

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

In the Matter of:

Electronic Application Of Kentucky Power	)	
Company For A Certificate Of Public Convenience	)	
And Necessity To Construct A 138 kV	)	Case No. 2018-00072
Transmission Line In Boyd County, Kentucky	)	
(EastPark 138 kV Transmission Line (Phase 1))	)	

**Motion To Clarify And Confirm The Commission's October 5, 2018 Order**

Kentucky Power Company moves the Public Service Commission of Kentucky to enter an order confirming that the one-year period for commencing construction under KRS 278.020(1) of the EastPark 138 kV transmission line and related work is the date Kentucky Power satisfies the conditions imposed by ordering paragraphs one and two of the Commission's order. Kentucky Power states in support of its motion:

1. Kentucky Power filed its application on June 27, 2018 seeking a certificate of public convenience and necessity to construct a 2.7 mile 138 kV transmission line to the EastPark Industrial Center in Boyd County, Kentucky, to construct the Moore Hollow 138 kV Substation, and to perform related work at other locations ("EastPark Project").

2. The Commission entered an order on October 5, 2018 conditionally granting Kentucky Power's application. The grant of the certificate was expressly conditioned on Braidy Industries, Inc. furnishing, and Kentucky Power filing of record in this proceeding, reasonable

written assurance by Braidy Industries that it has obtained financing “to complete construction of the planned facility.”<sup>1</sup>

3. Braidy Industries, Inc. recently confirmed to Kentucky Power that Braidy Industries continues to work to secure financing to complete construction of the facilities described in the special contract. Braidy Industries indicated that it anticipates that the financing funds will be transferred to Braidy Industries in the December 2019 time frame. *See* Kentucky Power Company’s August 12, 2019 response to KPSC 3-1(c) in Case No. 2018-00418.<sup>2</sup>

4. The Commission has recognized “the significant economic benefits that Braidy Industries will bring to the Northeast Kentucky area and Kentucky Power’s territory.”<sup>3</sup>

5. Under the express terms of the Commission’s October 5, 2018 order, Kentucky Power lacks the authority to commence construction of the 138 kV transmission line, substation, and related facilities prior to the satisfaction of the conditions on the Commission’s grant of the certificate of public convenience and necessity.<sup>4</sup> Because the commencement of the one year period under KRS 278.020(1) to begin construction in good faith of the new facilities is tied to the existence of the authority to begin construction, and not simply the issuance of the order

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<sup>1</sup> Order, *In the Matter of: Electronic Application Of Kentucky Power Company For A Certificate Of Public Convenience And Necessity To Construct A 138 kV Transmission Line In Boyd County, Kentucky*, Case No. 2018-00072 at 9 (Ky. P.S.C. October 5, 2018).

<sup>2</sup> *In the Matter of: Electronic Application Of Kentucky Power Company For Approval Of Contract For Electric Service To Braidy Industries, Inc.*

<sup>3</sup> Order, *In the Matter of: Electronic Application Of Kentucky Power Company For A Certificate Of Public Convenience And Necessity To Construct A 138 kV Transmission Line In Boyd County, Kentucky*, Case No. 2018-00072 at 8 (Ky. P.S.C. October 5, 2018).

<sup>4</sup> *Id.* at 9 (“The conditional CPCN granted in this Order shall become unconditional upon Kentucky Power’s filing in the post-case correspondence file a copy of the written statement by Braidy Industries providing reasonable assurance that sufficient financing has been secured to complete construction of its planned facility.”)

granting the certificate of public convenience and necessity,<sup>5</sup> the one year statutory period will not commence until the certificate becomes unconditional.

