

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BRUCE WAYNE VICKERS)	
)	
COMPLAINANT)	
)	
V.)	CASE NO. 2007-00149
)	
KENTUCKY UTILITIES COMPANY)	
)	
DEFENDANT)	

O R D E R

On April 11, 2007, Complainant, Bruce Wayne Vickers ("Complainant"), brought this action against Kentucky Utilities Company ("KU"), claiming that KU failed to properly give notice that its planned transmission line would cross a portion of his property. Defendant, KU, filed its answer to the complaint on May 7, 2007, and moved the Commission to dismiss the complaint with prejudice for failure to state a claim upon which the Commission may grant relief. In its answer, KU claimed that it fully complied with the notice requirements set forth in 807 KAR 5:120. On May 18, 2007, the Commission ordered the Complainant to file a response to KU's motion to dismiss within 20 days and ordered KU to file any reply within 10 days thereafter. On June 5, 2007, the Complainant filed his response, and on June 15, 2007, KU filed its reply – both within the time limit established by the May 18, 2007 Order.

For the foregoing reasons, the Commission hereby orders that the complaint filed on April 11, 2007 in the above-styled matter be dismissed with prejudice.

FACTS

The material facts of this case are not in dispute. Complainant is a resident and property owner in Hardin County, Kentucky. On May 26, 2006, in the consolidated cases of 2005-00467 and 2005-00472,¹ the Commission granted the joint application of KU and Louisville Gas and Electric Company ("LG&E") for a Certificate of Public Convenience and Necessity to build a 42.03-mile electrical transmission line in Jefferson, Bullitt, Meade, and Hardin counties. At the time that KU and LG&E filed their application, the boundaries of Complainant's property were not accurately depicted on property valuation administrator ("PVA") Map No. 82, which was filed in the office of the Hardin County PVA, dated May 1984.² A copy³ of Map No. 82 was attached to KU's motion to dismiss, along with the property ownership card for Mr. Vickers. The map and card show that Mr. Vickers is the owner of Parcel No. 9 on Map No. 82, and Parcel No. 8 is owned by another person.⁴

¹ PSC Case No. 2005-00467, Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade and Hardin Counties, Kentucky, and PSC Case No. 2005-00472, Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Alternative Transmission Facilities in Jefferson, Bullitt, Meade and Hardin Counties, Kentucky.

² KU motion to dismiss at 3-4.

³ The copy of Map No. 82 in KU's Exhibit 3 is not a certified copy. The Commission confirmed that Parcel No. 9 shown in KU's Exhibit 3 is, in fact, the parcel owned by Complainant, Bruce Vickers, through a search of the Hardin County PVA website: <http://www.hardincountypva.com/propertymaps.asp>, utilizing the Map/Parcel identification number 082-00-00-009, as found on KU Exhibit 4, the property report card for Mr. Vickers' property at 2194 Blue Ball Church Road, Elizabethtown, Kentucky.

⁴ KU's motion to dismiss at 3.

As the planned right of way for the KU/LG&E transmission line did not appear to cross any portion of Parcel No. 9, as depicted in PVA Map No. 82, KU did not notify Complainant directly about the pending transmission line siting case pursuant to 807 KAR 5:120, Sections 3-4.⁵ However, KU did publish a notification of the planned transmission line on December 14, 2005 in the Meade County Messenger and Shepherdsville Pioneer-News and on December 15, 2005 in the Hardin County Independent and Louisville Courier-Journal.⁶ KU also published notice of the March 28, 2006 public hearing in the Meade County Messenger, Louisville Courier-Journal, Shepherdsville Pioneer-News, and Elizabethtown News-Enterprise on March 15, 2006, and in the Hardin County Independent on March 16, 2006.⁷ Complainant also states that he was aware that a transmission line was going to be sited in the area of his property from conversations in his neighborhood.⁸

On February 27, 2007, Complainant encountered foresters employed by KU marking trees for clearing on his property in Hardin County.⁹ Upon further investigation

⁵ KU Exhibit 1 at 2.

⁶ KU's Exhibit 2 at 2 states that the initial notice was also published in the Elizabethtown News-Enterprise, but there is no tear sheet from that newspaper included either in Exhibit 7 to the original application filed on December 22, 2005, or in the present Exhibit 2, which appears to be an exact copy of the original Exhibit 7. However, 807 KAR 5:120, Section 5, requires only that the notification be published in a "newspaper of general circulation in the county or counties in which the construction is proposed," which, with regard to Hardin County, KU accomplished by publishing the notice in the Hardin County Independent newspaper.

⁷ KU Exhibit 1 at 2 and Exhibit 2.

⁸ Complaint at 1-2.

⁹ Id. at 1.

by KU, the company discovered that Map No. 82 incorrectly identifies the location of the property boundary between Parcel No. 8 and Parcel No. 9. Parcel No. 8 is shown to encompass a portion of land that should be rightly identified as part of Parcel No. 9.¹⁰

ARGUMENTS

Complainant argues that his rights were circumvented because he was not notified directly by KU of the pending transmission line siting case. In his response, he states that:

The public notice mentioned in [807 KAR 5:120] Section 5 was published in the local newspaper, but due to the scale of the maps it would be impossible to make a decision about easement of right of way based on newspaper maps or vaguely worded announcements. If the property boundary line was close, the error should be on the side of inclusiveness not exclusiveness of personal rights. I could have been notified easily just like all of the other landowners at this time.¹¹

Complainant also describes two fences and a post, which he claims demark the corner of the property in question. He states that the fences and post are marked with pink plastic ribbons, making them “highly visible.”

