

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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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)

RESPONSE OF EAST KENTUCKY POWER COOPERATIVE, INC.
TO INTERVENORS' MOTION TO COMPEL

Comes the Applicant, East Kentucky Power Cooperative, Inc. ("EKPC") and for its Response to the Motion to Compel ("motion") filed by Intervenors, Carroll Tichenor, Doris Tichenor, John Colliver, and H.H. Barlow ("Intervenors"), states as follows:

Intervenors' motion addresses data requests made by Intervenors that can be generally described as covering two general categories of information: environmental studies and siting studies. EKPC responded to those particular data requests as being objectionable as not being relevant to the Commission's determination of whether this Project is required by the public convenience and necessity. Intervenors claim that the information sought is relevant to the Commission's determination. However, the law of this Commonwealth does not support Intervenors' motion and the claim set forth therein.

First, Intervenors do not support their claim of relevancy by one cite to Kentucky statute, case, or regulation. Instead, they make the bare, singular claim that since EKPC identified its environmental responsibilities related to the proposed project in its responses to data requests propounded by the Commission, that EKPC somehow opened

the door to each and every request made by the Intervenors regarding environmental studies and siting studies.

While EKPC acknowledges that there are federal environmental requirements that must be addressed and determined with respect to the project, and those requirements have been identified in EKPC's responses to the Commission's data requests, EKPC also states that the responsibility for overseeing the compliance with those requirements must be made by the federal agencies empowered by Congress to administer federal environmental law or by the federal courts. All those studies, and those determinations, will be addressed in due course by the proper agencies prior to commencing construction of the project. It is not within the province of the Commission to interpret federal law and attempt to make these determinations.

The only issues relevant to the Commission's determination of whether a project is required by public convenience and necessity are adequacy of existing service, the economic feasibility of the proposed facilities, the avoidance of wasteful duplication, and the financial ability of the Applicant. Kentucky Utilities v. Public Service Commission, 252 S.W. 2d 885 (Ky. 1952). Intervenors' request for information related to, inter alia, environmental studies and siting studies, is clearly not relevant to that determination.

Further, the Amendments to KRS 278.020 passed by the 2004 General Assembly did not confer siting jurisdiction on the Commission nor empower the Commission to address environmental issues. While SB 245 did declare that an owner of property crossed by a proposed transmission line was an interested party and could, therefore, intervene in a transmission certificate case, the legislation did not confer in any way, shape, or form, an expansion of the scope of review by the Commission to environmental

review or consideration of routing and location of transmission lines. Instead, the Intervenor's sole function is to assist the Commission in the Commission's determination as to the issues of adequacy of service, economic feasibility, wasteful duplication and financial ability of the Applicant. See Satterwhite v. Public Service Commission, 474 S.W.2d 387 (Ky. 1972).

Notwithstanding the foregoing, EKPC has already responded to Commission data requests wherein it identified the "Draft-EPRI Report # 1012804", Standardized Methodology for Siting Overhead Electric Transmission Lines, as the most objective, comprehensive and sophisticated methodology that currently is available for siting transmission lines. This methodology was utilized by EKPC in considering all alternatives including co-location and sharing of right-of-way.

Second, the Commission has already determined that the issues of routing, locating, site selection, environmental matters, or right-of-way acquisitions, are not relevant in its determination of whether a transmission project is required by the public convenience and necessity.

In paragraph (12) of the Commission's Statement of Consideration relating to 807 KAR 5:120, the Commission's response to a request that environmental, historical, and archaeological impacts be addressed stated that:

The only mention in Chapter 75 of property impacts is the provision giving individual landowners the right to move for intervention. The statutory amendments therefore do not provide support for requiring the filings the Counsel suggests.

Further, in paragraph (15) of the Statement of Consideration, in response to a request that the Commission be required to make a finding that the Applicant has demonstrated that due consideration has been given to location, configuration, and proposed maintenance of


lines and corridors so as to minimize adverse property, scenic and environmental impacts and that all reasonable alternatives have been considered, including co-location of the line along existing rights-of-way, the Commission stated that:

For the reasons stated in item (12) above, the PSC does not believe the legislation supports this change.

Third, Intervenors' Motion to Compel has not been timely filed. EKPC's Responses to the Data Requests were filed with the Commission on August 26, 2005. Intervenors' Motion to Compel was served on the parties and the Commission by mailing it on September 8, 2005. The hearing on EKPC's application is scheduled to begin on Tuesday, September 13, 2005. Service of a motion to compel at such a late juncture prejudices the right of EKPC to be heard on its application at the scheduled hearing date.

For the foregoing reasons, EKPC requests that the Intervenors' Motion to Compel be denied.

Respectfully submitted,



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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 A.W. 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 12th day of September, 2005.



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