

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

Electronic Application Of Kentucky Power	)	
Company For Certification of Public	)	
Convenience and Necessity to Construct	)	Case No. 2017-00328
A 161 kV Transmission Line in Perry and Leslie	)	
Counties, Kentucky, and Associated Facilities	)	

Kentucky Power Company's Reply To The Attorney General's Response  
To The Company's Motion for Partial Rehearing

Kentucky Power Company submits the following reply to the Attorney General's Response to Kentucky Power Company's Motion for Partial Rehearing. The Attorney General's response ignores the Company's arguments and the Commission's order. His arguments can and must be rejected.

A. **The Attorney General Stands Mute Concerning The Need For The Hazard-Jackson 69 kV Reconfiguration.**

Noting that Kentucky Power seeks rehearing to clarify the Commission's decision with respect to the Hazard-Jackson 69 kV Reconfiguration,<sup>1</sup> the Attorney General nevertheless fails to address the Company's arguments at pages 3-5 of its motion for rehearing regarding the reconfiguration or, more importantly, the demonstrated need for it.<sup>2</sup> In particular, he leaves unchallenged the fact that the reconfiguration is required to tie the existing Hazard-Jackson 69 kV line to the Commission-approved new double-circuit portion of the Hazard-Wooton 161

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<sup>1</sup> Attorney General's Response to Kentucky Power Company's Motion for Partial Rehearing, *In the Matter of: Electronic Application Of Kentucky Power Company For Certification 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 at 1 (Ky. P.S.C. Filed April 12, 2018) ("Attorney General's Response").

<sup>2</sup> See Motion of Kentucky Power Company for Partial Rehearing, *In the Matter of: Electronic Application Of Kentucky Power Company For Certification 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 at 4-5 (Ky. P.S.C. Filed April 5, 2018) ("Rehearing Motion").

kV/Hazard-Jackson 69 kV Rebuild.<sup>3</sup> The Attorney General's self-refuting solution is to deny the Company's motion for rehearing *in toto*. Doing so would leave uncorrected the omission of the Hazard-Jackson 69 kV line reconfiguration from the Commission's Order, the practical effect of which is to isolate the reconfiguration electrically from the double-circuit portion of the transmission line approved by the Commission.

The Commission should amend its March 16, 2018 Order to grant a certificate of public convenience and necessity authorizing the Company to proceed with the Hazard-Jackson 69 kV Reconfiguration, or, alternatively, declaring that no such approval is required.

**B. The Attorney General Similarly Leaves Unrebutted The Need For The Supplemental Projects Required To Implement The Commission-Approved Baseline Work.**

Although addressing the Company's request for rehearing with respect to the nine upgrades (part of the Supplemental project) required to implement the Commission-approved Baseline projects, the Attorney General's arguments are no more availing than his silence with respect to the Hazard-Jackson 69 kV line. Instead, he spins implausible and unsupported conjecture regarding a plot to ensnare the Commission into denying a certificate of public convenience and necessity for the nine Supplemental upgrades so that later their necessity could be sprung on the Commission on rehearing: "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*

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<sup>3</sup> *Id.* at 4 ("Because the Hazard-Jackson 69 kV Reconfiguration will tie the existing Hazard-Jackson 69 kV transmission line into the new double-circuit portion of the Hazard-Wooton 161 kV/Hazard-Jackson 69 kV Rebuild, the Hazard-Jackson 69 kV Reconfiguration is required to obtain the benefits of the double-circuit portion of the rebuild.")

*project.*”<sup>4</sup> Left unexplained by the Attorney General is what advantage Kentucky Power would or even could gain from such machinations.

The Attorney General compounds his error by arguing that Kentucky Power should have engineered the Hazard-Wooton 161 kV transmission line and the In Station work as two electrically separate projects so that denial of authority to construct the nine Supplemental projects would not impede the Company’s ability to implement the Baseline projects.<sup>5</sup> The Attorney General’s position boils down to a suggestion that the Commission and Kentucky Power subvert good engineering practice to the Baseline/Supplemental nomenclature appended to the work by PJM. Such an approach only elevates form over substance, while failing to make up for the fact that the Attorney General does not, and cannot, challenge the record *evidence* demonstrating the need for these nine components (and in fact the need for all of the In Station Work).<sup>6</sup> For example, he nowhere indicates how the Company can terminate the Commission-approved Hazard-Wooton 161 kV transmission line without the nine Supplemental projects,<sup>7</sup> or how Kentucky Power can install the new Commission-approved 161/138 kV three phase transformer without physically relocating existing Circuit breaker M.<sup>8</sup>

Even less persuasive is the Attorney General’s proffered alternative: that the Company should have sought approval of the Supplemental and Baseline projects by means of separate applications.<sup>9</sup> But whether the nine components are included as part of a single application that

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<sup>4</sup> Attorney General’s Response at 2 (emphasis supplied).

