

**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))	

Motion for Partial Rehearing

Kentucky Power Company moves the Public Service Commission pursuant to KRS 278.400 for partial rehearing of its March 8, 2022 order¹ granting Kentucky Power a certificate of public convenience and necessity (“CPCN”) to construct the Garrett Area Improvements 138 kV Transmission Project (the “Project”) as described in its Application, with certain conditions expressed in the Order. Specifically, the Company seeks two clarifications of ordering paragraph 9 of the Order.² The Company further seeks clarification or amendment of the Order confirming that the filing of notice and a request for approval by the Company in this matter, without the need to reopen this case or file a new application, will satisfy ordering paragraph 8 of the Order.³

¹ 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 Breathitt, Floyd And Knott Counties, Kentucky (Garrett Area Improvements 138 kV Transmission Project)*, Case No. 2021-00346 (Ky. P.S.C. March 8, 2022) (“Order”).

² Order at 31.

³ *Id.* at 30-31.

I. Background

A. The Application

Kentucky Power filed its application on November 8, 2021 for a certificate of public convenience and necessity to construct the Project.⁴ The Project is required to address asset renewal concerns, to upgrade the existing 46 kV system, and to connect two previously approved and constructed 138 kV projects.⁵ The Project will yield a stronger and more reliable 46 kV grid currently served by the Garrett 46 kV and Spring Fork 46 kV substations as well as the Salt Lick delivery point to East Kentucky Power Cooperative.⁶

To ensure the ability to address potential issues that may emerge in connection with ground surveys, final engineering, and right-of-way negotiations, Kentucky Power requested authority to move the proposed centerline and right-of-way, and to expand the right-of-way, within the filing corridor illustrated on Exhibit 3 to the Application.⁷ The Company proposed a filing corridor that was a uniform 1,000 feet in width.⁸

Kentucky Power's request to move the centerline and right-of-way, or to expand the right-of-way, within the filing corridor was made expressly contingent upon Kentucky Power having notified the property owner(s) onto whose property the line would be moved of this proceeding in accordance with 807 KAR 5:120, Section 2(3).⁹ Persons owning property within the filing corridor were mailed the same notice provided to persons owning property within the

⁴ 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 In Breathitt, Floyd And Knott Counties, Kentucky (Garrett Area Improvements 138 kV Transmission Project)*, Case No. 2021-00346 (November 8, 2021).

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *Id.* at 12.

⁸ *Id.*; West Direct at 7.

⁹ Application at 12.

indicated right-of-way.¹⁰ These notices were mailed on October 25, 2021.¹¹ After construction is completed, Kentucky Power committed to file with the Commission a revised plan showing the final location of the transmission line and structures.¹² The Direct Testimony of Company Witness West¹³ provided further description of the proposed filing corridor and the manner in which Kentucky Power proposed to use it.¹⁴

B. The Commission's March 8, 2022 Order

Ultimately the Commission granted Kentucky Power a CPCN to construct and operate the Garrett Area Improvements 138 kV Transmission Project as described in its Application, with the conditions expressed in the Order, some of which were intended to address concerns raised by the sole intervenor Volney Brent Allen.¹⁵ Such conditions included:

Kentucky Power's request for the authority to move the centerline and the right-of-way within the 1,000 foot filing corridor, and to expand the right-of-way as described in the application, is denied. Kentucky Power shall not move the centerline more than 100 feet in any direction from the location as shown on the maps filed in this proceeding without first seeking Commission approval[;]¹⁶

[and]

Kentucky Power shall not clear cut any trees from Mr. Allen's property that are more than 80 feet below the transmission line.¹⁷

Kentucky Power now seeks clarification or amendment of the Commission's order, to the extent necessary, regarding both of these conditions.

¹⁰ West Direct at 8.

¹¹ *Id.*

¹² Application at 12-13; West Direct at 8.

¹³ West Direct at 7-8.

¹⁴ *Id.* at 13.

¹⁵ *See* Order at 29.

¹⁶ *Id.* at 30-31, ordering ¶ 8.

¹⁷ *Id.* at 31, ordering ¶ 9.

II. The Applicable Standard

KRS 278.400 authorizes “any party to the proceedings” to apply for rehearing of a Commission order within 20 days of service of the order. The Commission interprets the statute as “provid[ing] closure to Commission proceedings by limiting rehearing to new evidence not readily discoverable at the time of the original hearings.”¹⁸ The statute requires and the Commission expects “the parties to Commission proceedings to use reasonable diligence in the preparation and presentation of their cases and serves to prevent piecemeal litigation of issues.”¹⁹ Rehearing is not a vehicle for a party to reargue or re-litigate an issue fully addressed by the parties in the proceedings leading to the original order.²⁰

The Commission nevertheless enjoys the discretion to grant rehearing²¹ to consider new arguments,²² particularly where the argument could not reasonably have been raised before. In addition, rehearing will be granted when required to address any errors or omissions in its orders.²³ The first of these bases supports rehearing here.

