

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY FOR A DECLARATORY)	
ORDER THAT THE PROPOSED INSTALLATION)	
OF A NEW THREE-PHASE REACTOR CIRCUIT)	
BREAKER AND ASSOCIATED CONSTRUCTION)	CASE NO.
AT THE BAKER SUBSTATION IN LAWRENCE)	2024-00283
COUNTY, KENTUCKY IS AN ORDINARY)	
EXTENSION IN THE USUAL COURSE OF)	
BUSINESS AND DOES NOT REQUIRE A)	
CERTIFICATE OF PUBLIC CONVENIENCE AND)	
NECESSITY)	

ORDER

On September 4, 2024, Kentucky Power Company (Kentucky Power) filed an application for a declaratory order, pursuant to 807 KAR 5:001, Section 19, that would determine that the installation of a new three-phase reactor circuit breaker and associated construction at the Baker Substation is an ordinary extension in the usual course of business and does not require a Certificate of Public Convenience and Necessity (CPCN). There are no intervenors in this matter and no person filed a response to the Application pursuant to 807 KAR 5:001, Section 19(4). This matter is now before the Commission for a decision on the merits.¹

¹ Pursuant to 807 KAR 5:001, Section 19, the Commission may, among other things, “issue a declaratory order... with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.” The Commission “may dispose of an application for a declaratory order solely on the basis of the written submission filed” or may allow for other actions, including additional discovery, to ensure that the record is complete.

BACKGROUND

Kentucky Power seeks a declaratory order that the expansion of “the yard” at Baker Substation, the relocation of the existing reactors within the expanded yard, and the installation of a new three phase 765 kV 50 kA circuit breaker on the reactors on the Baker-Broadford 765 kV line at the Baker Substation in Lawrence County, Kentucky, is an ordinary extension in the usual course of business and does not require a CPCN.

Kentucky Power’s Baker 765/345 kV Substation is approximately 22 acres, split between a 765 kV section and a 345 kV section.² The scope of work relevant to this request is on the northern 765 kV portion of the substation.³ The reactors connected to the Baker-Broadford 765 kV circuit are used to help control the voltage levels and fluctuations during varying system conditions.⁴ Kentucky Power stated that adding a circuit breaker to the reactors will allow for real-time switching control of the reactors. This real-time switching is asserted to help maintain voltage levels on the system, particularly during high transfer scenarios, as the current reactors cannot be switched off while the 765 kV line is energized. Kentucky Power indicates that its current inability to switch off the energized 765 kV line poses operational risk and adds unnecessary operation cycles to maintain the breakers.⁵ Kentucky Power stated that PJM Interconnection LLC (PJM) identified an immediate need for the addition of a reactor circuit breaker.⁶

² Application at 2.

³ Application at 3.

⁴ Application at 3.

⁵ Application at 3.

⁶ Application at 3.

Kentucky Power argued that the project is necessary to ensure regional system reliability and optimal performance.⁷ Kentucky Power stated it worked with PJM to create a solution to the issue of being unable to switch the reactors on and off in a reasonable timeframe.⁸ Kentucky Power stated that the project would include (1) expanding the yard at the Baker Substation within property currently owned by Kentucky Power; (2) relocating existing reactors within the expanded yard; (3) installing a new three phase 765 kV 50 kA circuit breaker on the reactors on the Baker-Broadford 765 kV line; and (4) using bus lines to re-connect the existing Baker-Broadford 765 kV circuit to the relocated reactors.⁹ Kentucky Power also stated that additional minor construction would be included as part of the project.¹⁰ Kentucky Power stated that the estimated cost of the project would be \$23.5 million, which represents less than one percent of Kentucky Power's net utility plant in service.¹¹ In terms of alternatives, Kentucky Power identified one alternative to the proposed project, the construction of a new greenfield substation and a new connecting 765 kV transmission line, which it argued would be prohibitively more expensive than the proposed project.¹²

In support of its requested declaratory order, Kentucky Power argued that the proposed project would constitute an ordinary extension in the usual course of business.¹³

⁷ Application at 3.

