



EAST KENTUCKY POWER COOPERATIVE

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MAR 27 2006

PUBLIC SERVICE
COMMISSION

March 27, 2006

Ms. Elizabeth O'Donnell
Executive Director
Commonwealth of Kentucky
Public Service Commission
211 Sower Boulevard
PO Box 615
Frankfort, KY 40602-0615

RE: Application for Certificate of Public Convenience and Necessity for the
Construction of a 138 kV Electric Transmission Line in Rowan County,
Kentucky. PSC Case No. 2005-00458

Dear Ms. O'Donnell:

Enclosed please find an original and ten (10) copies of a Proposed Order Submitted by
East Kentucky Power to be filed in the above referenced case.

I hope this meets with the approval of the Commission.

Very truly yours,

Sherman Goodpaster III
Senior Corporate Counsel

SG/ti

Enclosures

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAR 27 2006

In the Matter of:

THE APPLICATION OF EAST KENTUCKY POWER)
COOPERATIVE, INC. FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY FOR) **CASE NO**
THE CONSTRUCTION OF A 138 kV ELECTRIC) **2005-00458**
TRANSMISSION LINE IN ROWAN CO, KENTUCKY)

PUBLIC SERVICE
COMMISSION

PROPOSED ORDER SUBMITTED BY EAST KENTUCKY POWER

This matter is before the Kentucky Public Service Commission (“Commission”) on the application of East Kentucky Power Cooperative, Inc. (“East Kentucky Power” or “Applicant”) for a Certificate of Public Convenience and Necessity (“CPCN”) to construct a 138 kV transmission line in Rowan County, Kentucky. This project consists of a new 138 kV transmission line to be constructed from the existing Rowan County Substation located on KY 32 east of Morehead to the existing Cranston Substation located just off of KY 377 north of Morehead near Triplett, KY. The line will be 6.9 miles in length, of which 4.8 miles will cross the United States Forest Service (“Forest Service”), Daniel Boone National Forest (“Forest”). The line will be constructed on two-pole, H-type, steel structures upon a one hundred foot wide right-of-way.

The Applicant, on April 21, 2005, filed its initial Application for a CPCN on this project, designated Case No. 2005-00089, and was denied such a CPCN by Order of the Commission dated August 19, 2005. However, the Commission at Page 4 of that Order, did find that based on undisputed evidence, there was a need for additional transmission facilities in this area. As a result, as the Commission stated on page 9 of its Order, East

Kentucky Power has established a need for this project in the prior case and both parties have so stipulated in the present proceeding (Transcript of Evidence presented at the hearing held herein on February 21, 2006, "T.E.", p. 11). Therefore, in this proceeding, the only issue before the Commission is whether this project constitutes a duplication of facilities pursuant to Kentucky Utilities Company v. Public Service Commission, 252 S.W.2d 885 (Ky. 1952).

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 in the present case to the Commission on December 8, 2005. The Applicant also submitted a Motion for Deviation from the Commission's Rules by waiving the requirement that the Application be filed no sooner than thirty (30) days after the filing of the Notice of Intent to File as stated in 807 KAR 5:120, Section 1. This motion was granted by the Commission on November 23, 2005. The Applicant submitted a Motion for Expedited Schedule to the Commission on December 13, 2005. The Commission denied this motion and entered a procedural order on December 16, 2005, setting, among other deadlines, dates for interventions, the filing of testimony, data requests and evidentiary hearing. The December 16, 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 Doug Doerrfeld on January 10, 2006. Mr. Doerrfeld, by and through counsel, participated actively in this case and his testimony was filed with the Commission on February 3, 2006.

Pursuant to the Commission's procedural schedule set in the order dated December 16, 2005, East Kentucky Power, the Commission Staff, and the Intervenor engaged in discovery. On or about January 23, 2006, the Applicant received the Commission Staff's First Data Requests and Intervenor, Doug Doerrfeld's, First Data Requests. On January 27, 2006, East Kentucky Power filed its responses to said data requests, along with its Petition for Confidential Treatment to specific data requests. The Petition for Confidential Treatment was granted by order of this Commission on February 6, 2006.

