

**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 Volney Brent Allen for Full Intervention**

Kentucky Power Company (“Kentucky Power” or “Company”) opposes the November 16, 2021 Motion of Volney Brent Allen (“Mr. Allen”) for Intervention.

**Background**

The Floyd County Property Valuation Administrator’s records indicate Mr. Allen owns parcels 005 and 006 as shown on Exhibit 15 to the Company’s application. The proposed right-of-way crosses through both of Mr. Allen’s tracts, however, his dwelling lies more than 730 feet from the proposed center line of the right-of-way and thus is outside the filing corridor.<sup>1</sup> The stated purposes of Mr. Allen’s requested intervention are: (1) Kentucky Power never surveyed the property, (2) his belief that an alternative route was not chosen due to the property owner’s political contributions, (3) an endangered species lives on the property, (4) a historical artifact is on the property, (5) a gas pipeline is on the property, (6) two, fish-stocked ponds would be irreparably damaged, and (7) the electromagnetic force radiation (“EMF”) from the proposed

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<sup>1</sup> 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).

transmission line would have a negative effect on Mr. Allen’s health.<sup>2</sup> On November 19, 2021, Mr. Allen filed an addendum to his Motion to Intervene, alleging that “Kentucky Electric Power” uses “strong ‘Herbicides’” in its rights-of-way, which purportedly would affect the water shed into the aforementioned ponds, which Mr. Allen also uses to fill his swimming pool.<sup>3</sup>

### 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.<sup>4</sup> 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.”<sup>5</sup>

Regardless of whether Mr. Allen is an “interested person,” 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 be determined by the Commission under KRS 278.020: the need for the facilities and the absence of wasteful duplication.<sup>6</sup> 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

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<sup>2</sup> *Id.*, Volney Brent Allen Motion to Intervene (November 16, 2021).

<sup>3</sup> *Id.*, Volney Brent Allen Addendum to Motion to Intervene (November 19, 2021).

<sup>4</sup> 807 KAR 5:001, Section 4(11)(a).

<sup>5</sup> KRS 278.020(9).

<sup>6</sup> *Kentucky Util. Co. v. Pub. Serv. Comm’n*, 252 S.W.2d 885, 890 (Ky. 1952).

disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.<sup>7</sup>

“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.<sup>8</sup>

Each of Mr. Allen’s concerns fall into one of two categories: 1) concerns about the proposed location of the transmission line, or 2) concerns about the purported effect of the transmission line on his family’s health.<sup>9</sup> Neither of these kinds of concerns have any 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.

Moreover, although a motion to intervene is not the place to resolve disputed issues of fact, the motion to intervene should be based on something more than the unsupported conjecture provided by Mr. Allen. For example, Mr. Allen baselessly alleges that the proposed route for the transmission line “goes entirely out of the way, to take in 2 millionaire properties, for their [p]olitical contributions...”<sup>10</sup> In fact, the route in the vicinity of Mr. Allen’s property to which he

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<sup>7</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 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)).

<sup>8</sup> *Id.* at 11-12.

<sup>9</sup> Kentucky Power does not concede the existence of any such claimed health effects.

<sup>10</sup> Volney Brent Allen Motion to Intervene at 2.

objects, Alternative D, provides the following advantages over the route, Alternative C, that Mr. Allen claims was chosen to curry favor with “millionaires” for their “political contributions:” (a) it is shorter; (b) it crosses fewer parcels; (c) it crosses fewer landowners; (d) it would require less tree clearing; (e) it is more easily constructed; and (f) it would require fewer structures.<sup>11</sup> Moreover, with respect to Mr. Allen’s other concerns, the Company will obtain all required permits and will otherwise operate in compliance with all environmental and other requirements in carrying out the CPCN.

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 regarding the location of the line. Another avenue open to Mr. Allen would be to file written comments.

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<sup>11</sup> Direct Testimony of George T. Reese at 19 (November 8, 2021).

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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