⁸ Application at 4.

⁹ Application at 4.

¹⁰ Application at 4.

¹¹ Application at 5.

¹² Application at 6.

¹³ Application at 9.

Kentucky Power stated that the project would not result in wasteful duplication because it is the least cost and most reasonable solution to the underlying operational issues identified at the Baker Substation.¹⁴ Further, Kentucky Power argued that the project would not compete with any other utility in the same area, because the proposed project would be contained within Kentucky Power's current service territory and on its own property.¹⁵ Finally, Kentucky Power argued that the proposed project would not involve sufficient capital outlay to materially affect Kentucky Power's financial condition, as the total cost of the project represents less than one percent of Kentucky Power's net utility plant in service.¹⁶

LEGAL STANDARD

Pursuant to 807 KAR 5:001, Section 19, the Commission may, upon application by a person substantially affected, "issue a declaratory order . . . with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278."¹⁷ An application for a declaratory order must:

- (a) Be in writing;
- (b) Contain a complete, accurate, and concise statement of facts upon which the application is based;
- (c) Fully disclose the applicant's interest;
- (d) Identify all statutes, administrative regulations, and orders to which the application relates; and

¹⁴ Application at 9.

¹⁵ Application at 9.

¹⁶ Application at 10.

¹⁷ 807 KAR 5:001, Section 19(1); see also Case No. 2020-00095, *Electronic Application of Kenergy Corp. for a Declaratory Order* (Ky. PSC Mar. 11, 2021), Order at 4-5 (noting that Commission may issue a declaratory order, in its discretion, with respect to the meaning and scope of an order, regulation, or statute if a request is made by a person substantially affected).

(e) State the applicant's proposed resolution or conclusion.¹⁸

Any factual allegation in an application for a declaratory order must be supported by an affidavit or verified.¹⁹ The Commission “may dispose of an application for a declaratory order solely on the basis of the written submission filed” or may allow for other actions, including additional discovery, to ensure that the record is complete.²⁰

Pursuant to KRS 278.020(1), no utility may construct or acquire any equipment to be used in providing utility service to the public until it has obtained a CPCN from the Commission. To obtain a CPCN, the utility must demonstrate a need for such equipment and an absence of wasteful duplication.²¹

“Need” requires:

[A] showing of a substantial inadequacy of existing service, involving a customer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.

[T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.²²

¹⁸ 807 KAR 5:001, Section 19(2).

¹⁹ 807 KAR 5:001, Section 19(6).

²⁰ 807 KAR 5:001, Section 19(8); see also Case No. 2020-00095, March 11, 2021 Order at 4–5 (noting that the Commission has discretion in whether to address an application for a declaratory order).

²¹ *Kentucky Utilities Co. v. Pub. Service Comm’n*, 252 S.W.2d 885 (Ky. 1952).

²² *Kentucky Utilities Co. v. Pub. Service Comm’n*, 252 S.W.2d at 890.

“Wasteful duplication” is defined as “excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”²³ To demonstrate that a proposed facility does not result in wasteful duplication, the Commission has held that an applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.²⁴ Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.²⁵ All relevant factors must be balanced.²⁶

An exception to the CPCN requirement is provided in KRS 278.020(1)(a)(2) for “ordinary extensions of existing systems in the usual course of business.” This exception is further described in 807 KAR 5:001, Section 15(3), which states:

Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

²³ *Kentucky Utilities Co. v. Pub. Service Comm’n*, 252 S.W.2d at 890.

²⁴ Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

²⁵ See *Kentucky Utilities Co. v. Public Service Comm’n*, 390 S.W.2d 168, 175 (Ky. 1965).

²⁶ See also Case No. 2005-00089, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005), final Order at 6, 18.

