

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. 2006-00463
THE CONSTRUCTION OF A 345 KV ELECTRIC)
TRANSMISSION PROJECT IN CLARK, MADISON,)
AND GARRARD COUNTIES, KENTUCKY)

O R D E R

East Kentucky Power Cooperative, Inc. ("EKPC") has applied for a Certificate of Public Convenience and Necessity ("CPCN") to construct or rebuild approximately 35.6 miles of 345 kV transmission line. Finding that the public convenience and necessity require the proposed transmission line, we grant the requested relief.

BACKGROUND

EKPC, a rural electric cooperative organized pursuant to KRS Chapter 279, owns and operates facilities that generate and transmit electric energy for sale at wholesale to 16 member distribution cooperatives which jointly own it. The member cooperatives purchase their total power from EKPC and distribute the power to approximately 504,492 retail customers in 89 central and eastern Kentucky counties.

PROCEDURE

On April 20, 2007, EKPC filed notice of its intent to file an application for a CPCN to construct a 345 kV transmission line.¹ On May 22, 2007, EKPC filed its application. On August 15, 2007, EKPC amended its application to increase the centerline-to-centerline separation on a portion of the co-located sections of the proposed facilities from 75 feet to 125 feet and to revise certain property owner information.

On June 1, 2007, the Commission established a procedural schedule for this proceeding, extended the statutory period in which a decision is required to 120 days,² and directed that the services of a competent, qualified, and independent firm be retained to assist in the Commission's review of EKPC's application.³

The Commission subsequently retained The Liberty Consulting Group of Quentin, Pennsylvania ("Liberty"), to review EKPC's analyses regarding the need for, and engineering aspects of, the proposed high voltage transmission line. On June 25, 2007, Liberty submitted a report of its review and its conclusions regarding the proposed construction.

¹ EKPC originally filed its notice of intent on October 31, 2006. Unable to file its application within the 6-month period that 807 KAR 5:120, Section(1), requires, EKPC "renewed" its original notice on April 20, 2007. See Letter from Sherman Goodpaster III, EKPC Senior Corporate Counsel, to Beth O'Donnell, Executive Director, Public Service Commission (April 17, 2007).

² KRS 278.020(8) provides that "[t]he commission shall issue its decision no later than ninety (90) days after the application is filed, unless the commission extends this period, for good cause, to one hundred twenty (120) days."

³ See KRS 278.020(8) ("[t]he commission may utilize the provisions of KRS 278.255(3) if, in the exercise of its discretion, it deems it necessary to hire a competent, qualified and independent firm to assist it in reaching its decision").

Phillip Price and Deidra Price are the only persons who sought intervention in this proceeding. On June 22, 2007, the Commission granted Mr. and Mrs. Price leave to intervene in this matter as limited intervenors.

After conducting discovery in this matter, the Commission, on its own motion, held a local public meeting in Richmond, Kentucky on August 2, 2007,⁴ and an evidentiary hearing in Frankfort, Kentucky on August 22, 2007. At the evidentiary hearing, the following persons testified: Mary Jane Warner, EKPC's Manager of Power Delivery Expansion; Darrin Adams, Manager of Transmission Planning, EKPC's Power Supply Business Unit; and Bryan Kirby, an owner of property on which the proposed facilities will be located.

STATEMENT OF THE CASE

EKPC proposes to construct 35.6 miles of 345 kV transmission line from its J. K. Smith Generating Station ("Smith Station") in Clark County to its proposed West Garrard Substation near Lancaster, Kentucky.⁵ Approximately 9 miles of the transmission line will be constructed along newly acquired right-of-way. Approximately 14.8 miles of the transmission line will be constructed on existing right-of-way and parallel to an existing transmission line. The remaining 11.8 miles of line will be a rebuild of existing transmission lines located on existing right-of-way.⁶ EKPC contends that the proposed construction is "needed to enable EKPC to reliably deliver energy

⁴ The purpose of the local public hearing was to take public comment on the proposed facilities.

⁵ Application at 3.

⁶ Id.

from its existing and planned future generating resources to its member systems.”⁷ EKPC currently has plans to construct two combustion turbines and a 278-MW coal-fired base unit at the Smith Station.⁸

EKPC used the Kentucky Transmission Line Siting Model (“Kentucky Siting Model”) to develop the route of the proposed transmission line from the Smith Station to the West Garrard Substation. Using the model, it first developed “macrocorridors” and “alternative corridors”⁹ and then narrowed its analysis to 16 possible routes along the alternative corridors.¹⁰ After further application of the siting methodology, it determined that the best routes were Er, Gr, and Hr. Based upon the judgment of its siting personnel, EKPC then determined that Route Hr was the best choice among these routes.¹¹

⁷ Testimony of Darrin Adams at 2.

⁸ See Case No. 2005-00053, 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 and Five 90 MW (Nominal) Combustion Turbines in Clark County, Kentucky (Ky. PSC Aug. 29, 2006); Case No. 2006-00564, An Investigation Into East Kentucky Power Cooperative, Inc.’s Continued Need for Certificated Generation (Ky. PSC May 7, 2007).

