

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

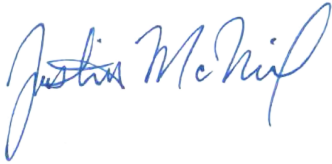
ELECTRONIC APPLICATION OF KENTUCKY)
POWER COMPANY FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY TO)
PERFORM UPGRADE, REPLACEMENT, AND)
INSTALLATION WORK AT ITS EXISTING)
SUBSTATION FACILITIES IN PERRY AND)
LESLIE COUNTIES, KENTUCKY)

CASE NO. 2019-00154

THE ATTORNEY GENERAL’S POST-HEARING RESPONSE BRIEF
TO KENTUCKY POWER COMPANY

Respectfully submitted,

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ATTORNEY GENERAL’S POST-HEARING RESPONSE BRIEF

The intervenor in this proceeding, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (“Attorney General”), submits the following for his post-hearing brief in response to Kentucky Power Company (“KPCo” or “Company”) in the above-styled matter.

STATEMENT OF THE CASE

This case follows a previous filing, Case No. 2017-00328, in which KPCo requested a certificate of public convenience and need (“CPCN”) to rebuild the 6.5 mile 161 kV Hazard-Wooton transmission line and to make various upgrades. The line rebuild, along with the replacement of the 161/138 kV single-phase transformer with a three-phase 161/138 kV transformer, was designated as a Baseline project by the Regional Transmission Organization (“RTO”), PJM Interconnection, LLC (“PJM”).¹ The remaining upgrades were designated as Supplemental projects by PJM.² Following discovery in that matter, the Attorney General’s motion

¹ See Application, *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 (Ky. Commission November 17, 2017).

² *Id.*

to submit briefs and waive a formal hearing was granted. After the submission of briefs, the Kentucky Public Service Commission (“Commission”) issued its final order upon the existing record on March 16, 2018. The Commission agreed with the Attorney General, initially approving only the Baseline projects in the proposal, finding that the Supplemental projects in the application did not meet the statutory standard for a CPCN.³

Following a motion for partial rehearing filed by KPCo, two further rounds of discovery were held and a hearing was scheduled for November 27, 2018. Just prior to the hearing, on November 14, 2018, the Commission issued an order amending two of the ordering paragraphs from its previous final order. The amending order provided an additional approval for the Hazard-Jackson 69 kV Reconfiguration. On November 16, 2018, KPCo filed a Motion to Cancel Hearing and for Leave to Dismiss Without Prejudice the Pending Rehearing. On November 20, 2018 the Commission granted that motion. The Attorney General filed a Motion for Rehearing to correct a typographical error in the Commission’s order, but otherwise waived any further right to rehearing of that order.

KPCo filed its Notice of Intent in the instant matter on May 22, 2019. KPCo filed its application on June 27, 2019 requesting a CPCN to perform upgrade, replacement, and installation work at existing substations, which had been denied in the prior case. Following the completion of discovery, a hearing was held in this matter on February 4, 2020. KPCo submitted its post-hearing brief on March 6, 2020. KPCo will have the opportunity to submit a reply brief by April 2, 2020, after which this case will stand ready for decision by the Commission.

³ Order, Case No. 2017-00328 (Ky. Commission March 16, 2018).

ARGUMENT

I. *KPCo Constructed its Original Proposal in Case No. 2017-00328 So That The Baseline Projects Were Reliant on Approval of the Supplemental Projects.*

PJM defines Baseline projects as “projects primarily required to eliminate base-case reliability criteria violations found in the PJM Regional Transmission Expansion Plan [RTEP].”⁴ PJM defines Supplemental projects as “projects originated by the Transmission Owner that are not driven by an applicable PJM criterion.”⁵ Thus, issues identified by PJM drive Baseline projects. Conversely, the Transmission Owner (“TO”), with justification outside of PJM’s purview, drives Supplemental Projects.