The Commission's consideration of the issue of duplication of facilities is directed to an examination of whether East Kentucky Power's review and consideration of alternate routes for the project, specifically addressing the use of existing rights-of-way and transmission lines and corridors (Commission Order in Case No. 2005-00089 at p. 9), was reasonable and acceptably thorough (Commission Order in Case No. 2005-00207, at p. 8) and that the choice of the location of the project was reasonable (Id. at p. 9). This will include a review of the proposed routes, review of procedures for routing performed by the Forest Service, engineering studies, and data. In addition, the Commission retained MSB Energy Associates, Inc. ("MSB") pursuant to KRS 278.020(8) to evaluate East Kentucky Power's consideration of alternate routes and issue a report to the Commission. MSB filed its report analyzing East Kentucky Power's alternate route consideration on January 13, 2006 wherein it determined that East Kentucky Power's consideration of alternate routes for the project was reasonable and complete (MSB Report, pp. 5, 7, 8, 9, 10 & 11).

The Commission held an evidentiary hearing for the purpose of cross-examination of witnesses at its offices in Frankfort, Kentucky on February 21, 2006. At the hearing, the Commission heard arguments from counsel for the Intervenor and East Kentucky Power on the limited issue of routing considerations.

PROCEDURAL ISSUES

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). At this juncture, the Commission notes that the issue of necessity was decided in the original PSC Case No. 2005-00089. It is in the context of the second prong of the issues to be decided in an application for a CPCN that the Intervenor argued that East Kentucky Power's Application should be denied. Intervenor based his arguments on the potential for duplication of facilities and the existence of other routes.

This Application raises unique issues because the proposed line would be located partially within the boundaries of the Forest. The evidentiary hearing in this case focused almost exclusively on discussions of the proposed route and additional alternative routes, as well as the procedures for establishing the preferred route submitted by the Forest Service. As was stipulated by the Intervenor both at the hearing (T.E., p. 124, Q.19) and in his Prepared Testimony (Doerrfeld Prepared Testimony, p. 8, lines 12 and 13), East Kentucky Power and this Commission do not have jurisdiction or authority over the Forest Service to determine or approve the route through the Forest. That authority lies within the exclusive jurisdiction of the Forest Service and involves federal requirements,

administered by federal agencies, pursuant to federal laws and regulations. East Kentucky Power has established that this environmental review is complete and has been approved by the Forest Service.

DUPLICATION OF FACILITIES

This issue was contested by the Intervenor at the evidentiary hearing. In the last several Orders the Commission has issued addressing CPCN's for transmission lines,¹ 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 CPCN's 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:

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

¹ EKPC Case No. 2005-00089 and LGEE Case Nos. 2005-00142 and 2005-00155.

applications should comprehensively consider the use of existing corridors in planning future transmission.” The Commission has also pointed out that in these orders 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 recognizes East Kentucky Power is in disagreement with its interpretation of the term “duplication of facilities,” but the Commission readopts this standard for purposes of this case.

DISCUSSION

The evidence establishes that East Kentucky Power submitted three preliminary routing options to the Forest Service for its consideration in its preparation of the Environmental Assessment (“EA”) (Brewer Prepared Testimony, p. 2, Q. 6; T.E., p. 31-33). Option 1, as set forth in Brewer Exhibit A to the Application, is similar to the route proposed in the Application which is depicted both on Application Exhibit VII₁, and as the solid line on Application Exhibit VIII₁. The Option 1 that was presented to the USFS is shown on Application Exhibit VIII₁ as the dotted line that approximately follows the proposed route. Option 2, shown on Application Exhibit VIII₁ parallels I-64 to the north until meeting the Kentucky Utilities (“KU”) Goddard – Rodburn line (KU line), and then parallels the KU line across Forest Service lands. Option 3, shown on Application Exhibit VIII₁ crosses Forest Service lands to the west and parallels U.S. 60 before turning southwest into the Rowan substation. MSB determined that these three options presented by East Kentucky Power to the Forest Service were reasonable (MSB Report, p.5) and the Commission concurs.

