

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

RECEIVED

IN RE: CASE NO. 2009-00064

SEP 25 2009

APPLICANT: EAST KENTUCKY NETWORK, LLC d/b/a APPALACHIAN WIRELESS

PUBLIC SERVICE
COMMISSION

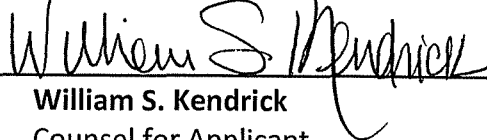
INTERVENOR: LEE ETTA CUMMINGS

NOTICE OF FILING OF REBUTTAL TESTIMONY

Comes the Applicant, East Kentucky Network, LLC d/b/a Appalachian Wireless, and files in the record herein the rebuttal testimony of Marty Thacker and J.W. Caudill, as required by the Commissioner's Order entered on September 9, 2009.

FRANCIS, KENDRICK & FRANCIS

BY:



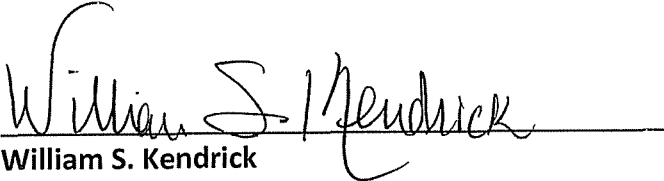
William S. Kendrick
Counsel for Applicant
311 North Arnold Avenue
P.O. Box 268
Prestonsburg, Kentucky 41653
606/886-2812
606/886-8833 – Fax

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Notice of Filing of Rebuttal Testimony was served upon the following on this 15 day of September, 2009:

Hon. Nora J. Shepherd
P.O. Box 300
Richmond, Kentucky 40476-0300

Hon. Allyson Honaker
Counsel for Public Service Commission
211 Sower Blvd.
Frankfort, Kentucky 40602


William S. Kendrick

REBUTTAL TESTIMONY OF MARTY THACKER
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 2009-00064

A. ROAD CONSTRUCTION.

Q. Have you reviewed the testimony and estimate of Michael Cornett attached to it filed regarding the cost of road construction to Alternate Site#1 in this case?

A. Yes, I have. He stated no test was done to determine if rock was on the site. Rock is visible on the entire hillside and very little dirt is visible on top of the rock.

Q. Is Mr. Cornett's estimate as to the scope of the work necessary to build a road to Alternate Site #1 adequate in your opinion?

A. No, it is not. It is not adequate from the standpoint of safety, especially a safe grade, or as to the length of the road that is necessary to reach the site safely in bad weather. Mr. Cornett's estimate does not take into consideration the number of switchbacks, where to locate them and spots to avoid, such as places where slips could occur and you have landslides that block the road or cause environmental problems in the head of the creek. None of these calculations appear to be taken in the price of the road by Mr. Cornett.

Q. In your opinion, what other material factors does his estimate not consider.

A. In building a road, the maximum slope that's safe is the first thing you need to know. The second thing is boundaries like the property lines or how much room you have to work with. With this information, you can then layout the road and determine the length, switchbacks and so forth like I mentioned. Mr. Cornett's statement about going up the center of the ridge and no drain tiles or drainage is needed? If EKN went up the center of the ridge, EKN would need to lease or buy property from Fields/Cummings, Cummings and Brown. EKN does not have any agreement with Cummings or Mr. Brown as far as a road over his land to this Alternate Site. There would be as much work and expense in getting a 100' x 100' lot constructed at the end of the road as it was to build the road. Remember that this lot has to be cut from solid. In my 32 years of work as a construction foreman for Thacker-Grigsby Telephone, I have never built a road that did not have drainage.

