

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING

In the Matter of:

THE APPLICATION OF KENTUCKY)
MOUNTAIN POWER, LLC /)
ENVIROPOWER, LLC FOR A) CASE NO. 2002-00149
MERCHANT POWER PLANT)
CONSTRUCTION CERTIFICATE IN)
KNOTT COUNTY, KENTUCKY)
NEAR TALCUM)

I N D E X

	PAGE
PROCEDURE	1
KMP	2
STATUTORY PROVISIONS	3
Impact on Scenic Surroundings, Property Values, Adjacent Property, and Surrounding Roads	4
Anticipated Noise Levels	7
Economic Impact on the Affected Region.....	8
Existence of Other Generation Facilities	9
Local Planning and Zoning Requirements	9
Potential Impact on the Electricity Transmission System	10
Compliance with Statutory Setback Requirements.....	13
Efficacy of Proposed Mitigation Measures.....	15
History of Environmental Compliance.....	16
CONCLUSION	17
APPENDIX	

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*Before: Martin J. Huelsmann, Chairman, Donnie Newsome, Vice Chairman,
Gary W. Gillis, Robert E. Spurlin, Henry List, J. R. Wilhite,
and Karen Jones*

O R D E R

On June 13, 2002, Kentucky Mountain Power, LLC (KMP) filed, pursuant to KRS 278.706(1), an application with the Kentucky State Board on Electric Generation and Transmission Siting (the Board) for approval to construct a 520 megawatt (MW) electrical generation facility in Knott County, Kentucky.

PROCEDURE

On July 16, 2002, a procedural schedule providing for discovery, intervenor testimony, an evidentiary hearing, and post-hearing briefs was established in this proceeding. On July 15, 2002, BBC Research and Consulting (BBC), a Board consultant, submitted its Review and Evaluation of KMP's Site Assessment Report. Another Board consultant, Commonwealth Associates, Inc. (CAI), filed its transmission system review of KMP's proposed facility as direct testimony on August 2, 2002. On

August 1, 2002, the Board granted full intervention to Pauline Stacy who also filed direct testimony in this proceeding on August 2, 2002. In lieu of direct testimony, KMP submitted its application as filed on June 13, 2002. The Board conducted an evidentiary hearing on August 7, 2002. Robin Morecroft, Randy Bird, and Peter Brown¹ testified on behalf of KMP. Pauline Stacy testified on her own behalf. Ed Harvey and Douglas Jeavons of BBC, and David Shafer of CAI provided testimony for the Board. All witnesses were subject to cross-examination by the other parties. On August 14, 2002, attorneys for KMP, and Ms. Stacy filed post-hearing briefs in this proceeding.

KMP

KMP is a Kentucky corporation principally located at 2810 Lexington Financial Center, Lexington, Kentucky 40507. KMP proposes to construct and operate the Kentucky Mountain Power Project located on a reclaimed coal mine site eight miles from Hazard, Kentucky. KMP is a wholly owned subsidiary of EnviroPower, LLC (EnviroPower). EnviroPower is a Kentucky corporation founded in 1999. EnviroPower currently has five 500 MW projects in active development in Kentucky and Indiana.²

¹ SCR 3.130(3.7) provides: A lawyer shall not advocate at a trial in which the lawyer is likely to be a necessary witness except where. . .[3] disqualification of the lawyer would work a substantial hardship on the client. The Board notes that Mr. Brown is the attorney of record for KMP. However, Mr. Brown is also the only witness qualified to testify on issues related to lease agreements and authorized to make commitments on behalf of KMP. After giving this issue special consideration during the evidentiary hearing, the Board concluded that Mr. Brown s disqualification as a witness would substantially undermine KMP s ability to meet the burden of proof necessary to obtain the construction permit.

² Proposed locations include: Knott County, Kentucky; Martin County, Kentucky; Franklin County, Illinois; South Kindall, Indiana; and North Kindall, Indiana. Section 4.1, KMP Application.

