

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS)	
ELECTRIC CORPORATION FOR A CERTIFICATE)	CASE NO.
OF PUBLIC CONVENIENCE AND NECESSITY TO)	2022-00012
CONSTRUCT A 161 KV TRANSMISSION LINE IN)	
HENDERSON COUNTY, KENTUCKY)	

ORDER

This matter arises upon the request for intervention of Cypress Flats Land Company, LLC (Cypress Flats), filed March 2, 2022. Cypress Flats seeks full intervention. As a basis for the request, Cypress Flats alleged that the company owns farmland which will be affected by the requested transmission line, and possibly, by related switching stations. Big Rivers Electric Corporation (BREC) did not file a response to the motion.

LEGAL STANDARD

The only person who has a statutory right to intervene in a Commission case is the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sole discretion of the Commission.¹ The statutory standard for permissive intervention, KRS 278.040(2), requires that “the person seeking

¹ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

intervention must have an interest in the 'rates' or 'service' of a utility, since those are the only two subjects under the jurisdiction of the PSC.”²

The regulatory standard for permissive intervention, set forth in 807 KAR 5:001, Section 4, is two-fold. Commission regulation 807 KAR 5:001, Section 4(11) requires a person to set forth in the motion to intervene either (1) a special interest in the proceeding that is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. In cases involving an application for a Certificate of Public Convenience and Necessity (CPCN) to construct an electric transmission line, the Commission also considers KRS 278.020(9) which includes a person over whose property a proposed transmission line will cross as an “interested person” who may request intervention.

DISCUSSION

Based on a review of the pleadings at issue and being otherwise sufficiently advised, the Commission finds that Cypress Flats demonstrated that the company has a special interest in the proceeding over which the Commission has jurisdiction that is not otherwise adequately represented, for the reasons discussed below. The proposed transmission line will cross property owned by Cypress Flats. It is reasonable to expect property in the direct path of the proposed line to be impacted by the construction of the line if the CPCN is granted. KRS 278.020(9) recognizes Cypress Flats as an interested person in this matter.

² *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 at 3 (Ky. App. Feb. 2, 2007).

There are three additional parties who have filed to intervene in this proceeding representing the interests of landowners in the proposed path of the transmission line. All four parties have retained the services of one attorney. The four parties make up a substantial portion of the proposed transmission line route.

Because Cypress Flats owns property over which the proposed line will cross, Cypress Flats has a special interest that is not otherwise adequately represented in this proceeding. Cypress Flats' special interest is an interest in the service provided by BREC, because the definition of "service" found in KRS 278.010(13) "includes any practice or requirement in any way relating to the service of any utility. . . ." BREC is a utility and is required to obtain a CPCN before constructing the proposed transmission line. Therefore, the CPCN review process is related to BREC's service.

It is not necessary for the Commission to analyze the likelihood of Cypress Flats presenting issues or developing facts to assist the Commission in fully considering the matter without unduly complicating the matter, because the regulatory standard found in 807 KAR 5:001, Section 4(11), requires a party seeking intervention to satisfy only one prong of a two-prong test, and the Commission has found Cypress Flats meets the "special interest not otherwise represented" prong of the test. Based on the above, the Commission finds that Cypress Flats is granted full rights of a party in this proceeding. The Commission directs Cypress Flats to the Commission's July 22, 2021 Order in Case No. 2020-00085 regarding filings with the Commission.³

³ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID 19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

IT IS HEREBY ORDERED that:

1. The motion of Cypress Flats to intervene is granted.
2. Cypress Flats is entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.
3. Cypress Flats shall comply with all provisions of the Commission's regulations, 807 KAR 5:001, Section 8, related to the service and electronic filing of documents.
4. Cypress Flats shall adhere to the procedural schedule set forth in the Commission's February 21, 2022 Order and as amended by subsequent Orders, if needed.

By the Commission

ENTERED
MAR 16 2022 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2022-00012

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