Q. Do you have these other property owners leased or deeds for that purpose.

A. No.

Q. Have you prepared a more realistic estimate for the road construction to this site?

A. Yes. About 2,200 feet of new road is involved – not 1,000 feet.

Q. Bottom line what is the cost you estimate for construction of a road and lot for the tower site at alternate sit #1?

A. About \$ 56,850.00

Q. Would you make your written signed estimate a part of your testimony today?

A. Yes. (NOTE: See Exhibit 1).

2. EKN TOWER – “SELF-SUPPORTING”

Q. The Commission wants to know why this particular tower will not collapse. Why won't it?

A. There are two (2) basic types of towers, guyed and self-supporting. Guyed towers are the least expensive but take up a large amount of room. Self-supporting towers cost more but take up a lot less room. With self-supporting towers there are three options for the support or foundation for a self supporting tower. The first is a drilled foundation. This would be the most cost effective and the easiest to use. You drill three holes (one for each leg) approximately 40” in diameter and 16’ deep. The second foundation is pier and pad. This foundation has three pads approximately 6’ x 12’ x 2’ thick and around 8 to 10’ deep with piers coming from the pad to the surface. The third foundation is a slab. This is approximately 36’ x 36’ x 30” thick five feet deep with piers coming to the surface and is the most expensive but the most stable of the models. Being around towers for the biggest part of my life either working on or building them I have seen towers fail. Seventy-Five percent of these towers failed due to the ground moving. Out of the towers that failed, they were guyed towers or self-supporting towers with either the drilled or pier and pad foundation. The guyed towers due to anchor slipping and pulling the tower over such as the South Central Bell Tower in Jackson, Kentucky, or the anchor slipping just enough to lean the tower badly and causing a lot of danger to the area around it. This was the case of the WYMT TV in Hazard, Kentucky.

Q. Which of these tower models did you select for this site?

A. After seeing problems with other towers, EKN went to the third foundation on the list. The slab with piers. The slab distributed the weight over a larger area and it tied all the legs of the tower together so that if one of them settled the other two legs move the same amount. The reason this is not used in most towers is the cost and time that it takes to put it in. The price of the slab is double the cost but in East Kentucky where blasting, mining, logging and where you can drive down the road and see mud slides on a lot of the mountains, the cost is well worth it. EKN has over 50 self-supporting towers with the slab and pier foundation with no failures to date.

Q. Is the proposed tower foundation now in place?

A. Yes. The slab with pier foundation is poured and meets the above specifications.

Q. Do you have an opinion as to whether the tower chosen by EKN for this site is safe from the standpoint of collapse or failure as to this site's conditions?

A. The tower is the best available and so is its foundation, under existing technology. As I said earlier, EKN has gone with this type of tower all over Eastern Kentucky in the same basic conditions as here with no problems. That's my experience.

Q. Is mining close to or around the proposed tower site likely to cause any operational problems for you or for that matter to the coal operator who does the mining?

A. No, not at all. Our company works in close proximity to mines, and active mines all the time. Out of 160 plus sites that EKN has in Kentucky, Virginia and West Virginia, they have always been able to work around mining. Dwarf tower located near the Knott/Perry County line is a 400' guyed tower and has been surface mined within 100' of the tower and anchors. The tower has been auger mined under it. Grapevine tower contour mined around and augured under. At Phelps in Pike County EKN actually took a tower down for CAM mining while surface mining was going on. Leatherwood tower in Perry County has been contour mined around while the tower was in place. Rock Fork in Knott County is deep mined under. Dean site in Letcher County surface, deep and contour mined. Shelbiana in Pike County has been mined under. The bottom line is mining is as important to EKN as it is to everyone else. I'm sure we can work around this.


We just ask Sapphire Coal Company to follow the blasting regulations, and permits and its lease with Ms. Cummings which says it will follow regulations, and we will work any way possible with the coal company.

Q. Is your testimony now concluded.

A. Yes, it is.

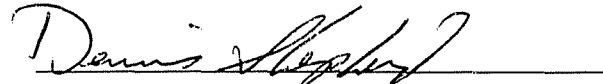
VERIFICATION

I hereby verify that the foregoing rebuttal testimony is true and accurate to the best of my knowledge and belief.


Marty Thacker

STATE OF KENTUCKY
COUNTY OF Knott

SUBSCRIBED, SWORN TO and ACKNOWLEDGED before me by Marty Thacker, this ____ day of September, 2009.


NOTARY PUBLIC, STATE AT LARGE
COMMISSION EXPIRES: OCT. 22 - 2009

COLEMAN ENGINEERING

P.O. BOX 153
HINDMAN, KENTUCKY 41822
PH# 606-785-5797
E-MAIL: COLEMAN@YAHOO.COM

To: Appalachian Wireless
Ivel, Ky

Attn: Marty Thacker
Re: Road Construction to Alternate Tower #1
Located on Smoot Creek in Letcher County, Ky.