KMP proposes to construct a 520 MW coal- and waste coal-fired merchant power plant in Knott County, Kentucky. The proposed plant will interconnect with American Electric Power s (AEP) 138 kV transmission system at substations in Hazard and Beaver Creek via proposed transmission lines that AEP will own and operate.³ The project will utilize a combination of waste coal and run-of-mine coal from the local area. The proposed plant will be located on a 195-acre site which lies within 4,000 acres currently leased by KMP from Appalachian Realty Company (ARC).

KMP also proposes to construct a water system to meet the facility s water supply needs. In addition to an intake and pumping station at the North Fork of the Kentucky River, the proposed water system will include a 22-mile water line and a 1.4 billion gallon water storage reservoir. The plant will also treat wastewater discharges.⁴ KMP estimates that the total capital expenditure for the entire project will exceed \$750,000,000.⁵

STATUTORY PROVISIONS

Pursuant to KRS 278.706(1), no person shall commence to construct a merchant electrical generating facility until that person has applied for and obtained a construction certificate for the proposed facility from the Board. KRS 278.710(1) directs the Board to consider the following criteria in rendering its decision: impact on scenic surroundings, property values, and surrounding roads; anticipated noise levels; economic impact upon the affected region; the existence of other generation facilities capable of generating at

³ See discussion on p. 12 of this Order.

⁴ KMP Application, Section 8.1.0.

⁵ KMP Application, Section 6.1.

least 10 MW of energy; local planning and zoning requirements; potential impact upon the electricity transmission system; compliance with statutory setback requirements; efficacy of any proposed measures to mitigate adverse impacts; and history of environmental compliance.

KRS 278.710(1) explicitly grants the Board the authority to grant or deny a certificate, in whole or in part, on the basis of these criteria. KRS 278.708(6) authorizes the Board to condition its approval upon the implementation of any mitigation measures that the Board deems appropriate. This Order will outline the evidence that KMP has presented with regard to each of the criteria listed in KRS 278.710(1) and evaluate each proposed mitigation strategy.

Impact on Scenic Surroundings, Property Values, Adjacent Property, and Surrounding Roads

KRS 278.710(1)(a) directs the Board to consider the impact of a proposed merchant power plant on scenic surroundings and property values before deciding whether to grant or deny a construction certificate. The statute also requires the Board to consider the impact that the facility will have on surrounding roads and adjacent properties.

KMP has clearly made special efforts to insulate the proposed plant site from local residents and property owners. The 195-acre plant site lies within a 4,000-acre KMP leasehold located on a 17,000-acre active coal mine called Starfire. There are no residential properties within 2 miles of the proposed plant.⁶ The closest residential and

⁶ BBC Report at B-1.

commercial properties are located approximately 2-1/2 miles from the site.⁷ According to BBC, the configuration of the 4,000-acre leasehold, together with the vegetation and topography that surrounds the area containing the site, will render any negative visual impacts negligible or non-existent.⁸

With regard to potential changes in the value of adjacent properties, the Board agrees with BBC that the 17,000-acre coal mine will serve as an adequate buffer for any negative impact that the plant could have on property values. The Board also notes that the residential properties closest to the plant lie within the valley below the proposed facility. The Board believes that the plant's location and position also serve as a buffer to possible negative effects.

Because KMP will rely upon trucks to haul the materials necessary to construct and operate the proposed facility, the Board has carefully considered the impact that the proposed plant will have on land-based transportation and surrounding roads. The project will likely generate an additional 1500-1900 trips per day on area roads during the construction phase alone.⁹ KMP will access the site from KY 80. This road consists of four lanes, two in each direction, with a raised median for traffic separation. According to KMP, KY 80 was constructed as a Resource Recovery Road and is designed to accommodate high volumes of heavy truck traffic.¹⁰ BBC concurs with KMP's findings and reports that projected increases in traffic along KY 80 will result in

⁷ Approximately 250 homes are located in the valley below the 4,000-acre leasehold. BBC Report at B-1.

