh Hendrick, Carroll and Doris Tichenor and H.H. Barlow, III. Only Joey Roberts, Carroll and Doris Tichenor, John H. Colliver and H.H. Barlow III (collectively the “Intervenors”) participated actively in the case.

Pursuant to the Commission’s procedural schedule, set in the order dated July 12, 2005, East Kentucky Power, the Commission Staff and the Intervenors engaged in discovery. On or about September 8, 2005, the Intervenors’ Carroll Tichenor, Doris Tichenor, John Colliver, and H.H. Barlow, filed a Motion to Compel responses to its Data Requests. Thereafter, East Kentucky Power filed its response to said motion, and this matter came before the Commission on the first day set for evidentiary hearing in this case, on September 13, 2005. At the hearing on said motion, the Commission heard arguments from counsel for the Intervenors and East Kentucky Power on each data request that was addressed in the motion to compel. On that same day, the Commission ruled orally on each item addressed in the Intervenors’ motion to compel and entered its order in accordance with those rulings.

The Commission’s consideration of the need for the proposed transmission line included a review of the East Kentucky Power engineering studies and data. In addition, the Commission retained ICF Resources, LLC (“ICF”) pursuant to KRS 278.020(8) to evaluate East Kentucky Power’s proposal and issue a report to the Commission. ICF filed its report analyzing East Kentucky Power’s proposal on August 15, 2005 wherein it

concluded with East Kentucky Power's selection of the 161 kV transmission facilities that forms the basis of this CPCN proceeding to provide service to WRECC.

The Commission held a local public hearing on Tuesday, September 6, 2005 at 6 p.m., in Bowling Green, Kentucky, attended by a large group of people, including representatives of East Kentucky Power. Over forty (40) members of the public, including Gerald Hayes, President and CEO of WRECC, gave oral comments to the Commission. Mr. Hayes identified the economic benefits from membership in East Kentucky Power, including the retention in Kentucky of over seventy-seven million dollars (\$77,000,000.00) in annual wholesale electric revenues. The Commission held an evidentiary hearing at its offices in Frankfort, Kentucky on September 13, 2005 and September 20 and 21, 2005.

### **PROCEDURAL ISSUES**

The Intervenor's Carroll Tichenor, Doris Tichenor, John Colliver, and H.H. Barlow filed a Motion to Dismiss the Application of East Kentucky Power. In their motion, the Intervenor's argued that East Kentucky Power's Application should be dismissed for three specific reasons. First, they argued that the 2004 Amendments to KRS 278.020 "nullified" and "voided" the holdings in Satterwhite v. Public Service Commission, 474 S.W.2d 387 (Ky. 1971), and Duerson v. East Kentucky Power Cooperative, 843 S.W.2d 340 (Ky. App. 1992), respectively, and that the Commission is now compelled to consider the "public interest" in supporting a decision to grant, deny, or condition a Certificate of Public Convenience and Necessity. While the Intervenor's do

not offer their definition of “public interest,” they suggest that the Amendments to KRS 278.020 require the Commission to consider all factors bearing on the public interest, including environmental impacts. They further argue that because East Kentucky Power’s application did not provide sufficient information that established consideration of environmental factors, the Commission cannot clearly state the basis for its approval or denial of the application and, therefore, the application should be dismissed.

The Commission finds no support in KRS 278.020, or its amendments, for the Intervenors’ position. The issues to be decided in an application for a CPCN to construct facilities are: (1) whether the facilities are needed and (2) whether the construction will result in a wasteful duplication of facilities. E.g. Kentucky Utilities Company v. Public Service Commission, 252 S.W. 2d 885 (Ky. 1952). The amendments to KRS 278.020 in 2004 did not expand those issues; nor did they restrict those issues. The issue of the “need” for the East Kentucky Power transmission facilities will be discussed later. At this juncture, the Commission notes that the issue of necessity was fundamentally uncontested at the evidentiary hearing on the application. As counsel for the Intervenors stated, “...The question of necessity, given your ruling on Mr. Roberts’ subpoena that we received today, would seem to be answered, to a certain extent, by WRECC’s decision to not use TVA after 2008. So, the duplication of services is the primary issue that you need to consider.” (Transcript of Evidence (“TE”), Vol. II, p. 7). It is in the context of the second prong of the issues to be decided in an application for a CPCN that the Intervenors’ first argument in support of their motion to dismiss is considered.

