

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)
POWER COMPANY FOR CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY) CASE NO. 2017-00328
TO CONSTRUCT A 161 KV TRANSMISSION)
LINE IN PERRY AND LESLIE COUNTIES,)
KENTUCKY AND ASSOCIATED FACILITIES)

ATTORNEY GENERAL'S MEMORANDUM BRIEF

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and tenders the following memorandum brief in the above-styled matter.

STATEMENT OF THE CASE

Kentucky Power Company (the “Company” or “KPCo”) filed an application for a Certificate of Public Convenience and Necessity (“CPCN”) to rebuild a 6.5 mile 161 kV transmission line from Hazard in Perry County to Wootton in Leslie County.¹ As part of the project, the Company proposes to replace a number of line supporting structures, most of which are wood and some of which are fifty (50) years old, with galvanized steel structures.² The Company estimates that the useful life for the newly constructed line and accompanying

¹ *Electronic Application of Kentucky Power Company for a Certificate of Public Convenience and Necessity to Construct a 161 kV Transmission Line in Perry and Leslie Counties, Kentucky and Associated Facilities*, Case No. 2017-00328 (November 17, 2017).

² *Kentucky Power Responses to Attorney General’s First Set of Data Requests*, Case No. 2017-00328, Response to Question 3, at 20 (January 29, 2018); *Application* at 6 (Preliminary designs call for 53 of the existing transmission line structures to be removed, and about 35 new transmission line structures will be installed). *But see Kentucky Power Responses to Attorney General’s Second Set of Data Requests*, Case No. 2017-00328, at 19 (February 9, 2018) (In the slides presented to the Subregional RTEP and appended to the cited set of responses, it was stated that 40 of 45 structures would need to be replaced due to sag clearance issues).

structures is between 60 and 80 years.³ KPCo also proposes additional work to the existing substations in Hazard and Wooton, consisting of upgrades, replacement, and installation of facilities and equipment at those sites,⁴ some of which is designated as Supplemental.⁵

PJM defines Baseline projects as “projects primarily required to eliminate base-case reliability criteria violations found in the PJM Regional Transmission Expansion Plan.”⁶ Conversely, PJM defines Supplemental projects as “projects originated by the Transmission Owner that are not driven by an applicable PJM criterion.”⁷ In the instant case, KPCo estimates that of the total CPCN project cost of \$44.5 million, approximately \$24.5 is Supplemental while \$20 million is considered Baseline.⁸

ARGUMENT

I. FERC Ruled That Transmission Owners’ Planning Practices Violated FERC Order 890, Specifically The Transparency And Coordination Principles, As Well As PJM Agreements

On February 15, 2018, the Federal Energy Regulatory Commission (“FERC”), issued an order addressing the intersection of Supplemental Transmission projects, the PJM Operating Agreement, and the PJM Subregional RTEP process used by Transmission Owners to obtain PJM approval for such projects.⁹ FERC held that “the PJM Operating Agreement

³ *Kentucky Power Responses to Attorney General’s First Set of Data Requests*, Case No. 2017-00328, Response to Question 3, at 20 (January 29, 2018).

⁴ *Application*, at 1 (November 17, 2017).

⁵ *Kentucky Power Responses to Attorney General’s First Set of Data Requests*, Case No. 2017-00328, Response to Question 5, at 22 (January 29, 2018).

⁶ PJM Manual 14C: Generation & Transmission Interconnection Facility Construction, Section 6: Baseline & Supplemental Upgrade Projects, <http://www.pjm.com/~media/committees-groups/committees/pc/20160811/20160811-item-04e-m14c-update-energization-schedule-clean.ashx>.

⁷ *Id.*

⁸ *Kentucky Power Responses to Attorney General’s First Set of Data Requests*, Case No. 2017-00328, Response to Question 5, at 22 (January 29, 2018).

⁹ *Order Accepting in Part Proposed Tariff Revisions and Requiring Tariff Revisions Pursuant to Section 206*, 131 F.E.R.C. ¶ 61,129 (2018).

and PJM OATT is not just and reasonable and is unduly discriminatory and preferential.”¹⁰

In explaining its reasoning, FERC opined that Order No. 890’s transparency principle sought to lessen or “avoid ‘after-the-fact’ litigation by stakeholders regarding ‘transmission plans that were developed in the first instance without their input.’”¹¹ FERC found that the manner in which the PJM Transmission Owners are currently implementing the PJM Operating Agreement conflicts with the requirements of FERC Order No. 890.¹² Specifically, FERC pointed to, *inter alia*, exceedingly short timeframes between meetings, vague or incomplete information provided by transmission owners, instances where transmission owners presented “obvious” solutions during the same meeting where issues were first discussed, and proffered examples where upon the “initial” presentation of certain projects, twenty four (24) had entered the engineering phase, seven (7) were already under construction, and two (2) had already been completed.¹³

Supplemental Transmission projects are not subject to the same standards of review as those which are deemed Baseline by PJM criteria. To foster a more transparent process, FERC’s Order called for prospective remedies, requiring PJM Transmission Owners to make a compliance filing within thirty (30) days showing revisions to Attachment M-3 of the PJM OATT, along with necessary clarifying edits to the PJM Operating Agreement.¹⁴ Among these edits are the creation of three distinct meetings with delineated periods between each,

¹⁰ *Id.* at 4.

¹¹ *Id.* at 5.

¹² *Id.* at 4 (FERC Order 890 was titled “Preventing Undue Discrimination and Preference in Transmission Service”, and laid out nine distinct principles to guide transmission providers in developing the planning process. The principles were: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects).