In order for the Commission to approve a CPCN, the applicant utility must show both a need and that the granting of the CPCN will not result in wasteful duplication.⁶ Furthermore, Commission precedent requires a demonstration that all reasonable alternatives were appropriately considered.⁷ Finally, the Commission’s “statutory touchstone for ratemaking in Kentucky is the requirement that the rates set by the Commission must be fair, just and reasonable.”⁸

The Company argued in the prior case that the initial denial of the nine Supplemental projects would be detrimental since those portions were “*required* to implement the Baseline projects approved by the Commission[.]”⁹ By constructing the proposal so that the Baseline projects were entirely dependent on the Supplemental projects, the Company sought to ensure the

⁴ PJM Manual 14C: Generation & Transmission Interconnection Facility Construction, Section 6: Baseline & Supplemental Upgrade Projects, <http://www.pjm.com/~media/committeesgroups/committees/pc/20160811/20160811-item-04e-m14c-update-energization-schedule-clean.ashx>.

⁵ *Id.*

⁶ KRS 278.020(2); *Kentucky Utilities Company v. Public Service Commission*, 252 S.W.2d 885, 890 (Ky. 1952).

⁷ *See Kentucky Utilities Co. v. Public Serv. Comm’n*, 390 S.W.2d 168, 175 (Ky. 1965); Order, *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. Commission August 29, 2005).

⁸ KRS 278.030(1).

⁹ *Kentucky Power Company’s Motion for Partial Rehearing*, Case No. 2017-00328, at 1 (Ky. Commission April 6, 2018) (emphasis added).

approval of the entirety of the application was guaranteed. The justification offered by the Company for those Supplemental projects was that upgrading the substations at the same time as the Baseline project, the rebuilding of the Hazard-Wooton 161 kV Transmission line, would allow “Kentucky Power to deploy engineering and construction resources in a more efficient manner.”¹⁰ The Commission found that efficiency did not equate to necessity.¹¹

II. *The Approval on Rehearing of the Reconfiguration of the 69 kV Hazard-Jackson Line Allowed the Previously Designated Supplemental Projects to be Resubmitted to PJM and Designated as Baseline.*

KPCo is correct that following the events of Case No. 2017-00328, the Company resubmitted certain projects to PJM for consideration under the newly designed stakeholder process at PJM, discussed *infra*. As confirmed in this hearing, the nine projects previously identified as Supplemental were designated as Baseline. As a result of the Commission granting the 69 kV Hazard-Jackson line reconfiguration on rehearing in the prior case, KPCo was able to resubmit the remaining Supplemental projects to PJM as Baseline projects by maintaining that the remaining work was necessary to complete the reconfiguration.¹² PJM seemingly approved the projects, now designated as Baseline, in part due to their necessity in implementing the reconfiguration of the 69 kV Hazard-Jackson line, which was itself designated Baseline.¹³

The Company argues that other than the entity who drives the need for upgrades under Baseline or Supplemental projects, there is little difference between them as both types are required for KPCo to provide safe and reliable service.¹⁴ This is the type of argument utilities will continue to use to justify future Supplemental projects. While in theory this sentiment may be true, the

¹⁰ Order, Case No. 2017-00328, at 5 (quoting Direct Testimony of Michael G. Lasslo, at 6).

¹¹ *Id.*

¹² KPCo Post-Hearing Brief at 9; KPCo Response to Staff-DR-1-2.

¹³ KPCo Post-Hearing Brief at 9; KPCo Response to Staff-DR-1-2.

¹⁴ KPCo Post-Hearing Brief at 5–8.

crucial difference is that the degree of oversight ultimately given by PJM to each type of project is not the same.

III. *The Commission Must Remain Vigilant In Approving Supplemental Projects Due To The Lack Of Oversight By PJM Through The M-3 Process.*

A February 15, 2018 order issued by the Federal Energy Regulatory Commission (“FERC”) held that the previous stakeholder process for approving Supplemental projects in PJM was flawed and violated FERC Order 890 regarding Transparency and Coordination principles, as well as other PJM agreements.¹⁵ Specifically, FERC found problematic the practice of providing a preferred solution at the same time that TOs presented the problem, and that there was insufficient time between various deadlines for stakeholders to offer meaningful feedback or to allow TOs to implement suggestions.¹⁶ The Commission based its denial of the Supplemental projects in the prior case in part on the projects having undergone stakeholder review under the prior process “that the FERC Order ... found to be flawed.”¹⁷