An interdisciplinary team within the Forest Service then developed six additional alternate routes as shown on Application Exhibit VIII₂. Alternate A was the Forest Service's preferred route (Brewer Prepared Testimony, p. 3), and is essentially the proposed route that appears on Application Exhibit VII₁ (Brewer Prepared Testimony, p. 3 and 4 and MSB Report, p. 6). Alternate B was the same route with no herbicide vegetation control allowed (USFS EA, p. 20 and MSB Report, p. 6). Alternate C was the no action alternative (USFS EA, p. 20 and MSB Report, p. 20).

Alternate D parallels I-64 on Forest Service lands to the south until meeting the KU line and then parallels the KU line across Forest Service lands to U.S. 60 (USFS EA, p. 22; MSB Report, p. 6). This is essentially the same alternative route that the Commission questioned East Kentucky Power's engineering witness about at the Hearing (T.E., p. 82-87).

Alternate E circumnavigates Forest Service lands to the west and south (USFS EA, p. 22; MSB Report, p. 6). Alternate F parallels I-64 to the north until meeting the KU line and then parallels the KU line across Forest Service lands to U.S. 60 (USFS EA, p. 23; MSB Report, p. 7).

Alternate G is essentially Option 3 presented by East Kentucky Power to the Forest Service initially (USFS EA, p. 23; MSB Report, p. 7).

Alternate H essentially circumnavigates Forest Service lands to the east and south (USFS EA, p. 24; MSB Report, p. 7).

Three other routes were identified and examined by East Kentucky Power subsequent to the Hearing in Case No. 2005-00089. The first, identified as "Post Hearing Parallel" on Brewer Exhibit A, was the route shown on an Exhibit presented by

Commission Staff at the Hearing in Case No. 2005-00089. Upon field examination, East Kentucky Power determined that this route actually crossed over homes and businesses and through other congested areas. Accordingly, East Kentucky Power developed the “Post Hearing Parallel (Adjusted) Route” that would reduce the issues related to congestion and make the route viable (Brewer Prepared Testimony, p. 4; T.E., p. 76-78). The third, the “Post Hearing I-64 Route” as shown on Brewer Exhibit A, was similar to Alternate D that was considered and rejected by the Forest Service. However, the centerline on the “Post Hearing I-64 Route” was brought down from the ridge-tops to share right of way with I-64 so as to allow access from I-64 and to eliminate the cutting of additional access roads on Forest Service lands (T.E., p. 82-88). All three of these post-hearing alternatives are shown on Application Exhibit VIII₃. MSB determined that the consideration of these three post-hearing routes was reasonable, and that when added to the other routes considered by East Kentucky Power and the Forest Service, there are no other routes in the area that should be considered (MSB Report, p. 8). The Commission concurs with this determination.

The Commission’s primary concern as stated in its Order in Case No. 2005-00089 is that adequate consideration be given to using existing rights-of-way and transmission line easements and corridors (Commission’s Order, Case No. 2005-00089, p. 9). Due to the safety issues involved in paralleling the existing six to eight gas transmission lines in the area (T.E., p. 67-74), the issue is narrowed to the consideration of paralleling the KU line. The Commission notes that there are two separate sets of issues involved with paralleling the KU line. First are the physical problems involved with actually sharing right of way or paralleling the KU line. The second involves the routing issues germane

to locating a transmission line from the Cranston Substation to the KU line. The Commission will address the second set of these issues first.

There appear to be four possible alternatives of locating a transmission line from the Cranston Substation to the KU line. The first is Option 2 that was submitted by East Kentucky Power to the Forest Service and was considered and rejected by the Forest Service in the EA as Alternative F. The second is Alternate D, which was developed, considered and rejected by the Forest Service in the EA. The third is the Post Hearing (Adjusted) Route developed by East Kentucky Power and developed from the route shown on Commission Staff Exhibits in the Hearing in the Case No. 2005-00089. The fourth is the Post Hearing I-64 Route identified by the Intervenor at the Hearing in Case No. 2005-00089.