¹³ *Id.* at 34–39.

¹⁴ *Id.* at 50–58.

requirements that the Subregional RTEP Committees provide timely review of the specific criteria, assumptions, and models the Transmission Owners use to decide on Supplemental projects, that Transmission Owners provide such information to PJM timely in advance of the respective meeting, and that Transmission Owners review comments received after each meeting, providing feedback if deemed appropriate.¹⁵

FERC rejected proposals that would have required Transmission owners to go even further, including requirements to provide individual responses to stakeholder comments, to assign PJM more involvement in the planning and selection of some Supplemental projects, and to have PJM review and approve Local Plans.¹⁶

II. The Company Specifically Relied On The Flawed PJM RTEP Process As A Basis For Demonstrating That It Fully Considered Stakeholders' Input

In a Response to the Attorney General's Second Request for Information ("RFI") regarding stakeholder input, the Company stated that the Supplemental project had been presented to PJM stakeholders through two Subregional RTEP Committee meetings and referred the Attorney General back to the testimony of Witness Lasslo.¹⁷ Company Witness Lasslo's testimony described how Supplemental projects are "vetted with stakeholders" through Subregional RTEP Committees as well as stakeholder meetings put on by PJM and AEP itself, resulting in a "transparent planning and vetting process."¹⁸ Furthermore, the Company provided a link to a document titled "AEP Guidelines for Transmission Owner Identified Needs" which is located on PJM's website, in which only the Subregional RTEP

¹⁵ *Id.* at 59–70.

¹⁶ *Id.* at 56–57.

¹⁷ *Kentucky Power Responses to Attorney General's Second Set of Data Requests*, Case No. 2017-00328, at 3–6 (February 9, 2018).

¹⁸ *Direct Testimony of Michael G. Lasslo on Behalf of Kentucky Power Company*, Case No. 2017-00328, at 52–53 (November 17, 2017).

Committee meetings are identified as stakeholder input which AEP considers to identify its transmission system needs¹⁹—although the Company noted in its Responses that it held an open house in Hazard in August 2017 and various meetings with public and private parties.²⁰

KPCo acknowledged in its Responses that approximately 55% of this project is deemed Supplemental.²¹ The FERC Order plainly states that the PJM planning process used to approve this project was insufficient to meet the requirements of Order 890. Moreover, the Company confirmed that its planned Eastern Kentucky Transmission Program will focus on “transmission needs that fall outside of PJM baseline criteria” and that “the majority of the projects will be designated supplemental by PJM.”²²

With such an increasing prevalence of Supplemental projects, which are undertaken solely at the discretion of the transmission owners, and FERC’s findings, the Attorney General is concerned that stakeholder input may not be adequately sought or appropriately considered for all such undertakings without requisite oversight. The recent FERC Order emphasizes the importance of the transparency and coordination principles it had previously established to the transmission development process. The Commission should be vigilant regarding Supplemental transmission projects, to inquire whether Kentucky electric utilities have complied with the FERC mandated changes to the PJM Operating Agreement and to ensure that stakeholder input is being properly valued at both the national and local levels.

In KPCo’s recent rate case, the Commission approved the Company’s request for a

¹⁹ *AEP Guidelines for Transmission Owner Identified Needs*, at 7 (<http://pjm.com/-/media/committees-groups/committees/srtepw/20170105/20170105-aep-guidelines-for-transmission-owner-identified-needs.ashx>).

²⁰ *Kentucky Power Responses to Attorney General’s Second Set of Data Requests*, Case No. 2017-00328, at 4 (February 9, 2018).

²¹ *Kentucky Power Responses to Attorney General’s First Set of Data Requests*, Case No. 2017-00328, Response to Question 5, at 22 (January 29, 2018).

²² *Id.*, Response to Question 1, at 2–3 (January 29, 2018).

tracker to recover the PJM OATT LSE expenses, while noting that KPCo expects investment in the transmission grid by PJM member transmission owners to continue to rise, increasing in turn the transmission charges which will be allocated to all load serving entities in PJM.²³ The Commission also stated that it expects KPCo “to work through the PJM stakeholder process to protect its customer interests.” The Attorney General would ask that the Commission hold the Company to this expectation, and scrutinize future Supplemental Transmission projects accordingly.

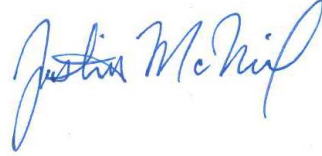
CONCLUSION

FERC has found the PJM process for obtaining approval of Supplemental transmission projects woefully inadequate. KPCo, and other electric utility PJM members, cannot rely on mere participation in the current PJM RTEP process to satisfy questions and concerns raised regarding Supplemental transmission projects, especially over issues which include relevant stakeholder input, necessity, and cost. The Commission should accordingly emphasize deliberate and serious consideration of local stakeholder input by these electric utilities in furtherance of a more transparent and fair process, as well exercise a higher degree of scrutiny in considering any Supplemental transmission project.

²³ *Electronic Application of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) An Order Approving Its 2017 Environmental Service Plan; (3) An Order Approving Its Tariffs And Riders; (4) An Order Approving Accounting Practices To Establish Regulatory Assets And Liabilities; And (5) An Order Granting All Other Required Approvals And Relief*, Case No. 2017-00179, at 51–54 (January 18, 2018) (The Commission’s approval included a modification to the return on equity portion of the tracker as agreed to in the nonunanimous settlement.)

Respectfully submitted,

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