Complainant argues that KU violated 807 KAR 5:120, Section 2(2), which provides, in pertinent part, “[t]he map detail shall show the location of the proposed transmission line centerline and right of way, and boundaries of each property crossed by the transmission line right of way as indicated on the property valuation

¹⁰ KU motion to dismiss at 3-4.

¹¹ Response at 2.

administrator's maps, modified as required." Emphasis added. Complainant states that this regulation "provides [for] management of errors in the mapping."¹²

KU responds that the phrase "modified as required" in 807 KAR 5:120, Section 2(2), does not refer to management of errors in the PVA's maps. Rather, the company argues that 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."¹³

CONCLUSIONS

807 KAR 5:120, Section 2(2) states:

To apply for a certificate of public convenience and necessity to construct an electric transmission line of 138 kilovolts or more and more than 5,280 feet, a utility shall file with the commission the following:

...

(2) Three (3) maps of suitable scale, but no less than one (1) inch equals 1,000 feet for the project proposed. The map detail shall show the location of the proposed transmission line centerline and right of way, and boundaries of each property crossed by the transmission line right of way as indicated on the property valuation administrator's maps, modified as required. Sketches of proposed typical transmission line support structures shall also be provided. A separate map of the same scale shall show any alternative routes that were considered. . . .

The phrase "modified as required" refers to the language in the first part of the second sentence of Section 2(2), which mandates that the three maps filed by the applicant must show where the transmission line centerline and right of way will run and must show the boundaries of the properties that will be crossed by the right of way,

¹² Id.

¹³ Reply at 2. Emphasis added.

based on the maps maintained by the PVA office in each county through which the transmission line will run. KU is correct that a PVA map may contain superfluous information or be of a scale smaller than that required by 870 KAR 5:120, Section 2(2), which mandates that such maps be no smaller than “one (1) inch equals 1,000 feet,” and that an applicant’s maps, based on such information, might have to be modified for clarity or to show the area at a larger scale. Ultimately, the responsibility for the accuracy of maps filed in the various PVA county offices is shared between the Kentucky Department of Revenue and the local PVA office, pursuant to KRS 132.670.

The subject regulation does not shift to KU the responsibility for verifying the accuracy of the Hardin County PVA maps, nor was KU required to re-survey the land over which the right of way for its proposed line will run. The regulation requires only that the utility demonstrate to the Commission that the property owners over whose property the right of way will run – as those property owners are identified by the information in the county PVA office – have been personally notified by first class mail or by personal service, which was done in this case.¹⁴ Landowners such as Complainant are also required to be given public notice, such as that provided by the December 2005 and March 2006 publications. Despite KU’s compliance with the regulation, Complainant did not discover, prior to the removal of his trees, that the line is scheduled to be built over his property.

Because KU complied with the notice regulations, the Commission will not reopen the transmission case to require that KU move the right of way some 100 feet west, as suggested by Complainant. The May 26, 2006 Order was correct when made,

¹⁴ 807 KAR 5:120, Sections 3-4.

based upon the evidence in the administrative record. The Commission does note, however, that the May 26, 2006 Order allows KU to voluntarily move the line up to 500 feet without pre-approval of the Commission:

LG&E/KU may move the approved centerline up to 500 feet in either direction (i.e., within a 1,000-foot corridor) as long as (1) the move does not shift the line or its right-of way onto the property of a different landowner and (2) the property owner who is subject to the move agrees in writing to the requested move. Changes greater than this distance, or that involve other landowners, will require LG&E/KU to come back to the Commission with another application.¹⁵

Moreover, as it is outside the statutory jurisdiction of the Commission, nothing in this Order should be construed to prejudice any other rights or remedies available under Kentucky law to the Complainant. The Commission acknowledges that the taking of a citizen's property for uses such as the siting of a transmission line is a serious matter involving due process and that a property owner may disagree with the characterization of even a "relatively small" taking as being "minimal"—a point which KU also appears to acknowledge in footnote 1 of its Reply. KU is responsible for fairly compensating Complainant for the necessary right of way, and has undertaken to negotiate with the Complainant for the price of the necessary easement to cross his property and, presumably, for the fair market value of the timber which must be felled to make way for the transmission line right of way.¹⁶ The Commission, however, has no statutory authority to require KU to compensate Mr. Vickers or to establish the fair market value of his affected property.

¹⁵ Case No. 2005-00472, final Order at 22.

¹⁶ KU's Exhibit 1 at 3.

IT IS THEREFORE ORDERED that the complaint filed by Complainant, Bruce Wayne Vickers, on April 11, 2007 against Defendant, Kentucky Utilities Company, is hereby dismissed with prejudice.

Done at Frankfort, Kentucky, this 6th day of July, 2007.

By the Commission

ATTEST:



Executive Director