The Commission must first note that the Intervenor has admitted both in Prepared Testimony and at the Hearing that the Forest Service has sole jurisdiction to determine, evaluate and approve the location of transmission projects on Forest Service Land. The Commission believes this is a correct statement of the law. This Commission does not have the authority or jurisdiction to review or overturn a determination by the Forest Service as to the location of such a project on Forest Service Lands. This Authority has been delegated to the Federal Courts pursuant to (43 U.S.C. § 1761; 36 CFR § 251; 36 CFR § 200, 3(b)(2)(ii); *State of Wyoming v. U.S. Department of Agriculture*, 239 F.Supp. 2d 1219, 1224 (D. Wyo. 2002); *The Wilderness Society v. Tyrrel*, 701 F.Supp. 1473, 1483 (E.D. Cal 1988).) As a result, the Commission cannot overturn the selection by the Forest Service of Alternative A as the route that will cross Forest Service lands.

However, the Commission will address the considerations made by the Forest Service and East Kentucky Power with respect to the issues presented above.

The evidence establishes that one of the primary concerns of the Forest Service is that structures and access roads be located on ridge tops to avoid excavation (“benching”) on the sides of the steep slopes that exist in this area (T.E., p. 22, Line 2; T.E., p. 83, Line 7; T.E., p. 89, Line 3). The problems that are involved with locating structures and access roads on steep slopes involve erosion, siltation and slope instability resulting from the excavation of benches around the mountainsides for roads and the excavation of larger benches for transmission structures (T.E., p. 21-23). The Commission finds this concern reasonable, material, and relevant in consideration of the alternative routes across the steep topography in this area.

Another major concern of the Forest Service established by the evidence is to minimize the length and number of access roads required to construct and maintain an electric transmission line (T.E., p. 87, Q, 17). Obviously, when more access roads are required to be cut, and the longer these roads are, the result is that more trees must be cut. One of the Significant Issues identified by the Forest Service in the EA (USFS EA, p. 17) is the number of trees that must be cut. The Commission finds that the Forest Service’s concern with the length and number of access roads is reasonable, material, and relevant in consideration of the alternative routes.

It is clear from the evidence that one of the main reasons for the rejection of Alternative D by the Forest Service was that a significantly greater number of longer roads would have to be cut to access the transmission structures, compared to Alternate A which is located in an area where there are existing, substantial Forest Service roads that

can be used for a great portion of this access (T.E., p. 87-90). We find this determination to be reasonable, material, and relevant in consideration of the alternative routes.

With respect to Alternate F, the Forest Service rejected this route for various reasons as set forth on page 23 of the EA. Among those reasons were the six to eight major gas lines that would have to be paralleled and the effect on Forest Service endangered species. There were also the issues of stream crossings and residential congestion (T.E., p. 28). The Commission finds that the Forest Service rejection of Alternative F was reasonable, material, and relevant in consideration of the alternative routes.

The remaining routes to the KU line from the Cranston Substation are the Post-Hearing Parallel (Adjusted) Route and the Post-Hearing I-64 Route. First, addressing the Post-Hearing I-64 Route, it must be noted that the I-64 right-of-way lies at the base of the steeply sloped hillsides of the Forest Service lands (T.E., p. 83, line 5-7). As a result, the line would have to be constructed on the side of those steep slopes, thus violating one of the Forest Service's main concerns (T.E., p. 83, line 7-12). The only advantage the Commission can see from locating the line on these slopes would be if access could be obtained from I-64, thereby eliminating the necessity of constructing the significantly longer access roads that would otherwise be associated with Alternative D. Without such access from I-64, the impact of these access roads would be even greater than it would be with Alternative D since these roads would have to drop off the ridge-top down to the structure location. Since access from I-64 was denied by the Kentucky Transportation Cabinet, (Brewer Exhibits D and E), there would have been no benefits associated with the Post Hearing I-64 Route that would offset the additional impact of locating structures

and access roads on steep slopes. Furthermore, this location would have been much more visible from I-64, an Environmental Effect identified by the Forest Service (USFS EA, p. 63). East Kentucky Power's rejection of this alternative was reasonable, material, and relevant in consideration of the alternative routes.