Dear Mr. Thacker,


Please find attached a topographic map indicating the access road to the proposed alternate cell phone tower #1. The proposed road has been designed with an overall grade of 15 percent. The length of the road is 2300 feet. The road shall be built on tract #8, however, at elevation 1760 feet a switchback is required on the spur which may extend onto tract #7. Most likely, extensive rock excavation will be necessary from elevation 1660 feet to the tower site. This is approximately 1500 feet. This road will have to cross major gas lines at three locations. Please note both the 3 inch and 4 inch metal gas lines shown on the attached map. The relocation of these lines may cause a major delay during the construction. I would like to remind you that gas line relocation is expensive and should be included in the road budget. This estimate does NOT include this relocation work.

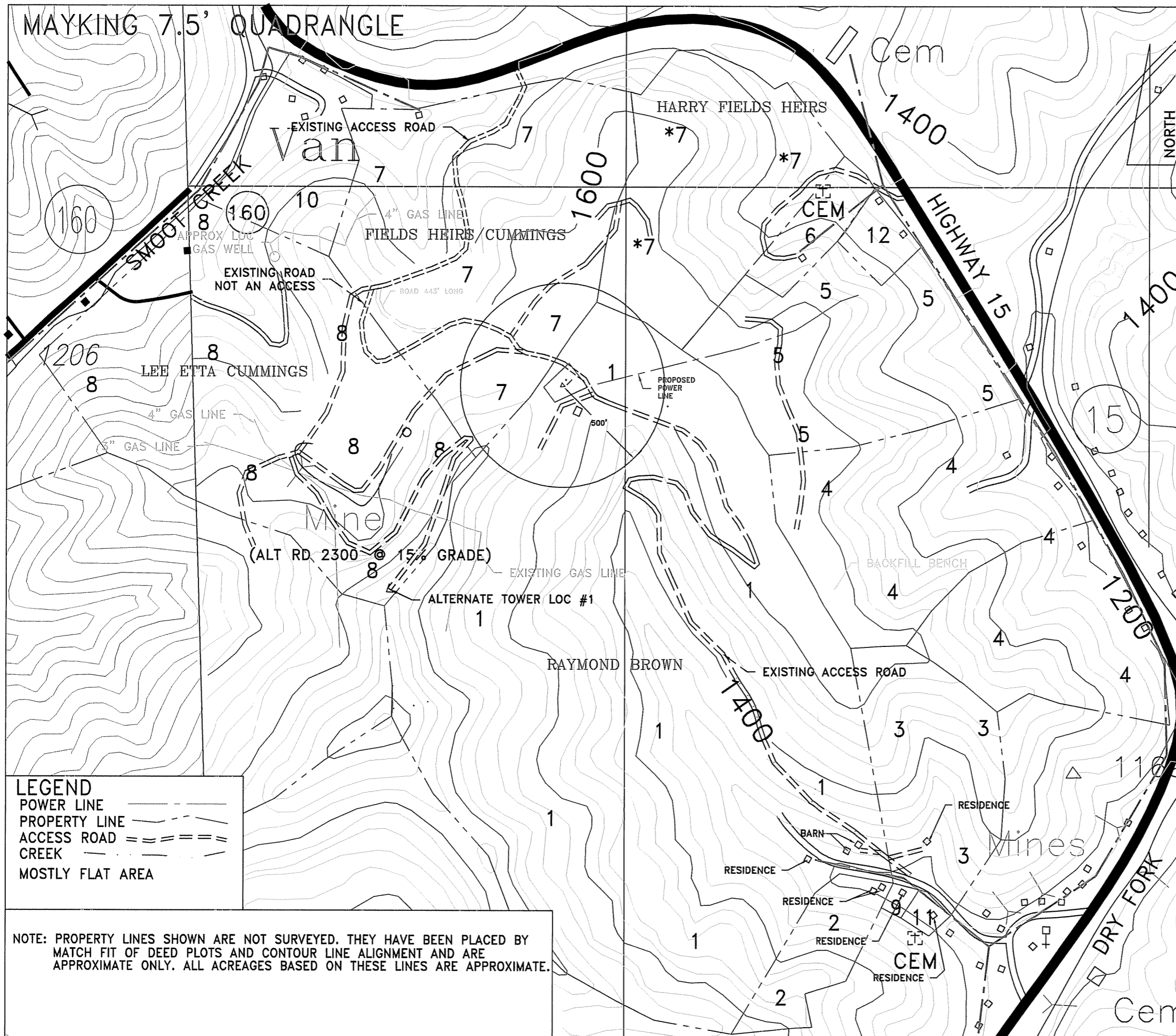
I estimate that it will take one month for a Cat D6N dozer and a Cat 320 CL excavator (with hammer) to construct this access road and prepare the site for the tower.

