

**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 Western Pocahontas Properties for Intervention**

Kentucky Power Company opposes the December 7, 2021 Motion of Western Pocahontas Properties to intervene in this proceeding.

Background

Western Pocahontas Properties is listed in the records of the Knott County Property Valuation Administrator as the record owner of Parcels 187 and 188.¹ Parcels 187 and 188 are crossed by the proposed centerline or proposed right-of-way and thus Western Pocahontas is an interested person within the meaning of KRS 278.020(9). Nevertheless, Western Pocahontas’ motion is untimely and was unaccompanied by a motion demonstrating good cause for modification of the Commission’s procedural schedule. Next, although nominally submitted in the name of Western Pocahontas Properties, the request was submitted by Jeffrey B. Conley of Natural Resources Partners L.P. Neither Mr. Conley nor Natural Resources Partners L.P. owns

¹ The Knott County PVA records indicate that Western Pocahontas also is the record owner of Parcel 186. Parcel 186 lies wholly within the proposed filing corridor and thus with respect to that parcel Western Pocahontas is not an “interested person” as the term is used in KRS 278.020(9). See 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 Floyd And Knott Counties, Kentucky (Garrett Area Improvements 138 kV Transmission Project)*, Case No. 2021-00346 at 3-4 (Ky. P.S.C. Filed December 7, 2021).

property within the proposed right-of-way or filing corridor and they lack an interest in the project (and this proceeding) in their own capacities. Finally, to the extent Mr. Conley is submitting the request on behalf of Western Pocahontas Properties, as seemingly is the case, he does not appear to be licensed to practice law in the Commonwealth and thus the submission was violates 807 KAR 5:001, Section 4(4).

Argument

The Commission’s November 17, 2021 Order established November 29, 2021 as the “[I]ast day for intervention requests to be accepted.”² Western Pocahontas’s motion is stamped as having been received by the Commission on December 7, 2021. Its filing thus was untimely.

The November 17, 2021 Order also provided that “motions for extensions of time with respect to the schedule herein in shall be made in writing and will be granted and will be granted only upon the showing of good cause.”³ Western Pocahontas did not file a motion for extension or otherwise provide a written explanation establishing any cause, much less good cause, for extension of the November 29, 2021 deadline. Its failure to file a timely motion to intervene, as well as its failure to file a motion for extension demonstrating good cause for an extension, particularly in a case with a statutory deadline, are sufficient bases to deny its request to intervene.

The records of the Kentucky Secretary of State indicate that Western Pocahontas Properties Limited Partnership is a limited partnership organized under the laws of Delaware.⁴

² 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 Floyd And Knott Counties, Kentucky (Garrett Area Improvements 138 kV Transmission Project)*, Case No. 2021-00346 Appendix (Ky. P.S.C. Filed November 17, 2021).

³ *Id.* at 3.

⁴ See **EXHIBIT 1**.

The request for intervention on behalf of Western Pocahontas was submitted by Jeffrey B. Conley. His signature block indicates he is Vice President and Sr. Regional Manager for a different limited partnership: Natural Resources Partners L.P.

Natural Resources Partners, L.P. and Mr. Conley are not shown on Exhibit 15 to the Company's application as record owners of property crossed by the proposed centerline or right-of-way of the project. Further, the request to intervene does not indicate the relationship between Western Pocahontas on the one hand, and Natural Resources Partners, L.P. or Mr. Conley on the other. It thus appears that both Mr. Conley and Natural Resources lack a special interest in this proceeding sufficient to support intervention.

Finally, limited partnerships such as Western Pocahontas are creatures of statute like corporations.⁵ Because Western Pocahontas is not a natural person it may appear before the Commission only if represented by an attorney licensed in Kentucky.⁶ Mr. Conley's request on behalf of Western Pocahontas does not indicate he is an attorney licensed to practice in Kentucky. The records of the Kentucky Bar Association likewise do not indicate Mr. Conley is a licensed Kentucky attorney.⁷ The request to intervene by Mr. Conley on behalf of Western Pocahontas should thus also be denied for the further reason that it was not submitted in accordance with the Commission's regulations or the rules of the Supreme Court of Kentucky.

⁵ *Patton v. Hobbs*, 280 S.W.3d 589, 593 (Ky. App. 2008).

⁶ 807 KAR 5:001, Section (4) ("a person shall not file a paper on behalf of another person, or otherwise represent another person unless the person is an attorney licensed to practice law in Kentucky or an attorney whose has complied with SCR 3.030(2).") Mr. Conley's submission on behalf of Western Pocahontas also does not indicate he is an attorney licensed in another jurisdiction, much less that he has complied with the pro hac vice admission rules of SCR 3.030(2). *See generally Bobbett v. Russellville Mobile Home Park*, No. 2007-CA-000684, 2008 WL 4182001 (Ky. App. 2008) (owner of a limited liability corporation could not represent the entity in a legal action outside of small claims court because the limited liability corporation was a separate legal entity).

⁷ *See* **EXHIBIT 2**.

Finally, as indicated in Mr. Conley's request, Kentucky Power and Western Pocahontas have discussed the proposed route. A response to a motion to intervene, particularly in connection with a request to intervene that is not properly before the Commission, is not the appropriate place to address the merits of the proposed route. Kentucky Power nevertheless states it disagrees with Mr. Conley's statements regarding the proposed route or the claimed advantages of its preferred route.

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

1. Denying Western Pocahontas Properties' 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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COUNSEL FOR KENTUCKY POWER
COMPANY

EXHIBIT 1

Commonwealth of Kentucky
Michael G. Adams, Secretary of State

PARP

0225079

Michael G. Adams

KY Secretary of State

Received and Filed

6/9/2021 11:13:37 AM

Fee receipt: \$15.00

Michael G. Adams
Secretary of State
P. O. Box 1150
Frankfort, KY 40602-1150
(502) 564-3490
<http://www.sos.ky.gov>

Annual Report
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ARP

Company: WESTERN POCAHONTAS PROPERTIES LIMITED PARTNERSHIP
Company ID: 0225079
State of origin: Delaware
Formation date: 1/30/1987 12:00:00 AM
Date filed: 6/9/2021 11:13:37 AM
Fee: \$15.00

Principal Office

5260 IRWIN RD
HUNTINGTON, WV 25705

Registered Agent Name/Address

CAPITOL CORPORATE SERVICES, INC.
828 LANE ALLEN ROAD
SUITE 219
LEXINGTON, KY 40504

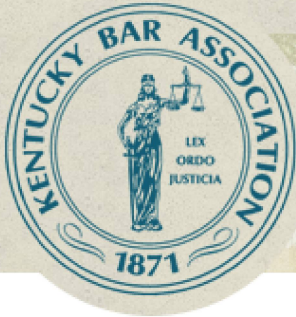
Partners

General Partner WESTERN POCAHONTAS CORPORATION 5260 IRWIN RD HUNTINGTON, WV 25705

Signatures

Signature KATHRYN S WILSON
Title GENERAL COUNSEL AND SECRETARY

EXHIBIT 2



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