⁸ BBC Report at B-2.

⁹ BBC Report at C-33.

¹⁰ Section 8.7, KMP Application.

traffic volumes substantially below the road's maximum capacity.¹¹ However, BBC warns that this increased traffic could cause considerable adverse effects if vehicles migrate from KY 80 and KY 15 and use KY 1087 instead.¹²

Early in this proceeding, the Board became aware of the increased dust, mud, and noise levels that could affect those residents living near the proposed site, particularly those living on KY 1087.¹³ KMP has made several commitments in response to these concerns. According to its letter to the Board dated July 26, 2002, KMP does not intend to rely on KY 1087 to access the proposed site. Instead, KMP intends to use the existing haul road, which is accessible from KY 80. KMP has also committed to instruct and encourage its employees and contractors to avoid KY 1087 and instead use KY 80, KY 15, or the new access road during all phases of the KMP project. The Board believes that these proposed mitigation strategies will address the legitimate concerns raised by BBC and residents living on KY 1087.

KMP has committed to work in conjunction with the Kentucky Transportation Cabinet (KTC) to construct a new bridge and access road to serve the project. The new access road will consist of two 12-foot traffic lanes made of heavy duty pavement and designed to accommodate heavy coal trucks. The KTC will monitor the road's construction and ensure that it is in compliance with agency guidelines. While the KTC has ultimate authority to construct the road, KMP has assured the Board that it will make every reasonable effort to ensure that construction proceeds expeditiously.

¹¹ BBC Report at C-33.

¹² *Id.* at C-34.

¹³ Letter from Pauline Stacy dated July 12, 2002.

The Board has considered the issues raised by Ms. Pauline Stacy regarding the storage capacity of the proposed impoundment, and notes that the Division of Surface Mine Reclamation and Enforcement (DSMRE) has already granted KMP a permit to build the structure. The Board will rely on DSMRE s evaluation of the risk of impoundment failure and concludes that this agency is better suited to address issues related to the proposed embankment structure.

Anticipated Noise Levels

KRS 278.710(1)(b) requires the Board to consider the anticipated noise levels expected to result from the construction and operation of the proposed facility.

The KMP project could substantially increase baseline noise levels because of certain activities that are likely to occur throughout the construction and operation phases. These activities include increased water pumping, vehicle traffic, and the use of steam blows.¹⁴

When construction begins, the maximum projected noise level at the nearest residence will be approximately 40 dBA.¹⁵ Noise at this level is comparable to a quiet home. However, KMP also intends to conduct steam blows shortly before operation commences, which will create a maximum noise level of 87 dBA at the nearest residence. Noise at this level is comparable to the engine of a large truck at a distance of 50 feet.¹⁶

¹⁴ BBC Report at C-23.

¹⁵ BBC Report at C-21.

¹⁶ BBC Report at C-21.

With regard to the pumping and traffic, the Board agrees with BBC's findings that the varied topography and dense vegetation, in conjunction with the baseline setting of an active coal mine, will successfully mitigate adverse noise impacts resulting from the proposed facility. KMP has explained that the boiler feed pumps will be enclosed within the boiler and turbine building and that the river pumps will be enclosed and baffled. BBC recommended, both in its site assessment report and at the hearing, that silencers be used for the steam blows.¹⁷ However, KMP points out that the use of silencers for the steam blows is not the industry standard, and that the steam blows would occur only during a 3-day period near the end of construction.¹⁸ Moreover, it is doubtful that the steam blows would produce disturbance exceeding that created by blasting by the adjacent mining company. Nevertheless, occurrence of the steam blows during nighttime hours would create an unacceptable disturbance. Accordingly, as a condition of granting the certificate, the Board will grant KMP the option of installing silencers or adjusting the timing of steam blows to occur between the hours 7:00 a.m. and 9:00 p.m.