As a result of FERC’s order, PJM’s M-3 stakeholder process was revised to allow for:

separate meetings for stakeholders to review and discuss the assumptions that the PJM Transmission Owners use to plan and identify Supplemental Projects, the identified criteria and system needs that may drive the need for Supplemental Projects, and potential solutions and alternatives to meeting those needs. The process further prescribes time periods for stakeholders to review materials and provide comments which ... we find to be sufficient to comply with Order No. 890. We confirm that this process ensures that the Supplemental Projects planning process in PJM complies with Order No. 890, including by providing sufficient transparency to stakeholders regarding the basic criteria, assumptions, and data that underlie their transmission system plans and ensuring appropriate lines of communication between stakeholders and the PJM Transmission Owners.¹⁸

¹⁵ Specifically, the PJM Operating Agreement and the Open Access Transmission Tariff.

¹⁶ Order, Case No. 2017-00328, at 6 (citing Order Accepting in Part Proposed Tariff Revisions and Requiring Tariff Revisions Pursuant to Section 206, 131 F.E.R.C., Section 61, 129 (2018)).

¹⁷ Order, Case No. 2017-00328, at 6–7.

¹⁸ ER17-179-000, *Rehearing Order*, 164 F.E.R.C. ¶ 61,217 at 30 (citing Order No. 890, F.E.R.C. Stats. & Regs. ¶ 31, 241 at 454, 461, 471).

The revised stakeholder process provides a fairer and more transparent system for all involved. However, structural inequities remain in the process between how Baseline and Supplemental projects are presented and ultimately evaluated at the RTO level. As the Company noted in the previous case, PJM does not have the authority to approve or deny Supplemental projects put forward by TOs.¹⁹ Concurrently, the Commission has only limited ability to deny Baseline projects, which are mandated through FERC-jurisdictional PJM processes.

In this hearing, Mr. Kamran Ali, the Company's Managing Director of Transmission Planning, confirmed that PJM does not exercise the same oversight over Supplemental projects as it does over Baseline projects.²⁰ As the RTO, PJM is the driver of Baseline projects, since these are required to address faults and violations on the system that PJM has identified in its RTEP based on data it has obtained. While PJM then runs its own reliability models of the grid, based on that internal data for identifying problems and recommended solutions for such Baseline projects, it relies solely on external data and models submitted by the TOs for Supplemental projects.²¹ In each instance, the problems identified and the preferred solutions are entirely driven by the TOs, based upon data that PJM cannot independently verify, but on which it must rely. As such, PJM cannot question the TOs conclusions or assumptions reliably. Any inquiry is left to other stakeholders, which has been helped somewhat by FERC's Order requiring the M-3 revisions.

However, TOs still have the ability to propose Supplemental projects virtually unchecked by PJM, which simply facilitates the stakeholder process. As the Company has described, there are multiple reasons which may precipitate it seeking approval for a project under the

¹⁹ *Kentucky Power Company's Motion for Partial Rehearing*, Case No. 2017-00328, at 15 (Ky. Commission April 6, 2018).

²⁰ Video Transcript Evidence [VTE], February 4, 2020, at 11:41:55 — 11:49:45.

²¹ *Id.*

Supplemental designation.²² Those reasons include, *inter alia*: maintaining the grid, connecting new customers, satisfying contractual and regulatory requirements, replacing failed equipment, proactive replacement of assets prior to failure, improving operational efficiency, installation of supervisory control and data acquisition systems, and modernizing the grid.²³ An electric utility can claim, accurately, that every proposed upgrade or rebuild will enhance reliability on its system, but at some point these projects can become gold-plating of the system. Gold-plating provides perpetual incremental benefit to the utility going forward, but the observable improvements to the system for the ratepayer are marginal at best. Therefore, it is left to the state utility commissions to determine whether Supplemental projects are necessary under their own statutes and regulations.

Due to the lack of proper oversight, the asymmetry of data, and ultimately, the inability of PJM to deny any such projects, the Attorney General remains concerned with the process of Supplemental project approval through PJM. Therefore, the Attorney General asks that the Commission continue to appropriately scrutinize CPCN applications under the relevant statutory requirements, including that the result be fair, just and reasonable for ratepayers.

²² KPCo Post-Hearing Brief, at 5–6 (quoting Direct Testimony of Kamran Ali, at 11).

²³ *Id.*