While we agree that the 2004 amendments to KRS 278.020 legislatively overruled a portion of the Court’s holding in the case of Satterwhite v. Public Service Commission,

supra, by specifically declaring that an owner of property crossed by a proposed transmission line was to be deemed an “interested party” who could intervene in a transmission certificate case, the legislation did not overrule that other component of the Court’s holding that declared that the Commission’s jurisdiction was limited to adequacy of service, economic feasibility, wasteful duplication and financial ability. In addition, to the extent that the amendments to KRS 278.020 also require utilities to seek and obtain a CPCN for 138 kV lines or greater (and of more than 5,280 feet in length), those amendments also legislatively overruled that particular holding in Duerson v. East Kentucky Power Cooperative. Accordingly, the Intervenors, as owners of property crossed by the proposed transmission line, are interested parties who can appropriately and actively participate in the certification process and hearing. However, as noted, the jurisdiction of the Commission in a transmission line certification case is limited to adequacy of service, economic feasibility, wasteful duplication and financial ability. Satterwhite, at p. 389.

The Intervenors have argued that the Commission should expand its jurisdiction to review matters of environmental, historical, archaeological, or cultural relevance. They further argue that because East Kentucky Power has not provided sufficient information on which to evaluate these factors, the Commission cannot clearly state the basis for its approval or denial of the application and, therefore, the application should be denied. The Commission disagrees. As was stated at the hearing on this matter, the Commission does not have jurisdiction to address environmental, historical, archaeological, or cultural issues in determining whether a proposed project will serve the public convenience and necessity. Those issues all involve federal requirements,

administered by federal agencies, with input from state agencies, pursuant to federal laws and regulations. East Kentucky Power established at the hearing that those environmental review processes were ongoing and will be independently scrutinized by federal authorities.

Second, the Intervenors contend that East Kentucky Power's Application should be dismissed because it is premature. They contend that East Kentucky Power has not obtained all necessary permits from local, state, and federal regulatory authorities pertaining to environmental, historical, and other factors. They further contend that East Kentucky Power has chosen the route for its proposed transmission line without first inviting comments and participation of parties as required by Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470 et seq. ("NHPA"). Intervenors further contend that the proposed line will adversely affect local farm operations throughout the proposed corridor and that East Kentucky Power has failed to perform assessments, investigations, and studies in accordance with the National Environmental Policy Act ("NEPA") prior to filing its Application at the Commission.

The Commission likewise finds no support in KRS 278.020 for this position. That statutory section is silent as to any requirement for a regulated utility to obtain all necessary permits from local, state, and/or federal authorities, whether those permits are related to environmental, historical, archaeological, or any other relevant public interest factors, prior to filing an application for a certificate for construction. The absence of such a provision in KRS 278.020 is significant. The Commission finds that it does not have the authority to require East Kentucky Power to obtain any other permits prior to filing its application with the Commission. Moreover, the Commission is not empowered

by the General Assembly of the Commonwealth of Kentucky nor the United States Congress to enforce either NHPA or NEPA. See KRS 278.040; 42 U.S.C. § 4331; 16 U.S.C. § 470(f). The Commission is further satisfied that the testimony at the evidentiary hearing firmly established that East Kentucky Power has already, is currently, or fully intends, to comply with all required regulatory processes with respect to those factors bearing on the public interest such as environmental, historical, archaeological, and cultural issues.

With respect to the Intervenors' contention that the proposed transmission facilities will adversely affect local farm operations throughout the proposed corridor, the Commission, as will be addressed in further detail below, is satisfied that East Kentucky Power has responded in good faith, or has been readily available for response, to such issues as stray voltage, electrical interferences to GPS receivers, and other similar issues and complaints registered by customers.

Third, the Intervenors argue that because East Kentucky Power's Application failed to contain a full environmental analysis prior to its filing with the Commission, that it is not ripe for the Commission's consideration. Intervenors allege that East Kentucky Power's obligation arises from NEPA. As East Kentucky Power points out, NEPA is a federal law, administered by federal agencies, and imposes no obligations on any state utility commission, including this Commission. "NHPA and NEPA, by their very language, impose no duties on the states and operate only upon federal agencies." Ely v. Velde, 451 F.2d 1130, 1139 (4<sup>th</sup> Cir. 1971). See also, Town of North Hempstead v. Village of North Hills, 482 F.Supp. 900, 903 (E.D. N.Y. 1979) ("NEPA, however, by its express language operates only upon federal agencies, and imposes no duties on the



States or on municipalities.”). While it is true that East Kentucky Power will receive financing for this project from the Rural Utilities Service, that is not sufficient in and of itself to trigger any requisite environmental assessments prior to filing its Application at this Commission pursuant to federal or state law. The Commission is satisfied that East Kentucky Power will comply with all federal environmental requirements in due course by the proper agencies prior to commencing construction of the project.