Mobilization = \$650
Demobilization = \$650
Night Watchman = \$100/day @ 30 days = \$3000
3-man crew (install culverts, cut timber, prepare site) \$65/hr @ 50hr = \$3250
Culverts = \$1200
Gravel = \$8000
Tandem dump truck = \$65/hr @ 40hr = \$2600
Cat D6N dozer = \$850/day @ 20 days = \$17000
Cat 320 CL excavator = \$850/day @ 10 days = \$8500
Cat 320 CL excavator (with hammer) = \$1200/day @ 10days = \$12000

Total = \$56,850

Thank You,


Randall L. Coleman (PE,PLS)

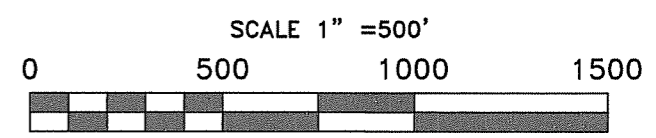


APPALACHIAN WIRELES
 101 TECHNOLOGY TRAIL
 IVEL, KY. 41642
 PROPOSED TOWER SITE
 RAYMOND BROWN TRACT
 DRY FORK IN LETCHER CO, KY

LAND OWNERS:

- | | | | |
|---|--|----|--|
| 1 | RAYMOND & BERYL BROWN et al
309 RAYMOND'S BR ROAD
WHITESBURG, KY 41858 | 8 | LEE ETTA GAY CUM
BOX 176
VICCO, KY 41773 |
| 2 | CHARLES & CONNIE STURGILL
237 RAYMOND'S BR ROAD
WHITESBURG, KY 41858 | 9 | DANIEL SANDLIN
208 RAYMOND'S BR
WHITESBURG, KY 4 |
| 3 | DALE BROWN
168 RAYMOND'S BR ROAD
WHITESBURG, KY 41858 | 10 | JAMES & BETTY BI
BOX 100 HOLLYBU
WHITESBURG, KY 4 |
| 4 | DON & COLLETT TOLLIVER
HC84 BOX 2658
WHITESBURG, KY 41858 | 11 | VIRGINIA A BROCK
11 COMET DRIVE
WHITESBURG, KY 4 |
| 5 | DENNIS & BETTY COMBS
1324 Jenkins RD
WHITESBURG, KY 41858 | 12 | WILLIAM DOYLE WR
P.O. BOX 501
ISOM, KY 41824 |
| 6 | VICKIE ADAMS
180 CHADS ROAD
WHITESBURG, KY 41858 | *7 | JAMES HARRY FIEL
C/O LINDA FIELDS
P.O. BOX 339
ISOM, KY 41824 |
| 7 | JAMES HARRY FIELDS
C/O LINDA FIELDS
P.O. BOX 339
ISOM, KY 41824
&
LEE ETTA GAY CUMMINGS
BOX 176
VICCO, KY 41773 | | PROPERTY #7 WITHIN 500' OF 1 |

05/04/09



LEGEND
 POWER LINE ———
 PROPERTY LINE ———
 ACCESS ROAD = = = = =
 CREEK - - - - -
 MOSTLY FLAT AREA

NOTE: PROPERTY LINES SHOWN ARE NOT SURVEYED. THEY HAVE BEEN PLACED BY MATCH FIT OF DEED PLOTS AND CONTOUR LINE ALIGNMENT AND ARE APPROXIMATE ONLY. ALL ACREAGES BASED ON THESE LINES ARE APPROXIMATE.

