

**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 Transmission Line)	
And Associated Facilities Floyd And Knott Counties,)	Case No. 2021-00346
Kentucky (Garrett Area Improvements 138 kV)	
Transmission Project))	
)	

**Kentucky Power Company’s Response in Opposition to
the Motion of Chalmer D. Allen for Full Intervention**

Kentucky Power Company (“Kentucky Power” or “Company”) opposes the November 12, 2021 Motion of Chalmer D. Allen (“Mr. Allen”) for Intervention.

Background

The Floyd County Property Valuation Administrator’s records indicate Mr. Allen owns parcels 001 and 002 as shown on Exhibit 15 to the Company’s application.¹ Mr. Allen’s tracts lie outside the proposed right-of-way.² Parcel 001 (599 Goose Creek Road) lies within the filing corridor but near the eastern boundary of the filing corridor; parcel 002 (575 Goose Creek Road) is located even farther away from the proposed centerline and straddles the eastern boundary of the filing corridor.³ The proposed center line of the transmission line is approximately 450 feet from the dwelling on parcel 001 and approximately 280 feet from the dwelling on parcel 002.

The stated purpose of Mr. Allen’s requested intervention is to “express concerns I have

¹ The addresses provided by Mr. Allen in his intervention request differ from the mailing addresses shown on the Property Valuation Administrator’s records.

² See, Application, *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 And Associated Facilities Floyd And Knott Counties, Kentucky (Garrett Area Improvements 138 kV Transmission Project)*, Case No. 2021-00346 at Exhibit 3A, Page 1 of 5 (Ky. P.S.C. Filed November 8, 2021).

³ *Id.*

regarding negative effects from electromagnetic radiation this [the proposed transmission line] could pose to my families health.”⁴

Argument

Intervention is appropriate where the party seeking intervention (1) has a special interest in the case not otherwise represented; or (2) his or her intervention is likely to present issues or develop facts that will assist the Commission in fully evaluating the matter without unduly complicating or disrupting the proceedings.⁵ In cases involving applications for the approval of a certificate of public convenience and necessity for a transmission line, KRS 278.020(9) indicates that “interested persons” include “person[s] over whose property the proposed transmission line will cross.”⁶

The transmission line as proposed by Kentucky Power will not cross Mr. Allen’s property. In fact, both of his parcels lie outside the proposed 100 foot (50 feet on each side of the centerline) right-of-way for the transmission line. Mr. Allen thus is not an interested person as defined in KRS 278.020(9) under the Company’s proposal. Kentucky Power nevertheless acknowledges that relocation of the centerline within the filing corridor could result in the right-of-way crossing one or both Mr. Allen’s parcels.

But Mr. Allen’s potential status as an interested person does not fully resolve the issue of whether intervention is appropriate. The regulation requires that Mr. Allen’s interest be a special interest not otherwise represented. A special interest seemingly is one that relates to the issues to

⁴ Chalmer D. Allen Motion to Intervene.

⁵ 807 KAR 5:001, Section 4(11)(a).

⁶ KRS 278.020(9).

be determined by the Commission under KRS 278.020: the need for the facilities and the absence of wasteful duplication.⁷ Need is demonstrated by:

[A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.

The inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.⁸

“Wasteful duplication” involves

“an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.” To demonstrate that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed. Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication. All relevant factors must be balanced. The statutory touchstone for ratemaking in Kentucky is the requirement that rates set by the Commission must be fair, just, and reasonable.⁹

Mr. Allen’s concerns about the purported effect of the transmission line on his family’s health¹⁰ have no bearing on the Commission’s determination of the need for the proposed transmission line or whether the line will result in wasteful duplication. As such, his motion fails to demonstrate a special interest sufficient to warrant intervention.

⁷ *Kentucky Util. Co. v. Pub. Serv. Comm’n*, 252 S.W.2d 885, 890 (Ky. 1952).

⁸ 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 and Associated Facilities in Pike and Floyd Counties, Kentucky*, Case No. 2018-00209 at 11(Ky. P.S.C, December 6, 2018) (citing *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 252 S.W.2d 885, 890 (Ky. 1952)).

⁹ *Id.* at 11-12.

¹⁰ Kentucky Power does not concede the existence of any such claimed health effects.

Nor can Mr. Allen demonstrate issues or develop facts that will assist the Commission in fully evaluating the matter without unduly complicating or disrupting the proceedings. Again, the “matter” to be fully evaluated by the Commission is the need for the transmission line and whether it constitutes wasteful duplication. Mr. Allen’s proposed intervention does not present an issue likely to advance that inquiry. But even if the matter before the Commission were broad enough to encompass Mr. Allen’s concerns, his participation would unduly complicate the Commission’s inquiry given the availability of more efficient remedies available to Mr. Allen.

The most efficient and appropriate means for Mr. Allen to resolve his concerns is through negotiations with Kentucky Power directed toward ensuring (as is presently proposed) that the transmission line will not cross his property. Indeed, his motion contemplates just such a result.

WHEREFORE, Kentucky Power Company respectfully requests the Commission to enter an Order:

1. Denying Mr. Allen’s motion to intervene in this case; and
2. Granting Kentucky Power all further relief to which it may be entitled.

Respectfully submitted,



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