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June 15, 2007

VIA HAND DELIVERY

RECEIVED

JUN 15 2007

PUBLIC SERVICE
COMMISSION

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

Re: In the Matter of Bruce Wayne Vickers v. Kentucky Utilities Company
Case No. 2007-00149
Our File No.: 400001/127103

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten (10) copies of Kentucky Utilities Company's Reply Brief in Further Support of Its Motion to Dismiss 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 two additional copies provided 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/cja
Enclosures
cc: Bruce Wayne Vickers (w/Encl.)

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BRUCE WAYNE VICKERS)
)
 COMPLAINANT)
)
 v.)
)
 KENTUCKY UTILITIES COMPANY)
)
 DEFENDANT)

CASE NO. 2007-00149

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 JUN 15 2007
 PUBLIC SERVICE
 COMMISSION

KENTUCKY UTILITIES COMPANY’S REPLY BRIEF
IN FURTHER SUPPORT OF ITS MOTION TO DISMISS

* * * * *

INTRODUCTION

On May 7, 2007, Kentucky Utilities Company (“KU”) moved the Commission to dismiss the Complaint filed herein by Bruce Wayne Vickers (“Mr. Vickers”). On May 18 the Commission entered an order providing for Mr. Vickers to file a Response to that motion, and allowing KU leave to file a reply. Mr. Vickers filed his response on June 5, but he did not serve a copy thereof on KU or its counsel. However, KU’s counsel obtained a copy of the Response from the Commission’s Docket Control staff on June 11, and KU now submits this Reply in further support of its Motion to Dismiss. For all of the reasons set forth below, Mr. Vickers’ Complaint against KU should be dismissed forthwith.

ARGUMENT

In his Response, Mr. Vickers does not contest the fact that the records of the Hardin County Property Valuation Administrator (“PVA”) contain errors with regard to the ownership

of a certain part of his property. Specifically, Mr. Vickers does not dispute the fact that the local PVA records incorrectly identify his neighbor, Alton Padgett, as the owner of that portion of Mr. Vickers' property which will be affected by the transmission line approved by the Commission in Case No. 2005-00467.¹ Nonetheless, Mr. Vickers continues to persist in arguing that his rights were somehow violated by KU's reliance on those PVA records, as directed by the Commission's regulations. In doing so, Mr. Vickers makes a number of claims, none of which support granting him any relief here.

First, Mr. Vickers claims that "807 KAR 5:120 Section 2 Number 2" is the regulation at issue, and he argues that it provides for modification of PVA maps in the event of errors. To the contrary, it is 807 KAR 5:120, Section 2 (3) which is at issue here. Section 2 (2) of the regulation, cited by Mr. Vickers, provides for the filing of certain maps as part of the utility's application to the Commission, and in no way addresses individual landowner notification. Moreover, while Section 2 (2) does refer to the use of PVA maps, "modified as required," for filing with the Commission, the reference to modification simply allows the utility to modify PVA maps as it deems necessary for purposes of depicting the location of the proposed line as part of the filing with the Commission. For example, a PVA map might contain information which is superfluous or irrelevant to the Commission's proceeding, or might be of a scale that is different from that required by the Commission's regulations, and thus certain modifications might be appropriate. Contrary to Mr. Vickers' argument, there is no provision in Section 2 (2), or anywhere else in 807 KAR 5:120, which requires a utility to take steps to identify and correct

¹ Mr. Vickers takes issue with KU's use of the phrase "minimally impacted" to describe the effect of the line on his property. KU recognizes that any impact, no matter how slight, is meaningful to a landowner. The phrase was merely used in an effort to accurately describe the facts relevant to this dispute, and the facts here are that only a small portion of the right-of-way for the line will cross Mr. Vickers' property, and that no actual structures will be placed on the property. Affidavit of Kathleen A. Slay ("Slay Affidavit"), ¶ 2, attached to KU's Motion to Dismiss as Exhibit 1.

errors in PVA maps or other records regarding the identities of property owners. Rather, the regulation clearly and simply directs utilities to use the county PVA records, as they exist, to identify and notify owners of record over whose land the transmission line right-of-way is proposed to cross. 807 KAR 5:120, Section 2 (3). There is no dispute that KU did exactly that in this case.