Economic Impact on the Affected Region

KRS 278.710(1)(c) requires the Board to consider the economic impact that the proposed facility will have upon the affected region and the Commonwealth.

KMP asserts that the total capital expenditure for the proposed project will exceed \$750,000,000 with over 60 percent of that amount allocated to materials and

¹⁷ BBC Report at C-24.

¹⁸ KMP's Objections to Review of Kentucky Mountain Power Site Assessment Report (KMP Objections) filed August 7, 2002.

40 percent allocated to labor.¹⁹ KMP predicts that the construction phase of the project will create between 400 and 600 jobs for skilled craft and contract workers.²⁰ Once construction is completed, KMP expects to retain a number of employees to operate and maintain the plant.

While the Board is hopeful that the KMP project will result in economic growth for the Knott County region, the Board believes that any positive economic impact resulting from this project greatly depends upon the extent to which KMP employs local workers and utilizes local resources. In approving this project, the Board relies upon KMP's commitments to hire construction and operation workers from the local population and to utilize local materials whenever practical and possible.

Existence of Other Generation Facilities

KRS 278.710(1)(d) provides that the Board must consider whether a merchant power plant is proposed for a site upon which facilities capable of generating 10 MW or more of electricity are already located.

No such facilities are located on the site proposed by KMP. Accordingly, KMP is not entitled to the statutory preference, including the automatic setback exemption provided by SB 257, Section 4(2)(e), accorded to applicants who propose to construct generating facilities on sites already used for this purpose.

Local Planning and Zoning Requirements

In deciding whether to grant or deny a construction permit, KRS 278.710(1)(e) directs the Board to consider whether the proposed facility will meet all the local

¹⁹ KMP Application, Section 6.0.

²⁰ *Id.*

planning and zoning requirements that existed on the date the application was filed. However, KMP has indicated to the Board that Knott County has no local planning and zoning regulations.²¹ Therefore, the Board need not consider the issue of KMP's compliance with local zoning laws in rendering its decision.

Potential Impact on the Electricity Transmission System

Before the Board may grant a merchant plant construction certificate, KRS 278.710(1)(f) requires the Board to consider whether the additional load imposed upon the electricity transmission system by the proposed facility will adversely affect the reliability of service for retail customers of electric utilities regulated by the Kentucky Public Service Commission.

The proposed plant will interconnect with AEP's transmission grid at substations in Hazard and Beaver Creek. AEP conducted load flow, short circuit, and transient stability studies to evaluate the transmission interconnection of the power plant to the system. As a result of these studies, KMP must construct the transmission lines and facilities described below to enable the plant to interconnect with the AEP transmission grid:

a. Talcum Switching Station. KMP will construct a new 138 kV switching station near the plant site and will connect the proposed generating plant to three 138 kV circuits.

b. Talcum-Hiner-Hazard 138 kV Circuit. On a newly acquired right-of-way, KMP will construct a 9.75-mile single circuit wood H-frame 138 kV line from Talcum to Hiner and a new 2.6-mile single-circuit wood H-frame 138 kV from Hiner to

²¹ KMP Application.

Hazard. On an existing right-of-way between Hazard and Hiner, KMP will remove 2.25 miles of existing 69 kV line wood H-frame and construct a double-circuit steel lattice line to carry the existing 69 kV line and the new 138 kV line.

c. Talcum-Harbert-Consolidated Coal-Beaver Creek 138 kV Circuit. On a newly acquired right-of-way, KMP will construct a 3.9-mile double circuit steel lattice tower line between Talcum and Harbert. KMP will remove 9.97 miles of existing wood H-frame 138 kV line between Consolidated Coal and Beaver Creek and replace it with a double-circuit 138 kV steel lattice line.

d. Talcum-Beaver Creek Circuit. This circuit will utilize the above-listed double-circuit line sections between Talcum and Harbert and between Consolidated Coal and Beaver Creek to create a second circuit to Beaver Creek, including 9.25 miles of new wood H-frame single-circuit 138 kV line on parallel right-of-way between Harbert and Consolidated Coal.

e. Hiner Substation. KMP will construct a 138/69 kV substation near Bulan and connect it to the Talcum-Hiner-Hazard 138 kV line and the existing Bonnyman-Hazard 69 kV line.

