

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF KENTUCKY)	
POWER COMPANY FOR A CERTIFICATE)	CASE NO.
OF PUBLIC CONVENIENCE AND NECESSITY)	2007-00155
TO CONSTRUCT A 138 KV TRANSMISSION)	
LINE IN FLOYD COUNTY, KENTUCKY)	

O R D E R

On May 15, 2007, Kentucky Power Company (“Kentucky Power”) filed an application for a Certificate of Public Convenience and Necessity (“CPCN”) for the construction of an 8.3-mile-long 138 kilovolt (“kV”) transmission line in Floyd County, Kentucky. On May 30, 2007, the Commission entered an Order establishing a procedural schedule which originally provided for a formal public hearing on August 2, 2007. The Order also established June 14, 2007 as the deadline for any motions to intervene as well as for any requests for a local public hearing in Floyd County.

June 14, 2007 passed without any requests for a local public hearing being filed. The Commission is unaware of any opposition to the transmission line, as no one has filed any written opposition to the transmission line or otherwise contacted the Commission regarding the proposed line. Given the circumstance of this specific case – the lack of any public interest in the siting of the line, the relatively short length of the line, and the fact that it is located entirely within a single county – the Commission determined, pursuant to its discretion under KRS 278.020(8), that it was not necessary to hold a local public hearing before rendering a final determination in this matter.

Equitable Resources, Inc. (“Equitable”), the parent company of Equitable Gathering, LLC (“Equitable Gathering”), timely requested full intervention, which was granted by the Commission’s Order dated June 19, 2007. No other motions for intervention were filed by any other party.

Equitable’s interest in the case arises from the installation of two new 11,000-horsepower compressor motors and three 3,000-horsepower motors at Equitable Gathering’s Maytown Compressor Station near Langley, Kentucky.¹ These motors will create a new 24 MW load on Kentucky Power’s system and will create an estimated 60 MW drawdown on the system during startup. Equitable will be the sole customer of the new 138 kV line when construction is complete. However, the addition of the line will also create the opportunity for a number of other benefits to Kentucky Power’s system in the future, including the addition of a 138 kV loop and 138 kV circuit breakers, which will enhance reliability; additional capacity to serve additional load from the Morgan Fork Station; a potential 69 kV source that could be used if the existing 46 kV sub-transmission system is converted to a 69 kV system; and the opportunity to locate a future station at the intersection of the proposed Morgan Fork-Hays Branch line and the Martin-Salisbury-McKinney 46 kV line.²

The compressor station is being upgraded in conjunction with the construction of Equitable’s 70-mile Big Sandy gas pipeline, which will connect with Tennessee Gas

¹ See Motion of Equitable Resources, Inc. for Full Intervention.

² Application at 6.

Pipeline's Broad Run Lateral in Carter County, Kentucky.³ The pipeline and compressor station project will provide Kentucky natural gas producers with an outlet for their production, which, according to Kentucky Power, is currently "shut in" for 7 months a year due to the lack of pipeline and processing capacity.⁴ The pipeline project will be available to provide "take-away" capacity for growth in gas production in the area.⁵ The Maytown Compressor Station modifications are projected to be completed by February 15, 2008, with startup scheduled for March 2008.⁶

DISCUSSION OF CPCN STANDARD

The issues to be decided in an application for a CPCN to construct facilities are (1) whether the facilities are needed and (2) whether the construction will result in a wasteful duplication of facilities.⁷

On June 18, 2007, the Staff's consultant, MSB Energy Associates, Inc., filed its report on Kentucky Power's application. The report concludes that the need for the 138 kV transmission line is justified by the new 24 MW demand created by the Maytown Compressor Station upgrades. The consultant determined that the demand could not be served by the existing 46 kV system in that area, because the system could not

³ Motion of Equitable Resources, Inc. for Full Intervention at 3. Kentucky Power Motion at 2.

⁴ Kentucky Power Motion at 2.

⁵ Id.

⁶ Consultant's Report at 1.

