

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

EAST KENTUCKY POWER COOPERATIVE, INC.;	)	
DONALD R. NORRIS, PRESIDENT AND GENERAL	)	
MANAGER; AND JIM FILLERS, E. A. GILBERT,	)	
VIRGIL O. GINTER, DELNO TOLLIVER, BUFORD	)	
GOODMAN, JAMES W. WELLS, RICHARD	)	CASE NO.
CRUTCHER, JOHN L. BURTON, JAMES S.	)	93-078
PATTERSON, H. E. O'DANIEL, FRED M. BROWN,	)	
JAMES BARFIELD, A. L. ROSENBERGER, SAM	)	
PENN, JOE TICHENOR, R. WAYNE STRATTON,	)	
RICK STEPHENS, AND WILLIAM HARRIS,	)	
MEMBERS OF THE BOARD OF DIRECTORS	)	
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ALLEGED FAILURE TO COMPLY WITH	)	
COMMISSION STATUTES	)	

SHOW CAUSE ORDER

East Kentucky Power Cooperative, Inc. ("East Kentucky"), a Kentucky corporation engaged in the generation, production, and transmission of electricity to or for the public, for compensation, for lights, heat, power, or other uses, is a utility under the jurisdiction of the Commission pursuant to KRS 278.010(3)(a) and 279.210(1). Donald R. Norris is the President and General Manager of East Kentucky and Jim Fillers, E. A. Gilbert, Virgil O. Ginter, Delno Tolliver, Buford Goodman, James W. Wells, Richard Crutcher, John L. Burton, James S. Patterson, H. E. O'Daniel, Fred M. Brown, James Barfield, A. L. Rosenberger, Sam Penn, Joe Tichenor, R. Wayne Stratton, Rick Stephens, and William Harris are members of East Kentucky's Board of Directors.

KRS 278.020(1) prohibits a jurisdictional utility from beginning the construction of any equipment to be used for furnishing utility service without first obtaining a certificate of public convenience and necessity from the Commission. On March 20, 1992, East Kentucky filed an application with the Commission, docketed as Case No. 92-112,<sup>1</sup> requesting a certificate of convenience and necessity to construct three combustion turbines in Clark County, Kentucky. Based on the record evidence in that case, it appears that on February 26, 1992 East Kentucky entered into a contract with Asea Brown Boveri ("ABB"), the manufacturer of the combustion turbines. That contract authorized ABB to begin the construction of the combustion turbines prior to the issuance of a certificate to construct, and also obligated East Kentucky to incur significant financial penalties in the event the contract would be terminated. As of the date that East Kentucky's application was filed in Case No. 92-112, the cancellation penalties were \$4.7 million and as of the August 25, 1992 hearing in that case, the penalties had escalated to \$24.5 million. It further appears that East Kentucky's management informed its Board of Directors of the construction and penalty schedules set forth in the contract with ABB and, with such knowledge, the Board of Directors voted on

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<sup>1</sup> Case No. 92-112, The Application of East Kentucky Power Cooperative, Inc. For a Certificate of Public Convenience and Necessity, and a Certificate of Environmental Compatibility for the Construction of 300 MW (Nominal) of Combustion Turbine Peaking Capacity and Related Transmission Facilities in Clark and Madison Counties in Kentucky.

February 4, 1992 to approve management's recommendation to sign the contract with ABB.

Based on a review of the record of evidence in Case No. 92-112, which is incorporated herein by reference, and being advised, the Commission finds that a prima facie case has been made that East Kentucky, its President and General Manager, and each member of its Board of Directors violated KRS 278.020(1) by beginning the construction of combustion turbines without first obtaining a certificate of convenience and necessity.

The Commission, on its own motion, HEREBY ORDERS that:

1. East Kentucky, its President and General Manager, and each aforementioned member of its Board of Directors shall appear at a hearing on April 22, 1993, at 10:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, to show cause why each should not individually be subject to the penalties prescribed in KRS 278.990 for the probable violation of KRS 278.020(1).

2. East Kentucky, its President and General Manager, and each member of the Board of Directors shall file within 20 days of the date of this Order an individual or joint written response to the probable violation noted herein.


3. The record of evidence in Case No. 92-112 be and it hereby is incorporated by reference in the record of this case.

4. Any request for an informal conference with the Commission Staff shall be filed within 20 days from the date of this Order.


5. Any request to reschedule the hearing shall be filed in writing not later than two business days prior to the date of the scheduled hearing.

Done at Frankfort, Kentucky, this 11th day of March, 1993.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director