The final route from Cranston to the KU line is the Post-Hearing (Adjusted) Route. It was developed and rejected by East Kentucky Power because, compared with the route approved by the Forest Service, and proposed in this case, it:

- 1) Was three miles longer;
- 2) Required 1.3 miles more new right of way;
- 3) Reduced right of way on Forest Service Lands by only .58 mile;
- 4) Increased right of way on privately-owned property by 3.68 miles;
- 5) Could not take advantage of shared right of way and required an additional 100' wide new right of way approximately 20 feet from the outside of the existing KU right of way;
- 6) Required 16 to 17 additional acres of new right of way;
- 7) Reduced the amount of uncut right of way in the hollows from 18.4% to 12%, resulting in additional deforestation of approximately 19.5 acres;
- 8) Required significantly more access roads to be built;
- 9) Crossed 87.5% more property owners; and
- 10) Would have a significantly larger impact on residences (T.E., p. 6 and 7, Q 11; Brewer Exhibit A).

Based on the foregoing, the Commission finds the rejection of the Post-Hearing (Adjusted) route in favor of the proposed route reasonable, material, and relevant in consideration of the alternative routes.

The Commission will now address the issues created by physically locating a transmission line parallel to the KU line. Applying the high wind case of the National Electric Safety Code, which the Commission has adopted pursuant to 807 KAR 5:041, Section 3, conductor blow-out considerations would require that any line built parallel to the KU line would have to be built so as to leave a strip of trees approximately twenty feet wide between the two rights-of-way (T.E., p. 57-58). This eliminates any benefit of shared right of way regardless of which alternative route is taken from the Cranston substation to the KU line.

The only way to share right of way under these circumstances would be to build intermediate structures down the steep slopes of the hillsides, which again violates one of the main concerns of the Forest Service for the reason stated above. Furthermore, not only does this type of short-span construction, under these circumstances, violate the standards of good engineering practices (T.E., p. 92 Line 4-5), it would require the KU line to be re-built with these intermediate structures as well (T.E., p. 91, Line 1-8). This would obviously require an extended outage of the KU line, which, due to the critical nature of this line, is unacceptable (T.E., p. 65, Line 8-16) (T.E., p. 102, Line 13-20).

As a result, the Commission finds that under the particular set of circumstances presented by this case, it is not practical to parallel the KU line across Forest Service lands, and the selection of the proposed route by the Forest Service and East Kentucky Power was reasonable.

CONCLUSION

Although the Commission has no jurisdiction or authority to overrule the selection of the proposed route by the Forest Service, the Commission does find, based on the evidence presented in this case, that the Forest Service and East Kentucky Power have conducted a thorough review of alternate line locations.

The Commission also finds that, based on the evidence presented in this case, the choice of line location by East Kentucky Power and the Forest Service is reasonable. It appears that, as the witness for East Kentucky Power stated (T.E. p. 86, Line 9-21), East Kentucky Power did make a reasonable attempt to try to make paralleling the KU line a viable alternative to consider, reviewing a number of alternatives from Cranston to the KU line. However, under the circumstances of this case, that was not a practical option compared with the selected route.

GENERAL COMMENTS

It is regrettable that all the evidence on routing presented in this case was not presented in Case No. 2005-00089, but the Commission again recognizes, as stated in its Order in that case, the Catch-22 in which East Kentucky Power found itself. The former case was the first case brought under the 2004 Amendments to KRS 278.020 in which the line location was contested. The Commission accepts the explanations contained in Brewer Prepared Testimony, page 4, question 7, that East Kentucky Power believed the issue before the Commission to be that of need and necessity and that the location had been established by the Forest Service. It is also reasonable to assume that this might

explain why the only remaining working papers on routing iterations are Brewer Exhibits B₁ – B₁₁.

IT IS THEREFORE ORDERED that:

1. Applicant is granted a CPCN to construct and operate the proposed transmission line as set forth in its application, as amended.
2. Applicant shall file a survey of the final location of the line after any moves as authorized by the Order and before construction begins.
3. Applicant shall file “as-built” drawings or maps within 60 days of the completion of the construction authorized by this Order.

Done at Frankfort, Kentucky, this _____ day of March 2006.

By the Commission.

ATTEST:

Executive Director

RESPECTFULLY SUBMITTED,

DALE W. HANLEY



SHERMAN GOODPASTER III



ROGER R. COWDEN

EAST KENTUCKY POWER
COOPERATIVE, INC.
PO BOX 707
WINCHESTER, KY 40392-0707

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 27th day of March, 2006.



SHERMAN GOODPASTER III