In addition to the above-listed system upgrades, additional upgrades are required at Harbert Substation, Beaver Creek Substation, and Hazard Substation and the existing 138 kV and 69 kV transmission lines in the vicinities of these substations. The total estimated construction cost for the transmission lines and associated facilities is approximately \$33 million and will be paid by KMP.

CAI conducted additional studies that compared existing 2002 Summer conditions without the KMP plant, and 2005 Summer conditions with and without the

KMP plant. According to these studies, the KMP plant would inject 500 MW of power at the Talcum Substation. The normal power flows from Talcum are 139.9 MW to Harbert, 125.4 MW to Beaver Creek, and 234.7 MW to Hiner (Hazard). CAI's analysis demonstrates that the transmission system can accommodate this level of power flow for both normal and single contingency conditions.

KMP is constructing the 138kV transmission lines that will connect the KMP plant site to AEP substations. Ms. Stacy asserts that the proposed lines are nonregulated transmission lines and that KMP should have filed an application pursuant to KRS 278.714(1) to construct them.²² However, KRS 278.700(5) defines a nonregulated transmission line as an electric transmission line that is not regulated by the Public Service Commission. According to the terms of an Interconnection and Operation Agreement signed by KMP and AEP in May 2001, KMP must transfer these lines to AEP, a regulated utility, before electricity moves across them. Because AEP will own and operate these lines, they will fall under the jurisdiction of the Public Service Commission and therefore cannot be considered nonregulated transmission lines within the meaning of KRS Chapter 278.

Overall, the record demonstrates that the proposed facility will not adversely affect service to Kentucky customers. In fact, the project should be beneficial to transmission reliability in this area. The plant will provide voltage regulating capability, which will improve power quality to customers in the Knott County area. In its report to the Board, CAI states:

²² KRS 278.714(1) requires any person seeking to construct a nonregulated transmission line to obtain Board approval before commencing construction.

On the basis of the review of information provided in the application, in telephone conversations with AEP, and from an independent power flow analysis, CAI concludes that the addition of a 520 MW power plant in Knott County near Talcum will not adversely impact the reliability of service to retail customers. Our conclusion is that the addition of the proposed power plant and the proposed transmission lines will improve the reliability of the transmission system that serves the substations identified in the analysis section of this report. This will increase reliability of service to those customers served by these substations, though the improvement will, most likely, be unnoticed by the customer. For other retail customers served by transmission lines and substations remote from those listed above, there would be no increase or decrease in the expected reliability of the transmission system.²³

In addition to retaining CAI to conduct transmission analyses, the Board also requested information from all transmission owners under Public Service Commission jurisdiction as to whether the proposed plant would require upgrades to their respective transmission systems. All replies received from these utilities indicate that no upgrade to their respective systems would be necessary. For these reasons, the Board concludes, pursuant to KRS 278.710(1)(f), that the proposed facility will not adversely affect reliability of service for Kentucky customers.

Compliance with Statutory Setback Requirements

Before deciding whether to grant or deny an application, the Board must consider whether the exhaust stack of the proposed merchant plant is at least 1,000 feet from the property boundary of an adjoining property owner and 2,000 feet from any residential neighborhood, school, hospital, or nursing home facility. KRS 278.710(4) allows the Board to grant a deviation from these setback requirements upon a finding that the proposed facility is designed and located to meet the goals of the statute at a distance closer than the prescribed distances.

²³ CAI Report submitted August 2, 2002.