<sup>5</sup> *Id.*

<sup>6</sup> See Rehearing Motion at 6-7.

<sup>7</sup> Direct Testimony of Michael G. Lasslo at 8, 9 (“Lasslo Direct”).

<sup>8</sup> Kentucky Power’s Response to AG 2-2, Attachment 1 at 4 (“Circuit breaker M will need to be relocated in association with the baseline project to replace the existing 161/138 kV transformer at Hazard station (b2761).”)

<sup>9</sup> Attorney General’s Response at 2.

includes Baseline projects, or a separate application limited to Supplemental projects, or nine separate applications are filed seeking approval of the nine upgrades, the fact remains the record demonstrates the need for the nine upgrades to implement the Commission-approved Baseline projects.<sup>10</sup> Further, the Attorney General nowhere indicates why or how his newly found<sup>11</sup> but now implacable opposition to the nine upgrades would evaporate if they had been included as part of a separate application. Indeed, the only effect of the Attorney General's preferred course is a multiplicity of proceedings with the attendant burdens and costs on the Commission, the Company, and the Company's customers.

Finally, the Attorney General argues that "[i]f these nine projects were 'required' in order to implement the Baseline projects, PJM would have deemed them Baseline at the outset."<sup>12</sup> That no credence can be given this suggestion is made clear by the Attorney General's inability to cite any authority for the proposition. Equally important, the Attorney General misconstrues the Company's use of the term "required."<sup>13</sup> As set out in the motion for rehearing,<sup>13</sup> the nine components at issue are required to implement the Baseline projects; that is different from being required by PJM planning criteria, but equally critical to the Company's ability to meet those criteria.

The Commission should enter an order on rehearing amending its March 16, 2018 Order to grant a certificate of public convenience and necessity authorizing Kentucky Power to proceed

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<sup>10</sup> Rehearing Motion at 6-7.

<sup>11</sup> The Company recognizes the Commission is not bound to follow the Attorney General's lead, and that its decision is not circumscribed by the scope of relief recommended by the Attorney General in his initial brief. Nevertheless, in judging the merit of the Attorney General's arguments in opposition to rehearing, it is important to note that nowhere in his March 28, 2018 brief did the Attorney General oppose the Company's application, much less the nine Supplemental projects required to implement the Baseline projects. Instead, the only relief requested was for the Commission to scrutinize future Supplemental projects. Attorney General's Memorandum Brief at 6.

<sup>12</sup> Attorney General's Response at 2.

<sup>13</sup> *See*, Rehearing Motion at 6-7.

with the construction of the nine Supplemental projects required to implement the Commission-approved Baseline Projects, or, alternatively, granting rehearing for the purpose of taking further evidence identifying the Supplemental Projects required to implement the Commission-approved Baseline Projects.

C. **The Attorney General's Arguments Concerning The Record Evidence Regarding The Need For The In Station Work Are Contrary To Law And Fact.**

The Attorney General nowhere challenges the detailed presentation in the Company's motion for rehearing<sup>14</sup> of the extensive record evidence demonstrating the necessity for the In Station work. Instead, he argues, based upon a quote from *Kentucky Utilities Co. v. Public Serv. Com'n*, 252 S.W.2d 885 (Ky. 1952), that Kentucky Power failed to satisfy KRS 278.020(1) because the Company failed to make:

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 persistence of "indifference, poor management or disregard of the rights of the consumers" led to an "inability or willingness to render adequate service."<sup>15</sup>

The black letter of KRS 278.020 disposes of the Attorney General's argument. KRS 278.020(1) expressly excludes from the general requirement of a certificate of public convenience and necessity "ordinary extensions of existing systems in the usual course of service...." To accept the Attorney General's characterization of the record – that is, that the Company failed to demonstrate that the need addressed by the In Station Work could not be supplied through normal improvements in the ordinary course of service – leads to the conclusion that the project is indeed an extension in the ordinary course of business. That in turn means that the Company

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<sup>14</sup> *Id.* at 8-12.

<sup>15</sup> Attorney General's Response at 3 (emphasis in original).

is entitled to construct the In Station Work without a certificate of public convenience and necessity because KRS 278.020(1) expressly exempts extensions in the ordinary course of service from the certificate requirement. Either the Company made showing the Attorney General insists is required,<sup>16</sup> or it failed to do so and hence no certificate is required. Neither alternative provides support for the Attorney General's opposition to the Supplemental projects.