For the foregoing reasons, the Commission hereby denies the Intervenors’ Motion to Dismiss.

### **CPCN STANDARD**

The issues to be decided in an application for a CPCN to construct facilities are (1) whether the facilities are needed and (2) whether the construction will result in a wasteful duplication of facilities. E.g., Kentucky Utilities Company v. Public Service Commission, 252 S.W.2d 885 (Ky. 1952).

### **NEED FOR ADDITIONAL TRANSMISSION**

While a few members of the public at the local public hearing questioned whether the line is needed, no Intervenor either in prepared testimony or at the evidentiary hearing presented any evidence that the line is not needed.

The Commission notes that as the source of power supply for WRECC, TVA currently has existing transmission lines that are able to provide sufficient transmission

service to serve WRECC's existing load, and these lines could be utilized by East Kentucky Power to provide power supply to WRECC.<sup>1</sup> However, TVA has refused to provide East Kentucky Power with the requested transmission service in order to serve WRECC's load,<sup>2</sup> and pursuant to Section 212(j) of the Federal Power Act (16 USCS § 824 (J)), the Federal Energy Regulatory Commission ("FERC") cannot require TVA to provide such transmission to East Kentucky Power. While the Commission regrets TVA's decision not to provide transmission service, it must recognize the limitations on its own jurisdiction over such matters as well as the statutory limitations imposed upon FERC. As a result, the Commission finds that East Kentucky Power needs to construct additional transmission facilities to connect its facilities to those of WRECC in order to provide power supply to WRECC by April 1, 2008.

East Kentucky Power employed the services of Commonwealth Associates, Inc. ("CAI") as an engineering consultant to assist East Kentucky Power in the selection of an electrical alternative to connect the East Kentucky Power and WRECC systems. East Kentucky Power conducted a preliminary review of several electrical alternatives to accomplish this<sup>3</sup> before selecting a 161 kV connection from East Kentucky Power's Barren County Substation to Warren load centers at Magna, Bristow, GM, East Bowling Green, Memphis Junction and Aberdeen and then proceeding on to Big Rivers Electric Cooperative's ("BRECC") Wilson Substation. CAI conducted power flow studies, short circuit analysis and transient stability studies, monitoring voltages up to two buses away

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<sup>1</sup> Prepared Testimony of Paul C. Atchison, Question 7; Transcript of Evidence, Volume 2, pp. 126 L. 18-25 and 127 L. 1-4.

<sup>2</sup> Atchison Prepared Testimony, Question's 9 and 10; T.E., V.2, p. 127, L. 5-16.

<sup>3</sup> Applicant's Response to Commission Staff's First Data Request, Item 10.

for a total of 2841 buses in 27 control areas.<sup>4</sup> The Midwest Independent System Operator (“MISO”) also performed an independent analysis, presumably reviewing facilities owned by MISO members, using its own models and contingency lists.<sup>5</sup> Additionally, Louisville Gas and Electric Energy (“LGEE”), TVA and BRECC were all either a participant in these studies or were periodically updated on the results of the studies by CAI and East Kentucky Power.<sup>6</sup>

The Commission’s Consultant employed in this case, ICF, determined that the selection of this 161 kV transmission option was the most favorable electrical solution,<sup>7</sup> and the Commission so finds.

The Commission notes that the East Kentucky Power plan also includes three interconnections with the TVA transmission system at the existing East Bowling Green and Memphis Junction substations and at the proposed Salmons substation. Several questions were asked of East Kentucky Power witnesses about these interconnections and the power flows through them. The evidence establishes that these interconnections are separate from the 161 kV transmission line for which a certificate is requested and do not affect the need for this line.<sup>8</sup> The Commission also takes notice that in the FERC Case of East Kentucky Power Cooperative, Inc., Docket Nos. TX05-000, TX05-001 and TX05-002, FERC has issued Orders requiring TVA to provide the three interconnections as requested by East Kentucky Power.<sup>9</sup>

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<sup>4</sup> EKPC Response to Staff Data Request, Item 8.