⁷ Kentucky Utilities Company v. Public Service Commission, 252 S.W.2d 885 (Ky. 1952).

provide the necessary voltage for startup of the large compressor motors.⁸ Nor could the 46 kV system be upgraded to 69 kV without undue delay and expense,⁹ and tapping into a nearby 765 kV line would also be too costly and could not be completed in time to service Equitable Gathering's demand in early 2008.¹⁰ The report further concludes that economic need is not a factor in the need for the proposed line, and that baseline growth is not a factor, as Kentucky Power's forecast shows demand growing at less than 1 percent per year in the project area.¹¹

The report also examined other potential non-transmission options and determined that they were not viable. Wheeling across neighboring electric systems is not possible due to the lack of sufficient interconnections.¹² There are no existing power plants that could be redispatched to serve the load, and building a large new power plant would require extensive interconnection work, ultimately resulting in the building of several high-voltage lines instead of the single line as proposed.¹³ Load management, which would require the gas company to allow its load to be interrupted during peak demand or other critical times, was also not viable, because the gas company does not consider its load to be interruptible and because Kentucky Power's peak demand time

⁸ Id. at 19-20.

⁹ Id. at 20-22.

¹⁰ Id. at 23.

¹¹ Id. at 11.

¹² Id. at 24.

¹³ Id. at 24-25.

in winter coincides with the gas company's peak demand time.¹⁴ The consultant's report did pose the question of whether the problem created by the 60 MW drawdown during startup of the motors could be resolved by replacing the two 11,000-horsepower motors with four 5,500-horsepower motors.¹⁵ However, as explained below, during an informal conference with Commission Staff, Equitable and Kentucky Power explained why that is not a viable option in this case. Ultimately, the Staff consultant agrees with Kentucky Power's analysis of its need for the 138 kV transmission line and recommends approval of Kentucky Power's application with no changes.

On June 20, 2007, Commission Staff held an informal conference attended by representatives of Kentucky Power and Equitable. Staff directed a number of questions to both companies regarding the application, including a follow-up to the consultant's question regarding the possibility of Equitable using smaller compressor engines to avoid the large drawdown at startup. Kentucky Power answered that it did not believe it could require the customer to change the design of its facility. Equitable stated that it anticipates the load on the gas pipeline will greatly increase in the near future, and that down-sizing the compressor motors would inhibit its ability to properly operate the gas pipeline if such an increase occurs. The companies also filed written answers to Staff's questions with the Commission on June 25, 2007.

During review of the application, Commission Staff noted on page 6 of the report prepared by GAI Consultants (Exhibit 3 of Kentucky Power's application) a statement that the Floyd County landfill (which will be crossed, in part, by the planned line) is "now

¹⁴ Id. at 25-26.

¹⁵ Id. at 26.

closed.” However, Commission Staff was advised by personnel in the Solid Waste Branch of the Kentucky Division of Waste Management (“DWM”) that, although most of the closure work is completed at the Floyd County landfill, it has not yet been finally closed. DWM anticipates that work will be completed in August 2007. This presents a concern, because it will be necessary for Kentucky Power to consult with DWM in order to ensure that its work on the transmission line would not interfere with ongoing closure or post-closure activities at the landfill, which are being overseen by DWM. Kentucky Power’s counsel then advised that the company would work with DWM personnel to ensure that the construction of the transmission line would not interfere with the closure activities at the landfill.¹⁶

On July 6, 2007, Kentucky Power filed an update to its Exhibit 2, showing that the company has obtained 18 of the necessary 27 property easements along the proposed transmission line route. From the updated Exhibit 2 and Commission Staff’s discussion with Kentucky Power’s counsel, it appears that the company is making reasonable progress toward obtaining the remaining easements, and the company anticipates it will complete its acquisition of the necessary easements in the near future.

CANCELLATION OF THE PUBLIC HEARING

On June 26, 2007, Kentucky Power filed a motion to cancel the August 2, 2007 hearing before the Commission; to submit the case for a decision on the record; and requesting expedited approval of its application. Following receipt of the motion, Commission Staff contacted the Attorney General’s office and confirmed that the

¹⁶ See Commission’s Informal Conference Memo.

Attorney General did not have any objection to the Commission cancelling the August 2, 2007 public hearing and taking the case under submission.

KRS 278.020 does not require the Commission to hold a public hearing in order to grant an applicant a CPCN if the Commission determines, in its discretion, that a public hearing is not necessary. KRS 278.020(1) states, in relevant part:

Upon the filing of an application for a certificate, and after any public hearing which the commission **may in its discretion** conduct for all interested parties, the commission may issue or refuse to issue the certificate, or issue it in part and refuse it in part, except that the commission shall not refuse or modify an application submitted under KRS 278.023 without consent by the parties to the agreement. (emphasis added).