Next, Mr. Vickers claims that the property line for his land is generally marked by a partial fence, an iron pipe and several pink plastic ribbons (although it is not clear whether those plastic ribbons were in place in 2005, at the time the notice to landowners in question was given), and he criticizes KU for missing his property “when the initial survey was made.” Even assuming, however, for the purposes of the pending Motion to Dismiss, that such markings in fact exist, those markings do not support the claim of any violation of the law by KU here. KU was not required to, and did not, survey the area surrounding the proposed line for purposes of determining property boundaries for use in notifying landowners. Instead, KU utilized PVA records, as set forth in 807 KAR 5:120, Section 2 (3), then went beyond its legal obligation and had title searches done to determine if any land had transferred hands since the PVA records were last updated.² The subsequent surveys referenced by Mr. Vickers were done as part of the pre-construction field work undertaken after the line was approved by the Commission, and it was through that process that the error in the PVA records was ultimately discovered.³ KU fully complied with the Commission’s regulations in notifying landowners of the proposed line, and it had no reason to know or suspect, at the time that it gave that notice in reliance on the Hardin County PVA records, that there was an error with respect to Mr. Vickers’ property.

² Slay Affidavit, ¶¶ 3, 4. Because there was no actual conveyance between Mr. Vickers and Mr. Padgett (the records just incorrectly identified the legal boundary between their respective properties), that title search did not reveal Mr. Vickers’ ownership of the land at issue here.

³ *Id.*, ¶¶ 7, 8.

Finally, Mr. Vickers concludes his response with a list of several reasons why he believes that the transmission line at issue here should not have been approved by the Commission in Case No. 2005-00467. Most importantly, none of those issues touch on the question of whether KU complied with the notice requirements set forth in the regulation, and therefore do not support Mr. Vickers' request for relief. Moreover, those issues were all presented to the Commission in the same or substantially similar form by other parties in Case No. 2005-00467, and thus were considered by the Commission before the line at issue was approved.

CONCLUSION

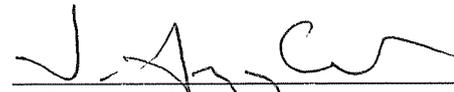
There is no dispute over the basic law applicable to, or the facts relevant to, the issue presented by KU's Motion to Dismiss: (1) 807 KAR 5:120, Section 2 (3) instructs utilities, like KU, to utilize county PVA records to notify landowners of a proposed transmission line which is the subject of a CCN application before the Commission; (2) KU utilized the Hardin County PVA records to notify landowners in that county as part of its application in Case No. 2005-00467; (3) Mr. Vickers' ownership of property in Hardin County is not accurately identified in the records of the Hardin County PVA; and (4) KU did not know of the error in those PVA records until well after the Commission had issued its final order in Case No. 2005-00467, at which time it discussed the proposed line with Mr. Vickers.⁴

Mr. Vickers seeks relief here based on a position which, in essence, claims that KU should not have relied on the Hardin County PVA records in notifying landowners in Case No. 2005-00467, the Commission's regulation notwithstanding. That position, of course, cannot be sustained. The Commission's regulation is clear: utilities, such as KU, are directed to rely upon county PVA records in sending out individual notice to landowners. 807 KAR 5:120, Section 2

⁴ *Id.*, ¶ 8.

(3). Because there is no question but that KU complied with the notice requirements of that regulation, there is no basis for granting Mr. Vickers any relief. The Complaint herein should be dismissed with prejudice and this matter should be closed on the Commission's docket.

Respectfully submitted,



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Counsel for Kentucky Utilities Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was served by first-class mail, postage pre-paid, upon the following, this 15th day of June, 2007:

Bruce Wayne Vickers
2194 Blueball Church Road
Elizabethtown, Kentucky 42701


Counsel for Kentucky Utilities Company