KMP leases the 195-acre footprint of the proposed site and the 4,000 acres that surround it from ARC, a subsidiary of Horizon Natural Resources. This lease extends to December 1, 2098, at which time KMP may renew the lease for an additional 99 years. Under the terms of the lease, KMP has the exclusive right to use and occupy the Property for any and all lawful purposes.²⁴

The current configuration of the KMP project indicates that the exhaust stack would be located 600 feet from the 195-acre footprint boundary. Under the most technical interpretation of the statute, one could argue that this configuration does not meet the statutory setback requirements. However, to the extent that KMP holds a significant ownership interest in the land adjacent to the proposed site, a strong argument can be made that there is no adjoining property owner within 1,000 feet within the meaning of KRS Chapter 278, and that the setback requirements do not apply because KMP essentially owns²⁵ the entire 4,000 acres.

The Board concludes that KMP has substantially complied with the setback requirements outlined in KRS Chapter 278. The legislative history and statutory language of the statute suggest that the primary purpose of the setback requirements is to protect the assumptions and expectations of property owners who had no reason to expect the construction of a merchant power plant near their property. The facts of this

²⁴ Page 3 of Lease between EnviroPower, LLC and ARC. EnviroPower assigned the lease to KMP in an agreement dated January 2, 2000.

²⁵ The word owner, as used in statutes relating to real property, is one of general meaning and may be applied to any defined interest in real property. . .the term owner is often used to characterize the possessor of an interest less than that of absolute ownership, such as a tenant for years, a tenant for life, and a remainderman in fee. 63C Am. Jur. 2d, Property, Section 26.

proceeding present a different scenario. KMP testified at the evidentiary hearing, and the language of the lease suggests, that ARC is aware of KMP's plans for the property and has no objection to this proposed use. Moreover, the Board believes that KMP has made every effort to protect property owners from any adverse impact that may result from the proposed project. The proposed site is surrounded by 4,000 acres that KMP will lease for the next 195 years. Therefore, to the extent that a deviation from the setback requirements is necessary, the Board grants such deviation based upon its finding that the proposed project is designed and located to meet the goals of KRS Chapter 278 at a distance closer than the prescribed distance of 1,000 feet.

Efficacy of Proposed Mitigation Measures

KRS 278.710(1)(h) requires the Board to consider the efficacy of measures proposed to mitigate any adverse impact that the proposed facility may have on the affected region. Pursuant to this statute, the Board has reviewed and considered the measures that BBC has proposed to mitigate the negative impact that the KMP project may have on the Knott County region.

With regard to access control issues, adequate security is essential to protecting residents from the dangers that may result from security breaches. The Board believes that the implementation of standard industry practices for security and access control will successfully mitigate the risk of security breach.

In assessing the scenic compatibility of the proposed facility with surrounding land, BBC asserts that visual impairment may occur for residents near the North Fork of the Kentucky River.²⁶ In response to this potential impairment, BBC proposes that KMP

²⁶ BBC Report at C-14.

keep certain facility structures at a low profile and select colors for these structures that are similar to surrounding vegetation. The Board concludes that implementation of these mitigation strategies will render the KMP project largely compatible with its scenic surroundings.

Mitigation strategies related to anticipated noise levels are discussed on page 8 of this Order. Mitigation strategies related to impact on surrounding roads are discussed on page 6 of this Order.

Finally, the Board is sensitive to the fact that many of KMP's proposed plans and agreements have not been finalized. If KMP failed to honor the commitments it has made to this Board, it would substantially affect the projected impact the proposed plant will have on the region. For these reasons, the Board has a responsibility to make every effort to ensure that the project is constructed as KMP has represented throughout this proceeding. To that end, the Board finds that the submission of an annual project impact report would successfully mitigate any adverse impacts caused by the inherent uncertainty of this project.