<sup>5</sup> Id.

<sup>6</sup> EKPC Response to Staff Data Request, Items 1, 8 and 14.

<sup>7</sup> ICF Report at page 16.

<sup>8</sup> Atchison Prepared Testimony, Questions 10-13.

<sup>9</sup> East Kentucky Power Response to Staff Data Request, Item 1, Exhibit 1-1.

Based on the testimony and record evidence, the Commission finds that the need for the proposed line has been established and it will be required for East Kentucky Power to provide power supply to WRECC beginning on April 1, 2008.

### **DUPLICATION OF FACILITIES**

This issue is more complicated and was fiercely contested. Speakers at the local public hearing complained about a multitude of issues including protection of historic and archaeological sites, interference with agriculture, proximity to residences, splitting family farms, destroying the potential market ability of property, and potential health effects.

In the last several Orders the Commission has issued dealing with CPCN's for transmission lines,<sup>10</sup> the Commission has concluded that, based upon its interpretation of the case of Kentucky Utilities v. Public Service Commission, 252 S.W. 2d 885, Ky., (1952), the term "duplication of facilities" should be defined to mean that the Commission must examine proposed facilities "from the standpoints of excessive investment in relation to efficiency, and an unnecessary multiplicity of physical properties." Id., at 891. The Commission in that case had approved a substantial expansion of East Kentucky Power's system, granting CPCNs for both generation and transmission facilities. The Court affirmed the CPCN for the generating plant, but remanded the case to the Commission to decide if the transmission lines proposed by East Kentucky Power would needlessly duplicate existing lines of other utilities, stating:

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<sup>10</sup> EKPC Case No. 2005-00089 and LGEE Case Nos. 2005-00142 and 2005-00155.

It is our opinion that the case should be remanded to the Public Service Commission for a further hearing addressed to the question of duplication from the standpoint of an excessive investment in relation to efficiency, and from the standpoint of inconvenience to the public generally, and economic loss through interference with normal uses of the land, that may result from multiple sets of right of ways [sic], and a cluttering of the land with poles and wires.

Id., at 892.

The recent Orders of the Commission have set the standard for determining if a proposed line will create wasteful duplication of facilities by ruling that, “future applications should comprehensively consider the use of existing corridors in planning future transmission.” The Commission has also pointed out in these orders that, in deciding the issue, “the Commission must balance all relevant factors..., [including] the availability of an alternative route and the magnitude of the increased cost of that alternative route.” The Commission realizes that East Kentucky Power may disagree with its interpretation of the term “duplication of facilities”, but the Commission readopts this standard for purposes of this case.

## **DISCUSSION**

East Kentucky Power utilized the “Standardized Methodology for Siting Overhead Electric Transmission Lines” (“The EPRI Report”) developed jointly by the Electric Power Research Institute (“EPRI”) and the Georgia Transmission Corporation (“GTC”).<sup>11</sup> These recognized experts in the industry have developed a methodology (“EPRI methodology”) to route and site transmission lines and the model (“EPRI model”) by which such routing and siting is carried out. East Kentucky Power also employed

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<sup>11</sup> EKPC Response to Staff Data Request, Item 25, Exhibit 25-1.

Photo Science Geospatial Solutions (“PSGS”) to implement the model on certain portions of the Project. The PSGS Report is included in the Application as an Exhibit to the prepared testimony of Mary Jane Warner. East Kentucky Power presented as witnesses three of the individuals who were on the team that actually developed the EPRI Methodology and Model, Christine M. Johnson, Project Co-Director, Steven P. French and R. Steven Richardson to explain the development and operation of the EPRI Methodology and Model.

While it is not possible within the confines of this Order to give a detailed explanation of this EPRI Methodology and Model, a brief description is probably warranted. The testimony at the evidentiary hearing established that the starting point for this process is the identification of a Macro Corridor using the Geographical Information System (“GIS”), 30-meter satellite imagery and statewide and national data sets. It is this Macro Corridor that forms the outside limits of the study area.<sup>12</sup>

This Macro Corridor is determined by looking at land use, land cover, roads, existing transmission line corridors, co-location with existing utilities, and co-location with other linear infrastructure.<sup>13</sup> This data is further refined and four alternative corridors are developed within the Macro Corridor utilizing 15-foot pixel aerial photography.<sup>14</sup> The four corridors are the Built Environment corridor that focuses on people and places, the Engineering Environment corridor which focuses on the engineering requirements, the Natural Environment corridor which focuses on the natural environment, and a fourth corridor that is an average of the first three.<sup>15</sup> After the

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<sup>12</sup> T.E., Vol.1, p. 100, L. 20-25 and p. 111, L. 1-6.