Aside from Equitable, which supports the application, no one has requested intervention in the case. Furthermore, the Attorney General's office verified that it does not wish to intervene in the case and has no objection to cancelling the hearing. In addition, the Commission's consultant agrees with Kentucky's Power's assessment of its need for the line, and all of the questions posed by Commission Staff were answered satisfactorily. Therefore, there is no need for the Commission to gather any additional evidence in order for the Commission to render a final Order in this matter, and because of the circumstances of this particular case,¹⁷ the Commission granted Kentucky Power's motion to cancel the August 2, 2007 hearing and took the case under submission by its Order dated July 12, 2007.

¹⁷ Specifically, its relatively short length (8.3 miles, over half of which will run along or parallel to existing right-of-way), the fact that it will be located within a single county, and the fact that the proposed siting has not generated any interest among the public justified cancelling the hearing in this case.

DISCUSSION

Based on the evidence in the record, including the Staff Consultant's report recommending approval of the application, the Commission concludes that the 138 kV transmission line is necessary and reasonable and that its construction will not result in the wasteful duplication of facilities.

Kentucky Power is obligated under KRS 278.030(2) to provide "adequate, efficient and reasonable service" to its customers within its service territory. Equitable's subsidiary, Equitable Gathering, will create an additional 24 MW load on Kentucky Power's system beginning in March 2008, by the addition of five natural gas compressor motors at its Maytown Compressor Station. The existing 46 kV system in the Langley area is not sufficient to serve this new load, and upgrading the system to 69 kV or tapping onto the nearby 765 kV AEP line are both too expensive and could not be completed in time for Kentucky Power to provide service to its customer. Other non-transmission options are not viable, and Equitable cannot downgrade its 11,000-horsepower compressor motors to smaller motors without compromising its ability to provide pipeline service to its customers if, as anticipated, demand increases in the near future.

Regarding the cost of the line, in the June 20, 2007 informal conference, Commission Staff asked whether Kentucky Power had considered requiring a contribution-in-aid of construction from Equitable to fund some, or all, of the construction costs of the new transmission line. In an answer filed on June 25, 2007, Kentucky Power stated that in conformity with its Terms and Conditions, shown on Tariff Sheet No. 2-6, paragraph 9, Kentucky Power compared the annual estimated revenues of

\$6.9 million with the annual cost to serve of \$6.7 million and determined that no contribution-in-aid of construction is required because the annual estimated revenues are greater than the annual cost of service. Kentucky Power has entered into a 10-year contract with the customer under which the customer is obligated to pay the contract minimum of 24,000 kW for 120 months, even if the project is not constructed and no electricity is consumed. The total minimum payment by the customer under the contract is \$17.8 million (24,000 kW X .60 X \$10.32 per kW X 120 months)¹⁸ over the 10 years, which exceeds the \$15.4 million estimated cost of the transmission line construction. Therefore, the cost of the line will be borne by the customer creating the demand and not by Kentucky Power's other customers.¹⁹

The addition of the 138 kV line may also provide a number of additional benefits to Kentucky Power's system in that area, including the addition of 138 kV circuit breakers at the Morgan Fork Station and the opportunity to establish a 138 kV loop from Thelma to Beaver Creek, which should increase the reliability of the system. The 138 kV line will also provide a potential source to upgrade the surrounding 46 kV system to 69 kV in the future and will provide capacity to serve additional load from the Morgan Fork Station.

FINDINGS

The Commission finds that Kentucky Power has established a need for the subject transmission line through the evidence submitted in support of its application

¹⁸ The factor .60 equals 60% of contract capacity per C.I.P.-T.O.D. Tariff Sheet 11-1, ¶ 2.

¹⁹ See, Kentucky Power Company Responses to Staff Data Requests In Connection [With] June 20, 2007 Informal Conference at 5.

and the answers Kentucky Power and Equitable filed in response to Commission Staff's questions. We also find from the record herein that Kentucky Power engaged in an adequate review of alternative routes, which ultimately resulted in a route that runs along or parallel to 4.4 miles of existing right-of-way. Based on these findings and the record in its entirety, the Commission finds that there is a need for the proposed line and that it does not create a needless duplication of facilities. Under the standards set forth in Kentucky Utilities Company v. Public Service Commission, 252 S.W.2d 885 (Ky. 1952), Kentucky Power's application for a CPCN for a 138 kV transmission line in Floyd County, Kentucky is approved.