The Attorney General's next argument concerning the Supplemental projects is even less compelling. Again quoting from the *Kentucky Utilities* opinion, the Attorney General suggests Kentucky Power was required to "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>17</sup> Thus, the Attorney General would have a utility plead that *its own* "indifference, poor management or disregard of the rights of consumers" requires that *the same utility* be granted a certificate to address the inadequate service resulting *its own* nonfeasance. The argument is not only at war with itself, but ignores the fact that the *Kentucky Utilities* case he cites arose out of facts entirely inapposite to those presented here. In *Kentucky Utilities*, East Kentucky Rural Electric Cooperative Corporation sought a certificate of public convenience and necessity to construct generating and transmission facilities to supply rural electric distribution cooperatives then being served by Kentucky Utilities.<sup>18</sup> Under those particular circumstances, the claimed indifference or disregard of Kentucky Utilities (the current supplier) was relevant to the need for East Kentucky to build facilities to supplant Kentucky Utilities' facilities. Here, where Kentucky Power is seeking a certificate to rebuild, replace, or upgrade its existing

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<sup>16</sup> See Rehearing Motion at 8-12.

<sup>17</sup> Attorney General's Response at 3.

<sup>18</sup> *Kentucky Utilities*, 252 S.W.2d at 888.

facilities, and is not seeking to supplant an existing supplier, that portion of the decision has no applicability.

Finally, the Attorney General now argues, *for the first time*, that Kentucky Power failed to demonstrate that the Supplemental projects did not constitute “wasteful duplication.”<sup>19</sup> His argument twice fails. First, in denying authority to undertake the Supplemental projects the Commission nowhere indicated that it concluded the projects constitute wasteful duplication, or that the Company failed to demonstrate the absence of wasteful duplication.<sup>20</sup> Second, and more fundamentally, the record demonstrates the need for the Supplemental projects, including the fact that they did not constitute wasteful duplication. The Supplemental work will upgrade to existing engineering standards – not duplicate – existing facilities.<sup>21</sup> Other upgrades will replace (not duplicate) physically deteriorating facilities,<sup>22</sup> including:

- ◇ circuit breakers A, C, S, E, and F at the Hazard Substation to address damaged bushings, environmental concerns, and an excessive number of fault operations;<sup>23</sup>
- ◇ circuit breaker M at the Hazard Substation to address excessive number of fault operations;<sup>24</sup>
- ◇ Hazard transformers 1, 2, and 3 to address insulation breakdown, accessory damage, short circuit breakdown, in addition to corrosion and oil leak issues associated with transformer 1;<sup>25</sup>
- ◇ Capacitor switcher BB at the Hazard Substation to address historical failure and mis-operation issues;<sup>26</sup>
- ◇ Capacitor switcher CC at the Hazard Substation, which cannot be repaired;<sup>27</sup> and

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<sup>19</sup> Attorney General’s Response at 3.

<sup>20</sup> Commission Order at 5-6.

<sup>21</sup> Lasslo Direct at 8-9.

<sup>22</sup> *Id.*

<sup>23</sup> Application Exhibit 15 at 5; KPCO\_R\_AG\_2\_2\_Attachment1\_5confidential.pdf and KPCO\_R\_AG\_2\_2\_Attachment 3.pdf.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*



- ◇ work to remedy safety and access issues with respect to facilities and equipment that are 40 years and older.<sup>28</sup>

Additional upgrade work includes the installation of low side breakers and the installation of a 69 kV bus tie circuit breaker are required (and are not duplicative) to provide operational and maintenance flexibility and efficiency.<sup>29</sup> Finally, the Company examined at least two alternatives to the Supplemental projects, including rebuilding the Hazard Substation in the clear, and constructing the 69 kV portion of the Hazard Substation yard into a 69 kV bus ring.<sup>30</sup> They were rejected because of cost, lack of available siting, the need for extended outages, and constructability concerns.<sup>31</sup> The Attorney General ignores all of this evidence.

The Commission should enter an order amending its March 16, 2018 Order granting Kentucky Power a certificate of public convenience and necessity authorizing the Company to proceed with the Supplemental projects constituting the In Station Work.

**D. The Attorney General's Arguments Regarding FERC's February 15, 2018 Order Requiring Prospective Changes To PJM's Process For Securing Stakeholder Input Regarding Supplemental Projects Do Not Render The Order Any More Relevant To This Proceeding.**

The Attorney General raises three arguments regarding FERC's February 15, 2018 order.<sup>32</sup> First, he argues that the Company should have anticipated that the Commission would have relied upon the FERC order to deny a certificate for the In Station Work. Second, he argues that Kentucky Power relied upon PJM stakeholder review process to demonstrate the need for the Supplemental projects. Finally, he seeks to apply his flawed understanding of the February

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> KPCO\_R\_AG\_2\_2\_Attachment 3.pdf at 5.