History of Environmental Compliance

In determining whether to grant a construction permit, KRS 278.710 directs the Board to consider whether the applicant has a good environmental compliance history. KMP asserts that it has not violated any federal or state environmental rules or regulations. The Board is encouraged by KMP's record of environmental compliance and believes that the company's record reflects its commitment to environmental responsibility.

CONCLUSION

After carefully considering the criteria outlined in KRS Chapter 278, the Board finds that KMP has presented sufficient evidence to obtain a certificate to construct the proposed merchant power plant. The Board conditions its approval upon the implementation of the measures described herein and listed in Appendix A to this Order.

The Board, having reviewed the evidence presented in the record, and being otherwise sufficiently advised, hereby grants KMP's application for a certificate to construct a 520 MW electric generating facility in Knott County, Kentucky.

Done at Frankfort, Kentucky, this 5th day of September, 2002.

IT IS SO ORDERED.

KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND
TRANSMISSION SITING

/s/ Martin J. Huelsmann
Martin J. Huelsmann, Chairman

Donnie Newsome, Vice Chairman

/s/ Gary W. Gillis
Gary W. Gillis

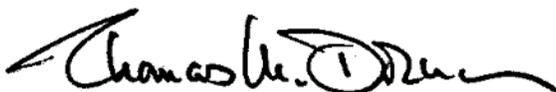
/s/ Robert E. Spurlin
Robert E. Spurlin

/s/ Henry List
Henry List

/s/ Karen Jones
Karen Jones

/s/ J. R. Wilhite
J. R. Wilhite

ATTEST:



Thomas M. Dorman
Executive Director, Public Service Commission
On behalf of
The Kentucky State Board on Electric
Generation and Transmission Siting

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION AND TRANSMISSION SITING IN CASE NO. 2002-00149 DATED September 5, 2002

In its report, *Review and Evaluation of Kentucky Mountain Power Site Assessment Report*, BBC recommended that the Board develop a monitoring program to ensure that a proposed merchant plant is constructed as the applicant has represented throughout the siting process. The following program shall apply to KMP and all subsequent permittees under Board jurisdiction.

A. The permittee (or its successors) shall file an annual report throughout the duration of the construction of its facility. The initial report shall be filed within 1 year of the date of any Order granting a construction certificate. Subsequent reports shall be filed annually.

B. The report shall be filed in the form of a letter to the Chairman of the Kentucky State Board on Electric Generation and Transmission Siting. The report shall contain the following sections:

Overview -- The permittee shall provide a short narrative summary of the project's progress or changes, which have occurred since the last report. The permittee shall also identify the primary contractor(s) responsible for the largest portion of the construction effort, if applicable.

Implementation of Site Development Plan -- The permittee shall describe: 1) the implementation of access control to the site; 2) any substantive modifications to the proposed buildings, transmission lines and other structures; 3) any substantive

modifications to the access ways, internal roads and railways serving the site; and 4) development of utilities to service the site. A map must accompany any change in the above four items.

Local Hiring and Procurement -- The permittee shall describe the efforts made by the permittee, if any, to encourage the use of local workers and vendors. At a minimum, the permittee shall include a description of the efforts made by the permittee and those efforts made by contractors and vendors to use local workers and local vendors to build and operate this project. The permittee shall also include at least an informed estimate of the proportion of the construction and operational workforce that resided in the region (e.g., 50-mile radius) of the plant site prior to coming to work at the KMP site.

Public Comments and Responses -- The permittee shall provide a summary of any oral, telephone, e-mail or other written complaints or comments received from the public during the intervening period since the last report. The permittee shall also summarize the topics of public comments, the number of comments received, and the permittee's response to each topic area. Original complaints and comments should be attached in their original form, including telephone transcriptions.

Specific Mitigation Conditions -- The specific mitigation conditions for each permittee may vary, depending on its site and the issues presented by its facility plan. In each case, however, the permittee shall provide a brief (e.g., 1 to 3 paragraph) narrative response to indicate its progress, any obstacles encountered, and plans to fulfill the permit condition or mitigation requirement or permit condition required by the Board.

