

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**ATTORNEY GENERAL’S RESPONSE TO KENTUCKY POWER COMPANY’S  
MOTION FOR PARTIAL REHEARING**

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (“Attorney General”), and hereby submits his response to Kentucky Power Company (“KPCo” or “Company”)’s Motion for Partial Rehearing.

**ARGUMENT**

Through its motion, the Company seeks rehearing and clarification regarding the Commission’s March 16, 2018 Order (the “Order”) on three issues:

- (1) The Order’s silence on the Hazard-Jackson 69kV Reconfiguration;
- (2) The Order’s limitation of approval granted to named Baseline projects prevents the Company from constructing the nine Supplemental projects required to implement the Baseline projects approved by the Commission; and
- (3) The Commission’s denial of KPCo’s request for a certificate of public convenience and necessity (“CPCN”) for the Supplemental improvements to KPCo’s Hazard and Wooton Substations.

## **I. The Order’s Limitation of Approval to Named Baseline Projects Was Correct**

The Company argues that the Order’s approval of only the named Baseline projects prevents it from being able to construct nine Supplemental projects which it deems “*required* to implement the Baseline projects approved by the Commission[.]”<sup>1</sup> However, the Company is the master of its own petition and had complete control over the method of implementation of its transmission projects. KPCo intertwined these nine Supplemental projects so closely with the Baseline projects precisely because they now provide a basis on which it can claim that the Supplemental projects are essential to the entire transmission project. If these nine projects were “required” in order to implement the Baseline projects, PJM would have deemed them Baseline at the outset.

The Company could have filed separate CPCNs for the Baseline and Supplemental portions of the project, or it could have simply kept the Supplemental portion from being so integral to the Baseline portion in the event that any or all of the Supplemental projects were denied by the Commission. The Company now wants to be rewarded for this tactical decision, which serves as insurance of sorts for the outright denial of the Supplemental projects. The Commission should not acquiesce.

## **II. The Order’s Denial of a CPCN to the Company for Supplemental Improvements to the Hazard and Wooton Substations Was Not In Error**

### **A. KRS 278.020 and the Company’s Burden of Proof**

The Company asserts that the evidence of record in this matter “regarding the necessity of the In Station Work is substantial and uncontroverted”, and was “overlooked by the Commission.”<sup>2</sup>

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<sup>1</sup> *Kentucky Power Company’s Motion for Partial Rehearing*, Case No. 2017-00328, at 1 (Ky. P.S.C. April 6, 2018) (emphasis added).

<sup>2</sup> *Id.* at 11 (KPCo defined “In Station Work” as “the Supplemental work to be performed at the two substations” at pg. 2).

However, the Order is clear, in that precedent guides the Commission’s interpretation of KRS 278.020, requiring the Commission to consider both the need of any proposed facilities and the prospect of wasteful duplication if the proposal is approved.<sup>3</sup> Here, in regards to the Supplemental portion of the project, the Company did not demonstrate sufficient need by making the required “showing of a substantial inadequacy of existing service . . . due either to a substantial deficiency of service facilities, *beyond what could be supplied by normal improvements in the ordinary course of business*”, nor did it plead that the persistence of “indifference, poor management or disregard of the rights of consumers” led to an “inability or unwillingness to render adequate service.”<sup>4</sup> The Company made multiple arguments in furtherance of perceived efficiencies that may have resulted from the completion of the Supplemental projects, but mere efficiency is not contemplated within KRS 278.020, and is certainly not stated or defined for the Commission’s consideration.

In its Order, the Commission went on to define “wasteful duplication” as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”<sup>5</sup> Commission precedent requires that applicants must make a showing that all reasonable alternatives to a project have been considered, and that the Commission will balance all relevant factors in its determination, including its core ratemaking requirement that rates must be fair, just and reasonable.<sup>6</sup> KPCo simply failed to meet its required

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<sup>3</sup> *PSC Order*, Case No. 2017-00328, at 3–4 (Ky. P.S.C. March 16, 2018) (quoting *Kentucky Utilities Company v. Public Service Commission*, 252 S.W.2d 885 (Ky. 1952)).

<sup>4</sup> *Id.* (emphasis added).

<sup>5</sup> *Id.* at 4 (quoting *Kentucky Utilities Company v. Public Service Commission*, 252 S.W.2d 885 (Ky. 1952)).

<sup>6</sup> *Id.* at 4 (citing Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. P.S.C. Dec. 8, 2005); *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 390 S.W.2d 168, 175 (Ky. 1965); Final Order, Case No. 2005-0089, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. P.S.C. Aug. 19, 2005); and KRS 278.030(1)).

burden of proof in demonstrating that the Supplemental work was both necessary and not wasteful duplication under the statutory and precedential authority by which the Commission is bound.

B. The FERC Order Is Relevant and Reliance On It Does Not Violate Due Process Nor Delegate the Commission's Authority

The Company takes issue with the February 15, 2018 Order issued by FERC (the “FERC Order”) being first mentioned in the record of this case in the Attorney General’s brief and later relied upon in the Commission’s Order.<sup>7</sup> The Company invokes due process and Commission precedent as requiring that it be allowed to address the issues raised by the FERC Order. Firstly, the Company was a named party to the FERC Order, and so was on notice as to the concerns of FERC, PJM, and other parties regarding the Supplemental project stakeholder process.<sup>8</sup> Moreover, the Company was neither deprived of notice nor opportunity to present evidence regarding stakeholder input in the PJM approval process in this docket, especially since the Attorney General asked numerous questions about it in discovery.<sup>9</sup> The Company itself stated in its motion:

[t]he FERC Order, which was issued nearly three months after the application was filed, was not identified as an issue by either Staff or the Attorney General as part of discovery. Nor, because of the expedited procedural schedule governing this matter, could the FERC order have been raised by either Staff or the Attorney General.<sup>10</sup>

The Company completely ignores the record of discovery in this matter related to the stakeholder process—either intentionally or by accident; but this neglect is not a basis for rehearing. As such, the Company’s argument regarding due process and its claim of being denied an opportunity to address the FERC Order is without merit.