The conditions prohibiting Kentucky Power from clear cutting trees from Mr. Allen’s property that are more than 80 feet below the transmission line, and from moving the centerline

¹⁸ *In the Matter of: Application Of Kentucky-American Water Company For A Certificate Of Public Convenience And Necessity Authorizing Construction Of The Northern Division Connection*, Case No. 2012-00096 at 4 (Ky. P.S.C. January 23, 2014).

¹⁹ *Id.*

²⁰ *In the Matter of: D.P.I. Teleconnection, L.L.C. v. BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky*, Case No. 2009-00127 at 3 (Ky. P.S.C. March 2, 2012) (rejecting motion for rehearing where movant failed to raise new arguments and arguments raised were fully considered in original order).

²¹ *In the Matter of: Adjustment Of Rates Of General Telephone Company Of Kentucky*, Case No. 8859 at 1 (Ky. P.S.C. June 28, 1984) (Commission exercised its discretion to grant second petition for rehearing to ensure due process).

²² *In the Matter of: America’s Tele-Network Corp.’s Alleged Violation of KRS 278.535*, Case No. 2000-00421 at 2 (Ky. P.S.C. March 23, 2001) (limiting scope of rehearing to new arguments raised in petition).

²³ *In the Matter of: Application of Jessamine-South Elkhorn Water District For A Certificate Of Public Convenience And Necessity To Construct And Finance A Waterworks Improvement Project Pursuant To KRS 278.020 And 278.300*, Case No. 2012-00470 at 11 (January 3, 2014).

more than 100 feet in any direction from the location shown on the maps filed in this proceeding without first seeking Commission approval, were not directly presented in the case prior to the Commission's March 8, 2022 Order. As a result, Kentucky Power lacked the opportunity to address the Commission's specific concerns giving rise to these particular conditions and, more importantly, to suggest alternatives or seek clarification regarding those specific concerns.

III. The Proposed Clarification Or Amendment Of The Commission's Order Will Provide Necessary Clarity To Ensure The Company Complies With The Commission's Order.

The Company requests the following clarifications, and to the extent necessary, amendment of the Order, to ensure the Company understands and complies with the Commission's Order.

A. The Company Requests Clarification Of Ordering Paragraph 9 Of The Order.

Ordering paragraph 9 of the Order requires that "Kentucky Power shall not clear cut any trees from Mr. Allen's property that are more than 80 feet below the transmission line."²⁴ The Company understands the term "clear cut" to mean the removal of trees from edge to edge of the right-of-way without regard to the height or species of tree being removed. Because different tree species grow at differing rates, a tree that is more than 80 feet below the transmission line at the time right-of-way is made ready for construction of the line may subsequently grow into the 80-foot zone before the next inspection. The Company thus requests clarification of ordering paragraph 9 to allow the removal of individual trees outside of the 80-foot zone established by the ordering paragraph where deemed necessary for safe, efficient, and adequate service.

The Company further requests a clarification of ordering paragraph 9 establishing that the 80-foot zone is to be measured from the estimated location of the line under maximum loading

²⁴ Order at 31, ordering ¶ 9.

conditions. The location of the transmission line in relation to the top of existing trees can vary under different loading conditions. As the load on the transmission line increases the line sags and moves closer to the tree tops, thereby creating a risk of contact with vegetation that does not exist under normal operating conditions.²⁵ The Company thus requests that the 80-foot zone be measured from the estimated height of the line under maximum loading conditions so to ensure the safe and adequate operation of the transmission line.

B. The Company Requests Clarification Or Amendment Of The Order To Clarify That The Filing Of Notice And A Request For Approval By The Company In This Matter, Without The Need To Reopen This Case Or File A New Application, Will Satisfy Ordering Paragraph 8 Of The Order.

Ordering paragraph 8 states:

Kentucky Power's request for the authority to move the centerline and the right-of-way within the 1,000 foot filing corridor, and to expand the right-of-way as described in the application, is denied. Kentucky Power shall not move the centerline more than 100 feet in any direction from the location as shown on the maps filed in this proceeding without first seeking Commission approval[;]²⁶

Although less than requested, the Company appreciates the flexibility to move the centerline provided by the Commission in the condition. Kentucky Power understands the limitations imposed by the Commission in ordering paragraph 8 arise in connection with the concern expressed on page 29 of the Order regarding the degree of engineering, survey, and investigation undertaken by the Company (and "similarly situated utilities") prior to filing its application for a CPCN. So that the record is clear, and to afford the Commission a better understanding of the Company's need to request a filing corridor, Kentucky Power provides a further explanation.

Unlike other proceedings, applications for a CPCN require applicants to demonstrate not only a need for the proposed line, but also to identify a proposed location for the line. The cost

²⁵ See KPCO_R_KPSC_PHDR_7 Attachment 2, page 7 of 15 (February 28, 2022).