POSSIBLE DEVELOPMENT AREA
 REVISION 1

COLEMAN
 ENGINEERING
 P.O. BOX 153, HINDMAN, KY 41822

**REBUTTAL TESTIMONY OF J.W. CAUDILL
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 2009-00064**

Q. You have testified in this matter on direct examination, is that so?

A. Yes. I am JW Caudill. And I'm a professional engineer, and a registered land surveyor.

I. Prior and future Mining as to Proposed Tower Site and Alternate Site #1

Q. After reviewing the testimony of Fred Webb, Sapphire Coal's engineering, what can you say about the proposed tower site vs. Alternate Site # 1, to which he asks the PSC to require EKN to move its proposed tower?

A. If I understand his position he is saying that it is preferable that mining be completed before the tower be erected. Well that is exactly the case here with the proposed site. The surface mineable coal on the Brown site has all been removed, and the tower site itself has been deep mined already and there is nothing that is no coal left under it to mine, or that any seams for which mining is planned anyway. So mining as to the selected site is completed. That is what I understand Mr. Webb to say is preferable when you are locating a site for a tower. Plus the fact that the present location has an existing access road built to it.

Q. What about the Alternate Site # 1 is mining completed on it?

A. We have not seen an actual mine plan from Sapphire Coal as to the scope or the timetable of mining under this site as it was just acquired by lease from Ms. Cummings around the middle of August, 2009 according to his testimony and the lease exhibit with it. So it is difficult to evaluate the effect that future mining would have as to the tower site EKN has selected or as to Alternate Site # 1 without studying their mine plan. If mining is planned on Alternate Site # 1 it seems like it would not be a good place to locate a tower based on Mr. Webb's testimony that it is usually after the mining is completed that the tower should follow.

Q. But Alternate Site # 1 has been previously deep mined is that correct as I recall from your previous testimony?

A. Yes it has. Both that site and the EKN site on Mr Brown were previously undermined per the mine maps that I supplied with my direct testimony as to the Hazard#4/Whitesburg Seam of Coal.

Q. Are you telling us that beneath the Alternate Site # 1 that it too is previously mined just like under the EKN site has been previously mined?

A. Yes. So the same problems Mr. Webb points out as to the EKN site exist as well as to Alternate Site # 1, if he is concerned about stability and the effects of blasting near the previous mining on the tower. Areas near Alternate Site # 1 that are predicted by Sapphire for mining and if further mining is planned on the site by Sapphire, all these point to the very same problems as to the alternate sites as Sapphire says it is concerned about with the EKN site. So it is a bad decision to move the tower from a site where the coal is completely mined out, and the pillars of coal that remain and the rock overburden that is left will provide sufficient stability to the tower, and put it on this other site, which has been deepmined itself and there will be or may be future mining on.

Q. Has anything changed about your opinion as to the present site being a superior site for the tower than the Alternative Site #1 after reviewing Mr. Webb's testimony, or any of the other witnesses of Ms. Cummings.

A. No. Not at all from the mining standpoint.

Q. What about other material factors—like the road construction issue?

A. No., my opinion remains that the EKN site is still the best for all the reasons I've stated originally. In fact Randy Coleman who is a PE and RLS and owns Coleman Engineering and I looked this week about the road construction in light of Mr. Cornetts. In fact, we laid out the only possible plan for a road to Alternate Site # 1. The road would be 2200' long or so, and would have to go up Ms. Cummings side of the hill on Ms. Cummings land where the alternate Site is proposed. Mr. Coleman has given this information to Marty Thacker who I understand will use it to form a more realistic estimate to include in his further testimony, based on our actual study on-site of the property. I'd like to say again, EKN has no Lease from Mr. Brown for this purpose and no right to use his land for any purpose other than a tower and related facilities and uses associated with a tower at its present site. Nor does EKN have any lease or other agreement with Ms. Cummings.

Q. Is there any problem you see that is not workable between the Tower operator and Sapphire Coal as to the present site."

A. Nothing that a reasonable waiver could not accomplish really that would allow Sapphire to mine near the tower so long as it follows the existing blasting regs. I don't see how it would not be able to mine the coal it has in the recent lease from Ms. Cummings on account of the tower placement here on the chosen site.

Q. Have you in your possession a copy of the deed Ms. Cumming's coal lease w/ Sapphire embraces?

A. Yes. I have a copy of the Deed from John Cummings to Lee Etta Cummings dated October 25, 1988, recorded Deed Bk. 289, p. 255, Letcher County Clerk's office.