<sup>13</sup> T.E., Vol. 1, p. 111, L. 11-15.

<sup>14</sup> T.E., Vol. 1, p. 118, L. 1-4.

<sup>15</sup> T.E., Vol. 1, p. 112, L. 7-12.

Alternative Corridors are determined, actual field work is performed to further acquire and refine data, and various, specific alternative routes are laid out within each corridor.<sup>16</sup> These routes are evaluated and balanced using the weighted layers for each of the three environments and the average and the top ranking routes, which represent 1%-3% of the available routes,<sup>17</sup> are then evaluated by an expert judgment team and one preferred route is selected.<sup>18</sup>

In order to establish the boundaries of the Macro and Alternative Corridors and to evaluate alternative routes, the model uses a system of weighted criteria or “layers” that are grouped together in “layer groups”.<sup>19</sup> The weighting and layers were established by the Delphi process which utilized a group of stakeholders representing a diverse cross-section of interests from utilities to environmental groups to community and neighborhood groups to state and federal government agencies.<sup>20</sup> A complete list of stakeholders is included at page 62-64 in the Appendices to the EPRI Report. Using the Analytical Hierarchical Process, these stakeholders evaluated various layers and developed a consensus weighting to be used for each layer and criterion.<sup>21</sup>

The Commission recognizes that, as with any other state of the art model or methodology, it is possible for individuals to isolate pieces for criticism. For instance, several Intervenors questioned witnesses whether the Delphi process, based on input from primarily Georgia stakeholders, would be applicable in Kentucky. However, there is no evidence in the record that the weightings developed through this process are not relevant

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<sup>16</sup> T.E., Vol. 1, p. 123, L. 8-25.

<sup>17</sup> T.E., Vol. 2, p. 87, L. 8-22.

<sup>18</sup> T.E., Vol. 1, p. 124, L. 10-21.

<sup>19</sup> T.E., Vol. 1, p. 122, L. 1-4.

<sup>20</sup> T.E., Vol. 1, p. 120, L. 20-25 and p. 121, L. 1.

<sup>21</sup> T.E., Vol. 1, p. 120, 121 and 122, L. 1-19.

in Kentucky. The only evidence in the record on this point is Ms. Johnson's testimony that Kentucky and Georgia are in the same physiographic region, and thus, it was sound and prudent for East Kentucky Power to proceed to apply the model.<sup>22</sup>

There was also examination of these witnesses questioning the subjective evaluation at the expert judgment stage. Ms. Johnson testified that the model was never intended to be a completely automated process where data was inputted and a route was automatically selected.<sup>23</sup> Human judgment is needed throughout the entire process<sup>24</sup> and we are convinced that East Kentucky Power properly considered these human factors. The issue, however, before the Commission is whether East Kentucky Power comprehensively considered the use of existing corridors.

Based on the information contained in the record, Segment 1 of the Project, Barren County – Oakland – Magna, consists of a total of 28.29 miles, 16.62 or 59% of which utilizes existing corridors, either parallel to or rebuilding an existing line. Segment 2, GM – Memphis Junction, consists of a total of 14.96 miles, 11.03 or 74% of which utilizes existing corridors. Segment 3, Memphis Junction – Aberdeen, consists of a total of 27.41 miles, including the 3.93 miles of shared right-of-way to West Bowling Green, 18.05 miles or 66% of which utilizes existing corridors. Section 4, Wilson – Aberdeen consists of a total of 26.79 miles, 4.13 or 15% utilizes existing corridors.

Relying on the PSGS Report and Ms. Warner's testimony, it appears that the EPRI model was utilized to route Segments 1 and 4 and on the Memphis Junction – Natcher Parkway Junction section of Segment 3.<sup>25</sup>

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<sup>22</sup> T.E., Vol. 1, p. 43, L. 13-19.

<sup>23</sup> T.E., Vo. 2, p. 86, L. 11-25 and p. 87, L. 1.

<sup>24</sup> Id.

<sup>25</sup> PSGS Report and T.E., Vol. 3, p. 130, L. 20-25 and p. 131, L. 1-2.