²⁶ *Id.* at 30-31, ordering ¶ 8.

of the final engineering, geotechnical investigation, right-of-way work, and on-ground surveying and investigation is significant. To the extent possible consistent with the necessary planning and development of required projects, Kentucky Power is mindful of incurring these costs, along with the consequent need for customers to bear the costs through increased rates, after, rather than before, approval by the Commission concerning not only the need for the transmission line project, but also an approval of the approximate location of the transmission line itself.

The Commission is familiar with the nature of Kentucky Power's service territory. It is densely forested and mountainous, which leads to greater uncertainty than in other areas of the Commonwealth regarding the location of the final transmission centerline.²⁷ Unknown factors, many of which exist more often in Kentucky Power's service territory than in that of other investor-owned utilities in the state, include the topographic variation along the proposed centerline route, unknown mining plans by mineral estate owners, previously undiscovered subsurface conditions, incomplete or inaccurate property records, the desire to accommodate to the extent reasonable late-arising landowner requests and demands, the likelihood of unmarked cemeteries and natural gas pipelines in the area, and other natural and manmade constraints on the Company's ability to construct the transmission line along the proposed centerline.²⁸

To address these uncertainties, while limiting the cost borne by customers, the Company's past practice has been to request a filing corridor,²⁹ and the Commission has previously granted the Company's request for 1,000 foot filing corridor, as for example in Case No. 2020-00062.³⁰ In that case, the Company discovered previously unknown conditions during

²⁷ See KPCO_R_KPSC_1_12 (December 7, 2021).

²⁸ *Id.*; KPCO_R_KPSC_2_12 (December 28, 2021).

²⁹ *Id.*

³⁰ 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*

the engineering, development, and construction of the line that necessitated a limited number of modifications (two) of the centerline within the 1,000 foot filing corridor proposed by the Company.³¹

A filing corridor generally allows the Company to adjust the project centerline and right-of-way to accommodate information received during the development and construction of a transmission line.³² Because of the cost and lead time required to develop, engineer, and construct a transmission line in the rugged terrain comprising the Company's service territory, it is oftentimes required, and ultimately beneficial to both customers and affected landowners, for the Company to file its application before the required project engineering, right-of-way acquisition, and geotechnical investigation proceed beyond preliminary stages.³³ Importantly, a filing corridor allows Kentucky Power to obtain all necessary approvals from the Commission in a single proceeding.³⁴ Using a filing corridor conserves the Commission's resources and avoids the additional costs to the Company, and additional burdens on adjoining landowners, attendant to reopening Commission proceedings to amend the granted authority to construct a transmission line when later developments during construction necessitate moving it.³⁵

To ensure Kentucky Power understands and fully complies with ordering paragraph 8, the Company respectfully requests that the Commission clarify, and to the extent necessary, amend its Order to expressly provide that Kentucky Power may satisfy ordering paragraph 8 by a

Counties (Kewanee-Enterprise Park 138 kV Transmission Line Project), Case No 2020-00062 (Ky. P.S.C. December 29, 2020).

³¹ See *KPCO_R_KPSC_2_12* (December 28, 2021).

³² *Id.*

³³ *Id.*

³⁴ *KPCO_R_KPSC_1_12* (December 7, 2021).

³⁵ *Id.*

notice and request for approval to move the centerline of the proposed outside the corridor provided in ordering paragraph 8. The written request for approval would identify the amended proposed location of the centerline, the identity of the affected landowner(s), and the need for the proposed modification of the centerline. The written request for approval would be served on any affected landowner even if not a party to this proceeding. The Company further requests that the Commission indicate that in order to obtain Commission approval of a modification of the location of the centerline as provided in ordering paragraph 8, the Company would not be required to file a new or amended application.

A requirement that Kentucky Power file a new or amended application could unreasonably burden the Commission, impose unnecessary costs on the Company (and ultimately its customers), and unreasonably delay the completion of the Project.

WHEREFORE, Kentucky Power Company respectfully requests that the Commission enter an order:

(1) Granting rehearing to clarify (or amend) ordering paragraph 9 of its March 8, 2022 Order to allow the removal of individual trees outside of the 80-foot zone established by the ordering paragraph where deemed necessary for safe, efficient, and adequate service;

(2) Granting rehearing to clarify (or amend) ordering paragraph 9 of its March 8, 2022 Order to provide that the 80-foot zone specified in ordering paragraph 9 is to be measured from the estimated height of the line under maximum loading conditions so to ensure the safe and adequate operation of the transmission line;

(3) Granting rehearing and clarifying (or amending) its March 8, 2022 Order to provide that the Company may in conformity with ordering paragraph 8 seek approval to move the centerline of the proposed transmission line more than 100 feet in any direction from the filed

proposed centerline by filing a written request for approval identifying the amended proposed location of the centerline, the identity of the affected landowner(s), and the need for the proposed modification of the centerline. The written request for approval would be served on any affected landowner even if not a party to this proceeding;

(4) Granting rehearing and clarifying (or amending) its March 8, 2022 Order to provide that approval of an amended proposed location of the centerline in conformity with ordering paragraph 8 would not require the filing of a new or amended application; and

(5) Granting the Company all other relief to which it may be entitled.

Respectfully submitted,



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