6. The Commission similarly interpreted KRS 278.020(1) in *In the Matter of: Application Of Big Rivers Electric Corporation For A Certificate Of Public Convenience And Necessity To Construct A 161 kV Transmission Line In Ohio County, Kentucky*.<sup>6</sup> There, Big Rivers sought a certificate of public convenience and necessity to construct a transmission line, but requested that the Commission make the grant of the certificate of public convenience and necessity conditional upon the Commission's issuance of an order in a different proceeding approving the Big Rivers Unwind Transaction. In declining to make the grant of the certificate of public convenience and necessity conditional as requested by Big Rivers, the Commission explained "[i]f the Commission made the CPCN in this case contingent upon the approval of the Unwind Transaction, the one-year statutory limit under KRS 278.020(1) *would not begin to run until* the issuance of the final order in that case."<sup>7</sup>

7. Kentucky Power has acted reasonably and in conformity with the Commission's October 5, 2018 order in this case by not commencing construction of the new facilities until the condition imposed by the Commission in the order is satisfied.

8. Kentucky Power requests that the Commission adhere to its earlier interpretation of KRS 278.020(1) and confirm that the one-year period for commencing construction on the

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<sup>5</sup> "Unless exercised within one (1) year from the grant thereof, ..., *the authority conferred by the issuance of the certificate of convenience and necessity shall be void.*" KRS 278.020(1) (emphasis supplied).

<sup>6</sup> Case No. 2007-00177 (Ky. P.S.C. October 30, 2007).

<sup>7</sup> Order, *In the Matter of: Application Of Big Rivers Electric Corporation For A Certificate Of Public Convenience And Necessity To Construct A 161 kV Transmission Line In Ohio County, Kentucky*, Case No. 2007-00177 at 13 (Ky. P.S.C. October 30, 2007) (emphasis supplied).

EastPark Project will not commence until Braidy Industries provides Kentucky Power with the required written assurance required by the Commission's order, and the Company seasonably makes the required filing. Departing from the Commission's own precedent by starting the statutory period prior to the satisfaction of the Commission-initiated condition, would be unreasonable<sup>8</sup> and would impose unnecessary burdens on the Commission and the Company alike. Indeed, Kentucky Power anticipates that if required to file a new application<sup>9</sup> in the likely event it is unable to commence construction prior to October 5, 2019 the proceedings would be essentially identical to those in this case.

Wherefore, Kentucky Power Company respectfully requests that the Public Service Commission of Kentucky enter an order

(a) Confirming that the one-year period for commencing construction under KRS 278.020(1) in connection with the Commission's October 5, 2018 order conditionally granting Kentucky Power a certificate of public convenience and necessity to construct the EastPark 138 kV transmission line and related work is the date Kentucky Power satisfies the conditions imposed by ordering paragraphs one and two of the Commission's order; and

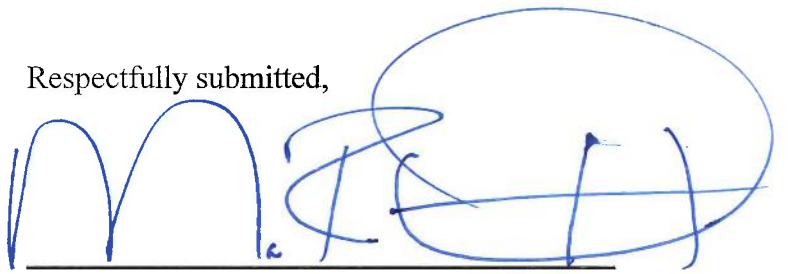
(b) Granting Kentucky Power Company all other necessary relief.

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<sup>8</sup> See *In re Appeal of Hughes & Coleman*, 60 S.W.3d 540, 543 (Ky. 2001) ("It is axiomatic that an administrative agency either must conform with its own precedents or explain its departure from them. An agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored ....")

<sup>9</sup> See 807 KAR 5:001, Section 15(4) ("An application for renewal of a certificate of public convenience and necessity shall be treated as an original application.")

Respectfully submitted,

A handwritten signature in blue ink, consisting of a stylized 'M' followed by a large, loopy flourish that ends in a horizontal line.

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