<sup>31</sup> *Id.*

<sup>32</sup> Attorney General's Response at 4-6.



15, 2018 FERC order to go beyond in this case what FERC required. Each argument is of no avail.

The Attorney General first seeks to transform the Company's data request responses prior to the entry of the FERC order into knowledge the Commission would rely on the then yet-to-be-issued order. What the Attorney General ignores is the fact that the FERC order was prospective in effect, and as such it in no way affects the legal adequacy of stakeholder input regarding the Hazard-Wooton Supplemental projects. Certainly, the Attorney General does not contend that the February 15, 2018 FERC order requires resubmission of the Hazard-Wooton Supplemental projects for further stakeholder input. Indeed, his own brief – which recommended heightened scrutiny by the Commission of *future* Supplemental projects and not the Hazard-Wooton project<sup>33</sup> – only underscores the irrelevancy of the FERC order to the Hazard-Wooton Supplemental projects. Stated otherwise, the Attorney General and Kentucky Power shared a common understanding on March 2, 2018 when each submitted its brief: the order applied only to stakeholder input with respect to future Supplemental projects. As such, the Company lacked a basis to anticipate both the Attorney General's misplaced arguments and incorrect reading of the otherwise inapposite FERC order or the Commission's reliance on that order.

Equally flawed is the Attorney General's argument that "the Company explicitly *relied* on PJM standards and processes in the formulation and development of this Supplemental project, specifically those in the RTEP and the TEAC, in order to demonstrate the project's necessity."<sup>34</sup> Again, the Attorney General's argument in opposition to rehearing is at war with

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<sup>33</sup> Attorney General's Memorandum Brief, *In the Matter of: Electronic Application Of Kentucky Power Company For Certification 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 at 6 (Ky. P.S.C. Filed March 2, 2018) ("The Attorney General would ask the Commission to hold the Company to this expectation, and scrutinize *future Supplemental Transmission projects* accordingly.") (emphasis supplied).

<sup>34</sup> Attorney General's Response at 5.

his earlier brief. Indeed, the Commission need look no farther than the Attorney General's brief which provides: **“The Company Specifically Relied Upon The Flawed PJM RTEP Process As A Basis For Demonstrating That It Fully Considered Stakeholder Input.”**<sup>35</sup> Equally telling is that the Attorney General's response lacks any citation to the Company's brief indicating the Company was relying on the PJM stakeholder process for Supplemental projects to demonstrate the need for the work. In fact, the Company pointed to the PJM stakeholder process to demonstrate its compliance with PJM planning criteria for Baseline projects and the then-existing PJM process for soliciting stakeholder input regarding Supplemental projects.<sup>36</sup> In any case, even if the Company had relied upon the PJM process for presenting Supplemental projects for stakeholder review to demonstrate the need for the Supplemental projects, and it did not, the Attorney General nowhere disputes the other evidence of record regarding the need for the Supplemental projects.<sup>37</sup>

Finally, the Attorney General asks the Commission to give greater effect to FERC's February 15, 2018 order than FERC itself does. It is undisputed that nothing in the FERC order requires a “do-over” of stakeholder review of the Hazard-Wooton Supplemental projects. The yet-to-be-decided changes to the PJM process of obtaining stakeholder input for Supplemental projects are prospective only. Yet, the Attorney General would extend the FERC order

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<sup>35</sup> *Id.* at 4 (initial capitalization and bold font in original).

<sup>36</sup> See generally, Kentucky Power Company's Brief, *In the Matter of: Electronic Application Of Kentucky Power Company For Certification 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 at 5-7 (Ky. P.S.C. Filed March 2, 2018); *id.* at 5 (“The proposed project is consistent with Kentucky Power and PJM planning criteria and received full stakeholder input.”)

<sup>37</sup> See, Rehearing Motion at 8-12.

retroactively to the Hazard-Wooton Supplemental projects, something FERC itself does not require or allow.<sup>38</sup>

In sum, Kentucky Power's compliance with the then-existing PJM process for soliciting stakeholder input regarding Supplemental projects, coupled with the record evidence of the Company's outreach efforts, including the open house, as well as the opportunities for stakeholder input through this proceeding and the opportunity to request a public meeting, more than ensure that all interested stakeholders had a full opportunity to review and comment on the Supplemental projects.

### **Conclusion**

Kentucky Power Company respectfully requests that the Commission grant rehearing and amend its March 16, 2018 Order as requested by the Company.

Respectfully submitted,



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<sup>38</sup> See FERC Order, 162 FERC ¶ 61,129 at paragraphs 120 and 121; see also Rehearing Motion at 14 and n. 42.