⁹ Transcript of 8/22/2007 Hearing at 38.

¹⁰ Id. at 19. See also Application at Exhibit 10.

¹¹ According to the Kentucky Siting Model, “[e]ach siting team member ranks the top scoring routes based on several important considerations: visual concerns, community concerns, schedule delay risk, special permit issues, and construction and maintenance accessibility.”

Although Route Hr is the most expensive of the three best routes,¹² it contains the largest portion of rebuild. Route Hr had 11.8 miles of rebuild compared to 7.9 miles for Route ER and 7.7 miles for Route Gr.¹³ According to EKPC, the greater the amount of rebuild that a route possesses, the more desirable the route.¹⁴ While rebuilding is generally more expensive than the construction of new line, it does not require the acquisition of new easements. Rebuild lines generally run along existing easements. Amending and expanding existing easements for a rebuild is generally much faster and easier than acquiring greenfield easements. It allows the construction schedule to move forward more quickly.¹⁵ According to EKPC, rebuilding an existing line is more acceptable to the community than the construction of a new line.¹⁶

Based upon its review of EKPC’s application and interviews of EKPC personnel, Liberty concluded that EKPC needs the proposed facilities “on the proposed schedule in order to meet the electric service requirements of serving native load customers

¹² EKPC determined the cost of the three best routes as follows:

Route	Cost
Route Er	\$37,154,045
Route Gr	\$36,893,565
Route Hr	\$38,112,921

Transcript of 8/22/2007 Hearing at 77; Application at Exhibit 10.

¹³ Transcript of 8/22/2007 Hearing at 23; Application at Exhibit 10.

¹⁴ Transcript of 8/22/2007 Hearing at 68.

¹⁵ Id. at 72.

¹⁶ Id.

resulting from the additional new Commission-approved generation at the J.K. Smith Generating Station.”¹⁷

Liberty also examined additional projects that EKPC considered as alternatives to the proposed construction and concluded that EKPC had properly considered the possibilities of upgrading the voltage of existing facilities, adding new generation and improving the power factor of the system, and wheeling power through an alternative interconnection. It found that none of these alternatives are viable.¹⁸

Liberty found that the preferred alternative route is reasonable and that the route takes maximum advantage of co-location opportunities.¹⁹ It further recommended that the Commission permit some flexibility in its final determination of the actual centerline to address landowner concerns.²⁰

DISCUSSION

To establish that the public convenience and necessity require the construction of a new facility, an applicant must demonstrate the need for the proposed facilities and that their proposed construction will not result in the wasteful duplication of facilities.²¹ EKPC has presented substantial evidence that the construction of additional generation facilities at its Smith Station will require the construction of the proposed transmission

¹⁷ The Liberty Consulting Group, “Final Report: Focused Review of Documentation Filed by East Kentucky Power Cooperative, Inc. For a Proposed 345kV Transmission Line Within Kentucky” (June 25, 2007) at I-4.

¹⁸ Id. at III-1 to III-13.

¹⁹ Id. at III-12.

²⁰ Id.

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

main.²² Liberty examined whether EKPC had given adequate consideration of wheeling power through another utility's system and determined that EKPC had given adequate consideration to that alternative and had reasonably rejected it in favor of constructing the proposed line.²³

In rendering our decision, we are mindful of the concerns of landowners and local residents. The Kirby family voiced several concerns regarding the placement of the proposed transmission main and its effect on their property in Lancaster, Kentucky. They noted that the proposed route will cross over an existing Kentucky Utilities Company ("KU") transmission line and thus divide their property into four quadrants. They further questioned the fairness and appropriateness of EKPC's route selection analysis as applied to their property.

The evidence shows that the proposed route cannot avoid intersecting the route of the existing KU transmission line. At the Commission's direction, EKPC prepared an additional map showing the characteristics of the land below the point at which segment 11 of the EKPC proposed line would cross the existing KU transmission line that overhangs the Kirby farm.²⁴ This map shows that the EKPC line would intersect the KU

²² One commenter questioned EKPC's need for new generation facilities at Smith Station and the local area's need for the generation from those generation facilities. He asserted that the "grid system was to correct any need for additional lines by allowing utilities to purchase or sell power from other utility plants." Letter from Earl Johnson to Public Service Commission (Aug. 10, 2007). The Commission has previously addressed the need for the generation facilities in issue. See supra note 8. Our review of the record indicates no evidence to support the proposition that the existence of a grid system has totally eliminated the need for transmission lines in this state.

²³ Liberty at III-4.

²⁴ Transcript of 8/22/2007 Hearing, Commission Staff Exhibit 2.

line and divide the property underneath it just as the proposed line will divide the Kirby property. Thus, even if the Commission ordered EKPC to re-route the line along segments 12 and 13, the EKPC line would still cross the KU line over another person's property in the same manner. The EKPC line will undoubtedly have an adverse impact on the value of the Kirbys' property. However, the determination of that devaluation falls outside the purview of the Commission's jurisdiction.

