

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY POWER)
COOPERATIVE, INC. FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY FOR) CASE NO. 2005-00207
THE CONSTRUCTION OF A 161KV)
TRANSMISSION PROJECT IN BARREN,)
WARREN, BUTLER, AND OHIO COUNTIES, KY)

ORDER

Joey Roberts has moved for the issuance of a subpoena to compel the attendance of Gerald Hayes, president and chief operating officer of Warren Rural Electric Cooperative Corporation (“WRECC”), at the hearing scheduled to reconvene on September 20, 2005. Finding that Movant seeks the issuance of a subpoena to present testimony on matters that are not relevant to this proceeding, we deny the motion.

This proceeding involves the application of East Kentucky Power Cooperative, Inc. (“EKPC”) to construct approximately 90 miles of 161 kV transmission line to connect its existing transmission system to WRECC’s retail electric distribution system. The Tennessee Valley Authority (“TVA”) currently provides electric power to WRECC. WRECC recently elected to terminate its power supply agreement with TVA and to enter into a new power supply agreement with EKPC. EKPC asserts that the proposed construction is necessary to implement its obligations under this agreement.

In his motion for the issuance of a subpoena, Movant argues that the testimony of Mr. Hayes is necessary to address the effect of the power supply agreement between WRECC and EKPC on the retail rates assessed to WRECC’s ratepayers. He states:

WRECC has acted with no outside review whatsoever to obligate its members under a 33-year contract to pay EKPC wholesale rates for electric power that include the amortized costs of new power production facilities and transmission lines in addition to all related costs of power generation by EKPC or purchase from other suppliers. Neither WRECC nor EKPC have revealed the actual rates that WRECC customers will be required to pay for electricity under that contract. The WRECC Board made this decision in a closed session, never conducted a public hearing or meeting on this issue, and has refused to provide copies of the responses to its Request for Proposals or the subsequent rate analysis conducted by consultants working under its direction.”¹

He asserts that Mr. Hayes is the only person who can address these issues.²

The Commission “may issue subpoenas, subpoenas duces tecum, and all other necessary process in proceedings” brought before it. KRS 278.320; 807 KAR 5:001, Section 2(6)(a). The issuance of subpoenas is clearly a matter within our discretion. No statute or administrative regulation requires the issuance of a subpoena merely because a party requests its issuance. A subpoena should be issued only when the requesting party has demonstrated that the subpoenaed witness will provide testimony that is relevant to the proceeding.

In Case No. 2004-00423,³ the Commission held that the effect of the proposed power supply agreement between WRECC and EKPC on the retail rates assessed to WRECC’s ratepayers and the reasonableness of such rates are not germane to a proceeding on EKPC’s application to construct the facilities necessary to implement the

¹ Motion at 2.

² Id.

³ Case No. 2004-00423, The Application of East Kentucky Power Cooperative, Inc., for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Construction of a 278 MW (Nominal) Circulating Fluidized Bed Coal Fired Unit in Mason County, Kentucky (Ky.PSC June 10, 2005).

proposed contract. In that proceeding, which dealt with the construction of generation facilities, we stated:

[T]he Commission finds that Warren RECC currently purchases its electric power supply from TVA and, as a consequence, Warren RECC's rates are subject to the exclusive jurisdiction of the TVA, not this Commission. Thus, until such time as Warren RECC ceases to be subject to TVA's jurisdiction, we have no authority to determine the reasonableness of decisions by Warren RECC regarding its future source of electric power.

The issues before the Commission in this case are whether East Kentucky Power has a need for additional generating capacity, whether it properly solicited and evaluated power supply bids, and whether its proposed construction of a new generating facility at the Spurlock Station will result in duplication of facilities. Warren RECC has entered into a Special Membership Agreement with East Kentucky Power, as well as a Wholesale Power Contract with East Kentucky Power. Under the terms of those agreements, Warren RECC has agreed to purchase all of its electric power requirements from East Kentucky Power, and East Kentucky Power has agreed to sell to Warren RECC all of its electric power requirements. Since East Kentucky Power is the only party to those contracts that is subject to the Commission's jurisdiction, the issues in this case must of necessity be limited to whether it is necessary and reasonable for East Kentucky Power to supply power, not whether it is reasonable for Warren RECC to purchase that power.⁴

While the EKPC's application in this proceeding concerns the construction of transmission facilities, our analysis from the earlier proceeding remains applicable. As the Movant clearly seeks to examine Mr. Hayes on the new power supply agreement's effect on WRECC's retail rates, he seeks testimony on an issue that is not relevant to this proceeding. Accordingly, we find that his motion should be denied.

⁴ Id. at 2-3.

IT IS THEREFORE ORDERED that Movant's Motion for Subpoena is denied.

Done at Frankfort, Kentucky, this 19th day of September, 2005.

By the Commission

ATTEST:


Executive Director

Case No. 2005-00207