The Commission notes that in Segments 1, 2 and 3, existing corridors are utilized for the majority of the length of the line. The Commission can assume that since the majority of these segments actually utilize existing corridors, the use of existing corridors was comprehensively considered. However, on Segment 4, only 15% of the length is along existing corridors. The EPRI model, which was used on Segment 4, not only considers use of existing corridors, the testimony reveals that it has an intentional bias for the use of existing corridors.<sup>26</sup> The Commission must therefore determine whether East Kentucky Power, in using the EPRI model, comprehensively considered the use of existing corridors for Segment 4, and if so, whether the decision not to utilize existing corridors was reasonable.

There was substantial evidence, developed both at the evidentiary hearing and in East Kentucky Power's Responses to Tichenor Data Request 1, Item 1 and Tichenor Data Request 2, Item 9, on this issue. Boiled down, the evidence indicates that of the twelve different routes considered as top routes in Figure 4.5a of the PSGS Report, Routes F and C as shown in Figure 4.5b of the PSGS Report were taken to Expert Judgment.<sup>27</sup> It should be noted here that testimony indicated that Routes F, D, E, and G in Figure 4.5a are essentially the same with minor variations, and East Kentucky Power considered the best of these, Route F, against the more southern Route C.<sup>28</sup> As shown in Figure 4.4c Route F was slightly more costly than Route C even though it was Route F that utilized more existing corridors through co-location with existing lines.<sup>29</sup> The evidence also indicates that East Kentucky Power went to great lengths to engineer a "forced" co-

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<sup>26</sup> T.E., Vol. 2, p. 25, L. 25 and p. 26, L. 1-4.

<sup>27</sup> PSGS Report Section 4.6.

<sup>28</sup> T.E., Vol. 3, p. 277, L. 21-25 and p. 278, L. 1-6.

<sup>29</sup> T.E., Vol. 3, p. 119, L. 12-21.

location route so that co-location could be considered without requiring the acquisition of five homes and a couple of businesses.<sup>30</sup> The evidence reveals that the East Kentucky Power Expert Judgment team selected Route C over the more heavily co-located Route F for several prudent reasons. Primary among these reasons were the degree of urbanization and the close proximity of homes and businesses along Route F, the availability of abandoned strip mine property on Route C, and the reduced reliability of the line due to the engineering steps taken to co-locate.<sup>31</sup>

The Commission's Consultant, I.C.F., indicated in its report that East Kentucky Power should explore the routing of Segment 4 to minimize the need for new right-of-way.<sup>32</sup> However, after reviewing East Kentucky Power's Responses to Data Requests and hearing the testimony at the Evidentiary Hearing, I.C.F.'s witness testified that by all industry standards, East Kentucky Power's approach to utilizing co-location, rebuilding and minimizing acquisition of new right-of-way appears to be reasonable.<sup>33</sup>

Based on the testimony at the hearing and the evidence contained in the record, the Commission finds that East Kentucky Power's selection of Route C over Route F on Segment 4 was reasonable.

There are three other issues the Commission needs to address. The first is that this Commission by this, or any of its past orders, does not require utilities to route all future transmission lines along existing corridors. The Commission only requires that a

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<sup>30</sup> T.E., Vol. 3, p. 120, L. 11-25; p 121, L. 1-10;  
T.E., Vol. 3, p. 122, L. 13-23;  
T.E., Vol. 3, p. 225, L. 14-25; p. 226 and p. 227, L-1;  
T.E., Vol. 3, p. 269, L. 4-19;

EKPC Response to Tichenor Data Request 1, Item 1, Exhibit 1-2, p. 6 of 9.  
<sup>31</sup> T.E., Vol. 3, p. 154, L. 1-17; T.E. Vol 3, p. 223, L. 15-25 and p. 224, L 1; T.E., Vol. 3, p. 276, L. 22-25, p. 277, p. 278, p. 279, and p. 280, L. 1-7; Vol. 3, p. 182, L. 6-25 and p. 183, L 1-2.  
EKPC Response to Tichenor 1<sup>st</sup> Data Request, Item 1, Exhibit 1-2 at p. 6 of 9 through 9 of 9.

<sup>32</sup> ICF Report, p. 16.

<sup>33</sup> T.E., Vol. 3, p. 303, L. 1-21.

utility comprehensively consider the use of such corridors. The Commission certainly does not encourage the acquisition of homes, businesses or other structures in the routing of lines along existing corridors. The Commission believes that East Kentucky Power's policy of avoiding this where possible is reasonable, and applauds East Kentucky Power for the efforts it undertook to devise a co-location route for Segment 4 that could work where a typical co-location may not have been acceptable.