We have considered and find no basis to the Kirby family's objections to the use of rights-of-way as a scoring measure in the route selection analysis. Route Hr scored better in this category because it crossed fewer planned developments than Route Er or Route Gr.²⁵ Under the Kentucky Siting Model, routing a transmission line over a subdivision is not preferred.²⁶ We find that giving additional "points" to a particular route based on its crossing fewer planned developments is logical and reasonable.

The Kirby family also contended that the route selection analysis considered a platted subdivision whose plat was not filed with the local Property Valuation Administrator ("PVA"). The Kirby family's failure to identify the specific location of the subdivision limits the Commission's ability to evaluate their objection. The record clearly indicates that EKPC obtained its information regarding planned developments from both local PVA offices and planning and zoning offices and consistently applied the Kentucky Siting Model.²⁷ We find no evidence that EKPC's scoring methodology was

²⁵ Application at Exhibit 10.

²⁶ Transcript of 8/22/2007 Hearing at 65.

²⁷ Id. at 66.

unreasonable or that the existence of an “unfiled” subdivision plat would render EKPC’s selection invalid.

The Kirby family also voiced concerns about EKPC’s possible use of herbicides along the right-of-way in areas which might contaminate the drinking water of the Kirbys’ livestock. We note that these concerns are speculative. The Commission’s authority over the methods that a utility may use to manage its right-of-way, moreover, is limited and does not include proscribing the use of herbicides. While this concern is insufficient to require modification of the proposed transmission line route, the Commission encourages EKPC to conduct its right-of-way management in a manner that will not result in any waste or harm to any property owner’s land or livestock.

The Prices urge the Commission to require the proposed transmission line to be placed underground to address aesthetic, property value, health, and environmental concerns. The record, however, is totally lacking any evidence regarding the costs and benefits from such action. Without such evidence, we cannot evaluate or act on such proposal.

Although the comments of John Logan were submitted beyond the comment deadline previously established for this case, the Commission has given them due consideration. The Commission examined Exhibit 8.10 of EKPC’s application and observed that the current transmission line will be rerouted to cross directly over Mr. Logan’s property.²⁸ While the Commission acknowledges Mr. Logan’s comments

²⁸ It appears that the existing transmission line was routed around the Logan property to avoid the house that stood there prior to the 1977 fire to which Mr. Logan refers in his comments.

regarding possible future use of the property, the comments did not overcome EKPC's showing of the need to route the transmission line as proposed.

Several commenters allege that the proposed transmission lines may adversely affect the health of persons residing near those lines. None, however, have offered any evidence of such effects. This Commission is not aware of any recognized and accepted scientific study that conclusively supports these claims.

Finally, the Commission acknowledges its gratitude to the citizens who took time to participate in this matter by submitting written comments and by giving spoken comments at the local hearing and testimony at the formal public hearing. We carefully considered these comments in reaching our decision. The final determination in this matter was not easy, because the Commission understands the importance of those issues to each of the commenters.

CONCLUSION

Having reviewed the evidence of record and being otherwise sufficiently advised, the Commission finds that the proposed 345 kV transmission line is necessary and reasonable and that its construction will not result in the wasteful duplication of facilities. We further find that EKPC's selection of Route Hr is reasonable in light of the circumstances.

In our prior Orders, this Commission has emphasized rebuilding and co-locating as goals of transmission planning. However, those goals may not necessarily be an overriding factor in every case. In some cases it is possible that choosing a route with more rebuild or co-location could make the overall cost of the preferred route unreasonable when compared to a route with less rebuild or co-location. The evidence

in this case supports the choice of Route Hr even though it is slightly more expensive than the other two possible routes.

The Commission also understands the need, in limited circumstances, to permit a utility the flexibility to address unanticipated construction issues. We therefore find that EKPC may move the approved centerline so long as: (1) it is no greater than 500 feet in either direction (i.e., within a 1,000-foot corridor) of the existing route; (2) the move does not shift the line or its right-of-way onto the property of a different landowner; and (3) the property owner who is subject to the move agrees in writing to the requested move. EKPC should file with the Commission a survey of the final location of the line after all moves are completed and before construction begins.

Any changes greater than this distance or involving landowners not identified in EKPC's application will require EKPC to file another application with the Commission. Likewise, if another agency requires an alteration of the line that does not meet all the conditions listed above, EKPC must apply for a CPCN for the modified route.

IT IS THEREFORE ORDERED that:

1. EKPC is granted a CPCN to construct and operate the proposed transmission line as set forth in its application, as amended.
2. EKPC shall file a survey of the final location of the line after any modifications are finalized as authorized herein and before construction begins.
3. EKPC shall file "as-built" drawings or maps within 60 days of the completion of the construction authorized by this Order.

Done at Frankfort, Kentucky, this 19th day of September, 2007.

By the Commission

ATTEST:


Executive Director