The Commission has interpreted 807 KAR 5:001, Section 15(3), as stating that no CPCN is required for extensions “that do not result in wasteful duplication of utility plant, do not compete with the facilities of existing public utilities, and do not involve a sufficient capital outlay to materially affect the existing condition of the utility involved or to require an increase in utility rates.”²⁷

While the other requirements in 807 KAR 5:001, Section 15(3) must be satisfied, the determining element for whether an extension is in the ordinary course of business is generally whether the extension involves sufficient capital outlay to materially affect the existing financial condition of the utility involved.²⁸

DISCUSSION

The Commission has generally determined the materiality of an extension’s capital outlay by comparing the cost of the extension to a utility’s net plant in service. Applying that standard, the Commission has nearly always held that an extension that will require a capital outlay in excess of 10 percent of a utility’s net plant in service will materially affect a utility’s financial condition,²⁹ and has generally found recently that extensions that

²⁷ Case No. 2000-00481, *Application of Northern Kentucky Water District (A) for Authority to Issue Parity Revenue Bonds in the Approximate Amount of \$16,545,000; and (B) A Certificate of Convenience and Necessity for the Construction of Water Main Facilities* (Ky. PSC Aug. 30, 2001), Order at 4.

²⁸ Case No. 2023-00415, *Electronic Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Declaratory Order that the Proposed Construction of Lisle Avenue Operations Center and the Proposed Purchase of an Office Building in Eastern Jefferson County are Ordinary Extension in the Usual Course of Business and Do Not Require a Certificate of Public Convenience and Necessity*, (Ky. PSC Apr. 4, 2024), final Order at 12.

²⁹ See, e.g., Case No. 2014-00277, *In the Matter of: Springcrest Sewer Co., Inc. Request for Deviation from 807 KAR 5:071, Section 7(4)* (Ky. PSC Dec. 16, 2014), Order (finding that a remote monitoring system that exceeded 10% of a utility’s net plant in service was material and, therefore, required a CPCN).

approach 5 percent of a utility's net plant in service will do the same.³⁰ Conversely, the Commission has generally found that an extension that will require a capital outlay of less than one percent of net plant in service is an extension in the ordinary course of business.³¹ However, evidence other than the relationship of capital outlay to the net plant in service is also considered.³² Thus, while the materiality of the capital outlay may be obvious in many instances, there is no bright line rule for when a capital outlay is sufficient to materially affect the financial condition of a utility.

Here, Kentucky Power indicated that the total cost of the proposed project is less than one percent of Kentucky Power's net utility plant in service.³³ Moreover, the record does not contain compelling evidence of other factors that would suggest that the proposed project will materially impact Kentucky Power's financial condition. Thus, the

³⁰ See, e.g., Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates: Approval of Depreciation Study; Approval of Tariff Revisions; Issuance of a Certificate of Public Convenience and Necessity, and Other Relief* (Ky. PSC Dec. 28, 2021), Order 26–27 (in which the Commission found that an extension was not in the ordinary course of business, based in part, on the fact that it would require a capital outlay of about 4.76 percent of the utility's net plant in service).

³¹ See, e.g., Case No. 2014-00171, *Application of Northern Kentucky Water District for Approval of Dixie Highway Water Main Improvements, Issuance of a Certificate of Convenience and Necessity and Approval of Financing* (Ky. PSC Aug. 6, 2014), Order at 4.

³² See Case No. 2019-00067, *Application of Hardin County Water District No. 1 for a Declaratory Order that Proposed Waterworks Improvements to Maintain Adequate and Reliable Water Service to the Fort Knox Military Installation do not Require a Certificate of Public Convenience and Necessity* (Ky. PSC May 30, 2024), Order at 9–10 (in the which the Commission found that a large extension would not materially affect the financial condition of the utility, in part, because it was fully funded by the customer that would have served by the extension, the United States government, and the funds had already been paid and could only be used, pursuant to an agreement with the customer, on the proposed extension); Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revisions; Issuance of a Certificate of Public Convenience and Necessity, and Other Relief* (Ky. PSC Dec. 28, 2021), Order at 27 (in which the Commission based a finding that an extension was not in the ordinary course of business, in part, the utility's claims that its inability to recover the costs associated with the capital outlay would have a significant effect on its financial condition); see also Case No. 2020-00060, *Electric Application of Kentucky Utilities Company for Approval of its 2020 Compliance Plan for Recovery by Environmental Surcharge* (Ky. PSC Sept. 29, 2020) (“The Commission finds that, until further Order of the Commission, any capital expenditure that exceeds \$100 million will be considered material to KU's financial position and will require a CPCN.”)