The second issue involves the location of National Historic Register sites on the property of Intervenors, Carroll and Doris Tichenor. As stated in previous orders, the Commission recognizes the limitations on its jurisdiction with respect to environmental issues. The environmental impact of locating a transmission line in the area of these sites is properly within the purview of those federal and state agencies that have jurisdiction over such matters, not this Commission. This Commission can only consider the presence of these sites as it relates to the duplication of facilities and the Commission finds that the presence of these sites does not relate to duplication of facilities. It is true that the presence of these sites are a part of the EPRI model, and Intervenors attempted at the evidentiary hearing to establish that the model was misapplied by East Kentucky Power with respect to these sites. However, the evidence establishes that at the level of investigation at the macro and alternative corridor levels, the information available to East Kentucky Power from the National Park Service database was that the only listed site with GIS coordinates was over 1500 feet from the applicable alternate route.<sup>34</sup> As such, it appears that this was properly entered in the model. Even if it were not properly entered, this would not be relevant, because the exact distances and the effect of those distances with respect to either the location of the line or any mitigating factors that may

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<sup>34</sup> T.E., Vol. 3; p. 52, L. 16-25; p. 53, L. 10-23; p. 54, L. 4-12; p. 61, L. 16-25.

be required, will be determined during the site-specific investigation conducted by the State Historic Preservation Officer pursuant to the environmental compliance process.<sup>35</sup>

This, as we have stated, is not within our jurisdiction.

The last issue involves the Commission's requirement that a utility make a good faith effort to address issues raised by speakers at the local public hearing which was contained in our orders in Case No. 2005-00142 and Case No. 2005-00155. The Commission notes that due to circumstances beyond anyone's control, there was only one week between the local hearing and the evidentiary hearing. It was on Thursday of that week that the above orders were issued. Before the evidentiary hearing on the following Tuesday, East Kentucky Power had put together a package of information that generally addressed the concerns raised by the public comments at the local hearing and sent this package to each speaker by overnight delivery. That package also advised that experts would be made available at the evidentiary hearing to address any concerns on the issues of stray voltage, EMF and interference with farming operations. Under the particular circumstances of this case, the Commission finds that this constitutes a good faith effort by East Kentucky Power to address the concerns raised by the public at the local hearing.

### **CONCLUSION**

In implementing the amendments to KRS 278.020, the Commission must analyze both issues Kentucky courts have identified as bearing on the issuance of a CPCN: (1) whether the facilities are needed and (2) whether the construction will result in a duplication of facilities. With regard to the first, the Commission has already found in

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<sup>35</sup> T.E., Vol. 3; p. 84, L. 5-17

this Order that the facilities are needed. As to the second, the Commission here reaffirms the holdings in Case Nos. 2005-0089, 2005-00142 and 2005-00154 that the applicant must comprehensively consider existing corridors and utility lines when it applies for a transmission line CPCN.

Based on the testimony and the record of this case, the Commission finds that East Kentucky Power did comprehensively consider alternative routes and the use of existing corridors and, consequently, these facilities proposed by East Kentucky Power do not constitute a duplication of facilities.

The Commission is of the opinion that the EPRI model as used by East Kentucky Power in this case constituted a reasonable process by which to route and site this transmission line.

Therefore, the Commission, having considered the evidence and testimony offered in this proceeding and being otherwise sufficiently advised, finds and concludes that East Kentucky Power's Application for a CPCN to construct the proposed line should be granted.

IT IS THEREFORE ORDERED THAT East Kentucky Power's Application in this case should be GRANTED.

Done at Frankfort, Kentucky, this \_\_\_\_\_ day of October 2005.

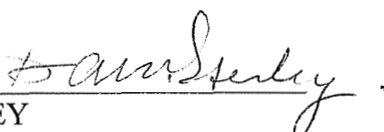
By the Commission.

ATTEST:


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Executive Director

RESPECTFULLY SUBMITTED,

  
\_\_\_\_\_  
DALE W. HENLEY

  
\_\_\_\_\_  
SHERMAN GOODPASTER III

  
\_\_\_\_\_  
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ATTORNEY FOR APPLICANT

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing was mail to each person designated on the official service list compiled by the Secretary for this proceeding, this the 18th day of October, 2005.

  
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SHERMAN GOODPASTER III