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<sup>7</sup> *Order Accepting in Part Proposed Tariff Revisions and Requiring Tariff Revisions Pursuant to Section 206*, 131 F.E.R.C. ¶ 61,129 (2018).

<sup>8</sup> *Id.* at 1.

<sup>9</sup> *Kentucky Power Company’s Response to the Attorney General’s Supplemental Requests for Information*, Case No. 2017-00328, Question 2 (February 9, 2018).

<sup>10</sup> *Kentucky Power Company’s Motion for Partial Rehearing*, Case No. 2017-00328, at 12 (Ky. P.S.C. April 6, 2018).

The Company also maintains that the FERC Order’s prospective changes regarding transparency and coordination to PJM’s process of reviewing Supplemental projects “are in no way relevant to the factors this Commission considers under KRS 278.020 and applicable precedent.”<sup>11</sup> The Attorney General submits that the Company explicitly relied on PJM standards and processes in the formulation and development of this Supplemental transmission project, specifically those of the RTEP and the TEAC, in order to demonstrate the project’s necessity. When asked about stakeholder input in discovery, the Company responded that both the Baseline and Supplemental portions of this project were presented at multiple Subregional RTEP meetings and were subsequently approved as evidence that stakeholder input was duly considered.<sup>12</sup> The Attorney General further asked about this project’s compliance with FERC Order 890, and requested that the Company provide evidence of any and all measures it had taken to ensure this.<sup>13</sup> The Company objected to this request and merely provided the slides that “were reviewed by [the Company] with stakeholders through the appropriate Subregional RTEP Committee or Transmission Expansion Advisory Committee forums.”<sup>14</sup> The Company’s reliance on the PJM approval process renders it, and the FERC Order, relevant, as well as thoroughly addressed within the record.

Furthermore, the FERC Order found that the current PJM approval process for Supplemental transmission projects does not comply with FERC Order 890, especially in regards to coordination and transparency.<sup>15</sup> In the instant case, the Company has embedded Supplemental projects so deeply within the Baseline portion, that it now claims nine projects are essential to even

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<sup>11</sup> *Id.* at 15.

<sup>12</sup> *Kentucky Power Company’s Response to the Attorney General’s Supplemental Requests for Information*, Case No. 2017-00328, Question 2 (February 9, 2018).

<sup>13</sup> *Id.*, at subsection (d).

<sup>14</sup> *Id.*

<sup>15</sup> *Order Accepting in Part Proposed Tariff Revisions and Requiring Tariff Revisions Pursuant to Section 206*, 131 F.E.R.C. ¶ 61,129 (2018).

construct the Baseline project. The FERC Order addressed this exact issue, wherein Transmission Owners presented “obvious” solutions to problems stakeholders were previously unaware of, and were not fully transparent as to a project’s details.<sup>16</sup> For the Company to now argue that the Commission should consider none of PJM standards, the FERC Order, or FERC Order 890 relevant, if not persuasive, in this context is spurious. The Commission rightfully considered the FERC Order in making its determination regarding the Supplemental project necessity.

Finally, the Company points out that PJM does not have the authority to approve or deny Supplemental projects, and that these projects are the responsibility of transmission owners despite the FERC Order’s findings.<sup>17</sup> The Attorney General agrees with this general proposition, but maintains that regardless of this pronouncement, the FERC Order rightly identified that PJM’s stakeholder process for Supplemental projects is flawed, and did not comply with FERC Order 890. Thus, since the Company relied so heavily on this process to evidence stakeholder involvement, the resulting approval is tainted. That the Commission gave thoughtful consideration to this in its Order is not a delegation of its authority to FERC or PJM. The Commission grounded its Order in Kentucky statutes and precedent. The result simply holds the Company to the standards it purports to follow, and the process it relies upon for stakeholder involvement and approval, in the development of its transmission projects. Though the Company professes concern regarding the Commission ceding authority, it has attempted to exploit the Commission’s limited ability to disapprove Baseline designated transmission projects, which are mandated by FERC-jurisdictional PJM, through its insistence that certain Supplemental projects are required to fully implement the Baseline project here. The Commission should summarily dismiss this contradictory argument.

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<sup>16</sup> *Id.* at 34–39.

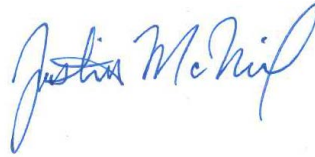
<sup>17</sup> *Kentucky Power Company’s Motion for Partial Rehearing*, Case No. 2017-00328, at 15 (Ky. P.S.C. April 6, 2018).

**CONCLUSION**

Based on the foregoing, the Attorney General respectfully requests that the Commission deny the Company's motion for partial rehearing, and any further relief requested in this matter.

Respectfully submitted,

ANDY BESHEAR  
ATTORNEY GENERAL



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