Q Will you consent to make a copy of that deed an Exhibit to your deposition here today?

A. Yes, of course.

(Note: Exhibit deed is attached)

Q. Which of the tracts does the description contained in this deed correspond to on your application site map?

A. It is tract no. 8 shown upon the map submitted with EKN's application and as well the amended application which is both exhibits to my direct testimony in this case.

Q. So the Sapphire Coal lease definitely embraces the coal underlying that property shown as Lee Etta Cummings tract # 8 on your map, correct"

A. That is correct.

Q. What is the significance of that in light of her expert, Mr. Webb's testimony?

A. Her side is suggesting to the Commission that Alternate Site #1 is the correct site for a tower to be placed on even as she has just over a month ago leased it to a coal company for deep mining purposes, which seems to me to create for that site the very conflicts she is telling the PSC makes the EKN site undesirable because of coal mining. If previous underground mining causes problems for the EKN site, the blasting, the stability and subsidence and cracking around a tower sited at alternative # 1 makes it no better from that standpoint than the present site.

Q. How far from Ms. Cummings' tract # 8 is EKN's tower site as now locate?

A. I measure it at the closest point as being 485' from the EKN tower site.

Q. So Sapphire, based upon this distance could not mine any closer to the tower site than 485', if it mined to the limits of it's lease boundary with Lee Etta Cummings, am I saying that correctly?

A. That is correct. Again there should be no adverse consequences at all if Sapphire follows its blasting regulations. Nor should the tower location affect its ability to recover any of the coal in the leased tract.

Q. Let me get this straight then. Mr. Webb saying that Sapphire must blast within 25' of the tower proposed by EKN to recover all of the coal it can from Ms Cummins tract as I read his deposition. Could this be when the limits of Ms. Cummings leased tract to Sapphire is no closer to the tower sit of EKN by about 485'?

A: No, 485' is the closest Sapphire could blast to the tower and still be within its lease boundary. As I said that should not affect the tower if blasting regulations are followed. Certainly a standard mining waiver should surely satisfy Sapphire about any other problem concerning mining close to structures.

Q. Have you seen or been supplied with other coal leases to Sapphire Coal other that the Lease from Ms Cummings referred to in the Sapphire lease and that you have discussed above?


A. No, just that one I've said could be made an exhibit here.

Q. Is that the conclusion of your testimony?

A. Yes it is.

VERIFICATION


I hereby verify that the foregoing rebuttal testimony is true and accurate to the best of my knowledge and belief.



J.W. Caudill

STATE OF KENTUCKY
COUNTY OF Knott

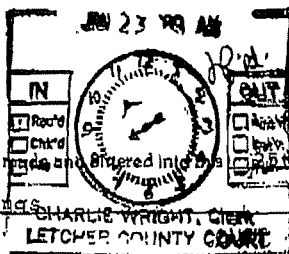
SUBSCRIBED, SWORN TO and ACKNOWLEDGED before me by J.W. Caudill, this 24th day of September, 2009.



NOTARY PUBLIC, STATE AT LARGE
COMMISSION EXPIRES: 09-22-2009

Mail 176
- Vicco, Ky
41723
TO: DEED

255



WITHOUT ABSTRACT
This deed prepared by:
Kenneth S. Baker
KENNETH S. BAKER
P. O. BOX 1096
HAZARD, KENTUCKY 41701

THIS DEED OF CONVEYANCE made and entered into this 23rd day of October, 1988

between John Cummings

of Vicco, county of Perry, and state of Kentucky, of the first part, and

Lee Etta Cummins

of Vicco, county of Perry, and state aforesaid, of the second part:

WITNESSETH, that the party of the first part, for and in consideration of the sum of

One (\$1.00) Dollar, cash in hand paid, and the

love and affection First Party has for Second Party,

the receipt and sufficiency of which is hereby acknowledged, have bargained and sold, and by these presents

do bargain, sell and convey unto the said party of the second part, a certain tract or parcel of land, lying

in Letcher County, Kentucky, and described as follows:

BEGINNING at a stake 5 feet from a small poplar on east bank of Smoot Creek at the mouth of Cornett Branch and corner surface Tract No. 8; thence with lines of same up the hill S 40 05 E 590 feet to a hickory and chestnut oak on a spur; S 17 55 E 92 feet to a white oak and black oak; S 31 05 E 1249 feet to a stake on ridge between Smoot Creek and Dry Fork on the outside boundary line; thence with said ridge; S 36 05 W 184 feet to a chestnut oak; S 13 35 W 253 feet to a chestnut oak; S 42 35 W 110 feet to a chestnut oak; S 40 10 W 382 feet to a stake between two chestnut oaks, corner to surface Tract No. 3; thence with lines of same down a spur; N 62 30 W 294 feet to a hickory; N 35 50 W 102 feet to a stake 4 feet from a hickory; N 23 15 W 131 feet to a sugar tree and black oak; N 32 15 W 145 feet to a stake 3 feet from a sugar tree; N 62 55 W 163 feet to a beech; N 53 55 W 233 feet to a stake 4 feet from a chestnut; S 84 50 W 303 feet to a sourwood; S 85 15 W 1100 feet to a stake on east side of Smoot Creek; thence N 93 45 W 88 feet crossing Smoot Creek to a stake in the public road, corner to surface Tract No. 5A; thence up the creek with said road, N 10 00 E 260 feet to a stake, N 25 05 E 429 feet to a stake in road corner to surface Tract No. 6; thence with same up road; N 51 05 E 367 feet to a stake in road, corner to surface Tract No. 5; thence with the lines of same up Smoot creek; N 73 30 E 267 feet to a stake in the creek; N 48 55 E 130 feet to a stake in the creek; N 36 00 E 202 feet to a stake in the creek; N 37 45 W 45 feet to a stake in the road; thence up a point; N 58 15 W 480 feet to two red oaks on the ridge east of Holly Bush thence up said ridge; N 28 00 W 165 feet to a sourwood and white oak; N 18 05 W 172 feet to two sourwoods; N 6 15 W 169 feet to a small maple; N 15 30 E 125 feet to a stake; N 24 10 E 225 feet to a white oak, corner to Tract No. 9; thence with lines of same down a spur; S 66 30 E 305 feet to a stake 3 feet from a maple; N 77 55 E 175 feet to a white oak and maple; N 84 40 E 170 feet to a sourwood and hickory; S 59 55 E 594 feet to a stake in the road, a corner to surface Tract No. 8; thence with line of same, S 24 55 E 145 feet to the BEGINNING, containing 95.52 acres.

256

Being the same or being part of the same land conveyed by Helen Frazier Collins and Orville Collins, Et Al
 to the grantor herein by deed dated July 27, 1984 and recorded in Deed Book No. 270
 page 745 records of the Letcher County Court Clerk's Office.

To have and to hold said tract of land, with the appurtenances (hereunto) belonging unto the party y of the second part, his heirs and assigns forever, with covenants of General Warranty, in testimony whereof, the part y of the first part has s hereunto subscribed his name the day and date aforesaid.

John Cummings
Betty Jean Cummings

STATE OF KENTUCKY,
 PERRY COUNTY,

I, William L. Brown NOTARY PUBLIC, of the county aforesaid do certify that the foregoing deed from John Cummings
 to Lee Etta Cummings
 was this day produced to me, and duly acknowledged before me, in said county, by John Cummings
 part y thereto, to be his act and deed.

Given under my hand this 25th day of October, 1988

William L. Brown
 Notary Public State of Ky.
 MY COMM. EXPIRES: 1-13-92

TAX \$ _____

STATE OF KENTUCKY,
 LETCHER COUNTY,

I, Charlie Wright Clerk of the county aforesaid, do certify that the foregoing deed from John Cummings
 to Lee Etta Cummings
 was, on the 23rd day of January, 1989 lodged in my office for record, and that it, the foregoing, and this certificate, have been duly recorded in my office in deed book 289 page 255.
 WITNESS my hand, this 31st day of January, 1989.

Charlie Wright Clerk
 By Lucille B. Polley D.C.

DEED	FROM	TO
Acknowledged by: _____ 19__		
Page _____ Tax _____	Recorded in Deed Book No. _____	
Page _____	Fee for Recording _____	
Additional Certificate _____	Additional Tract _____	
Lodged for Record _____	TOTAL _____	