³³ Application at 5.

Commission finds that the capital outlay of the proposed project will not materially affect the financial condition of Kentucky Power.

Kentucky Power's evidence similarly indicates that the proposed project will not conflict with existing certificates or services of other utilities, as the project will be built exclusively in Kentucky Power's service area and on land that Kentucky Power currently owns. Thus, the Commission finds that Kentucky Power's proposed project will not conflict with the certificates or service of another utility.

Based on the findings above, Kentucky Power's proposed project would be an extension in the ordinary course of business if it will not result in wasteful duplication. While Kentucky Power has presented evidence that tends to support its assertion that its proposal will not result in wasteful duplication, additional discovery would be necessary to clarify the basis for Kentucky Power's need and costs in order for the Commission to make an ultimate finding that Kentucky Power's proposal will not result in wasteful duplication. Such discovery would largely turn this matter into an application for a CPCN, which would defeat the purpose of requesting a declaratory order that a CPCN is not required. Thus, the Commission, solely for the purposes of addressing this request for a declaratory order, finds that the administrative record in this matter does not support a finding that the project will result in wasteful duplication.

The finding of an absence of evidence of record to support a finding that the project results in wasteful duplication should not be construed as an ultimate determination that either the project will not result in wasteful duplication or that the costs associated with project are recoverable. Rather, as in the case of other extensions that may otherwise meet the elements of the ordinary course of business exception, the Commission

reserves judgment regarding whether costs associated with the investment are recoverable, including the ultimate issue of wasteful duplication, for future proceedings in which Kentucky Power seeks rates to recover its costs associated with the investment.

As noted above, the Commission finds that Kentucky Power's proposal meets the other requirements of the ordinary course of business exception; and therefore, a CPCN is not required.

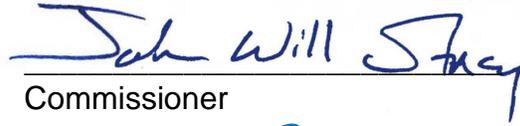
IT IS THEREFORE ORDERED that:

1. Kentucky Power's application for a declaratory order is granted.
2. The installation of a new three-phase reactor circuit breaker and associated construction at the Baker Substation is an ordinary extension in the usual course of business and a CPCN, pursuant to KRS 278.020(1), is not required for the project.
3. Notwithstanding the granting of the declaratory order, Commission reserves judgment regarding whether costs associated with the investment are recoverable, including the ultimate issue of wasteful duplication, for future proceedings in which Kentucky Power seeks rates to recover its costs associated with the investment.
4. This case is closed and removed from the Commission's docket.

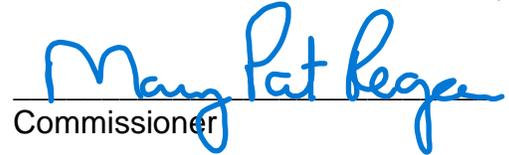
PUBLIC SERVICE COMMISSION



Chairman

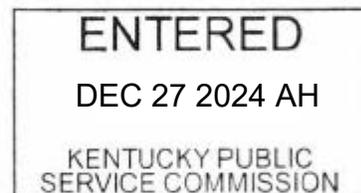


Commissioner



Commissioner

ATTEST:


Executive Director

*Hector Garcia Santana
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216

*Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Kenneth J Gish, Jr.
Stites & Harbison
250 West Main Street, Suite 2300
Lexington, KENTUCKY 40507

*Katie M Glass
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634