ADDITIONAL CONDITIONS

For the reasons explained above, neither a local public hearing nor a formal public hearing was held in this matter. While the Commission is unaware of any public opposition to the line, a local public hearing or a formal public hearing would have given private property owners a final chance to voice their concerns about construction of the line, despite not having intervened in the case and not filing any written comments. Therefore, as a condition of this Order, prior to beginning construction, Kentucky Power shall file a final update to Exhibit 2 of its application, demonstrating that it has obtained all of the necessary easements to construct the transmission line. If Kentucky Power does not obtain all of the easements shown in Exhibit 2 prior to the date upon which it plans to begin construction, it shall also file a report demonstrating that it has undertaken condemnation proceedings pursuant to KRS 416.540 et. seq. in order to obtain the necessary rights-of-way prior to construction. This condition will provide the

Commission with further assurance that Kentucky Power has taken all necessary steps to prevent undue harm to private property owners.

This Order is further conditioned upon Kentucky Power coordinating its construction of the line with DWM's closure of the Floyd County landfill, to the extent necessary to avoid unnecessarily interrupting any of the ongoing closure or post-closure activities at the landfill. Kentucky Power shall contact the DWM to coordinate the transmission line construction with DWM's closure and post-closure activities at the landfill. Kentucky Power shall file a report with the Commission prior to beginning construction on or over the Floyd County landfill property, detailing its coordination efforts with DWM personnel and explaining any modifications to the transmission line construction necessitated by such coordination, including any movement of the proposed route of the line.

The Commission also understands the need, in limited circumstances, to give a utility the flexibility to address last-minute or unanticipated issues regarding the construction of a transmission line. Kentucky Power may, therefore, move the approved centerline 500 feet in either direction (i.e., within a 1,000-foot corridor) as long as: (1) the move does not shift the line or its right-of-way onto the property of a different landowner; and (2) the property owner who is subject to the move agrees in writing to the requested move. So that the Commission will have a record, Kentucky Power must file a survey of the final location of the line after all such moves are completed and before construction begins.

Any changes greater than this distance, or ones that involve other landowners not identified in Exhibit 2 to the application, will require Kentucky Power to come back to

the Commission with another application. Likewise, if another agency requires an alteration of the line that does not meet all the conditions stated in this section,²⁰ that action will necessitate another application.

IT IS THEREFORE ORDERED that:

1. Kentucky Power is granted a CPCN to construct and operate the proposed transmission line as set forth in its application.

2. Prior to beginning construction of the transmission line, Kentucky Power shall file a final update to Exhibit 2 of its application with the Commission, demonstrating that it has obtained all of the necessary easements to construct the transmission line. If Kentucky Power does not obtain all of the easements shown in Exhibit 2 prior to the date upon which it plans to begin construction, it shall also file a report demonstrating that it has undertaken condemnation proceedings pursuant to KRS 416.540 et. seq. in order to obtain the necessary rights-of-way prior to construction.

3. Prior to beginning construction on or over the Floyd County landfill property, Kentucky Power shall contact the DWM to coordinate the transmission line construction activities with DWM's closure of the Floyd County landfill, to the extent necessary to avoid unnecessarily interrupting any of the ongoing closure or post-closure activities at the landfill.

²⁰ Namely, (1) that the move is no more than 500 feet to either side, (2) that it does not shift the line or its right-of-way onto another landowner, and (3) that the property owner who is subject to the move agrees in writing to the requested move.

4. Prior to beginning construction on or over the Floyd County landfill property, Kentucky Power shall file a report with the Commission detailing its coordination efforts with DWM personnel and explaining any modifications to the transmission line construction, including modifications to the direction of the proposed route, necessitated by such coordination.

5. Kentucky Power shall file a survey of the final location of the line after any moves as authorized by the Order and before construction begins.

6. Kentucky Power 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 3rd day of August, 2007.

By the Commission

ATTEST:



Executive Director