C. Within 6 months after the conclusion of construction, the permittee shall submit to a final site visit from the Board, its staff and its consultants, to review and ascertain that the constructed facility followed the description provided by the permittee in its site assessment report and that the mitigation conditions imposed by the Board were successfully implemented. The permittee shall also submit as-built plans in the form of maps that illustrate the implementation of the Site Development Plan.

D. The following conditions shall apply specifically to KMP:

1. KMP shall provide access control and security that meet industry standards suitable to its particular operation. Listed below are industry standards that the Board would consider appropriate. If KMP subsequently determines that there is a preponderance of industry standards which suggest an exception to these standards, it may request and substantiate such an exception in its periodic compliance reports.

- a. Approved parking areas for employees.
- b. Fenced, lighted plant perimeter.
- c. Access to waste disposal areas must be locked.
- d. Storage buildings with hazardous or dangerous chemicals must be locked.
- e. Only personnel who have attended an induction course will be permitted to work on-site.
- f. All employees and subcontractors working at the site must have a site security pass which must be carried at all times.

g. Entry to the site will be controlled, and only persons approved for work on the site will be allowed access. Access for site personnel will be via a security gate controlled by site security.

h. Commercial vehicle drivers delivering/removing materials to/from the site must first register with KMP.

i. Documentation of all drivers will be subject to examination. (Only those holding the necessary documents for the type of vehicle, plant or equipment to be driven, will be allowed on the site.)

j. All vehicles entering/leaving the site shall be subject to search by KMP security.

k. Vehicle speeds on site shall not exceed 15 kilometers per hour unless there are signs indicating other limits.

2. KMP shall ensure that the building contractors responsible for the smokestack construction, the water pump house construction, and the water diversion structure select neutral background colors which will minimize contrast with existing surroundings. Industry standards for accomplishing this permit condition should be applied.

3. KMP shall instruct its contractors to include enclosures and baffling for the boiler pumps and the water pumps to reduce noise impacts to the extent practicable, following industry standards.

4. To reduce noise impacts from steam blows, KMP shall ensure that its contractors either install silencers during the planned start-up period during which steam blows occur, or adjust the timing of steam blows such that they occur between

the hours of 7:00 a.m. to 9:00 p.m. Prior to conducting the steam blows, KMP shall provide adequate and reasonable notice to residents within the affected area.

5. KMP shall encourage and support the Commonwealth of Kentucky, Knott County, and any other parties in their effort to design, construct, operate, and maintain the turn-out lane from KY 80 to Talcum, the new bridge, and the new paved access road to the plant site. KMP shall encourage and in no way inhibit the construction of this new access road as soon as possible after project construction commences.

6. Prior to completion of the new bridge and access road, KMP shall require its employees and contractors to use KY 80, KY 15, and the access road to the plant site at Talcum which crosses KY 1087 heading directly to the plant site. Without violating existing laws or breaching existing contracts, KMP shall instruct its employees, vendors, contractors, and their sub-contractors to utilize the existing Talcum access to the plant from KY 80, and subsequently the new bridge and access road when it is completed, to the maximum extent practicable. Exceptions would include emergencies where other routes are necessary, access by employees or vendors who currently reside along other access roads to the sites or other similar circumstances where the use of the preferred route would be clearly unreasonable.

7. KMP shall make reasonable efforts to hire workers, vendors, and contractors from the local area. A worker hired from the local area is one that can commute daily to the plant site from his or her primary residence that existed prior to employment at the KMP site. Typically, workers, vendors or contractors living within a 50-mile radius of the site prior to their association with KMP may be considered local.

8. KMP shall include language in its contracts, provide training for its hiring agents and purchasing agents which indicate the preference for such local hiring and local expenditure patterns to the maximum extent practicable. Such provisions would not be considered practicable if they directly threatened the ability to construct or operate the project or obtain financing.