

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Electronic Application Of Kentucky Utilities)	
Company For A Certificate Of Public Convenience)	
And Necessity For The Construction Of)	Case No. 2022-00066
Transmission Facilities In Hardin County, Kentucky)	

Frank D. Brown and Martha V. Brown’s Initial Post-Hearing Brief

Frank D. Brown and Martha V. Brown (“the Browns”), by counsel, file with the Public Service Commission of Kentucky (“Commission”) their initial post-hearing brief and state as follows:

I. BACKGROUND AND CASE OVERVIEW

A. KU’s Application.

On March 31, 2022, Kentucky Utilities Company (“KU”) filed an application seeking a certificate of public convenience and necessity (“CPCN”) to construct two 345kV transmission lines, two 138kV transmission lines, and two associated substations. KU states that these facilities are intended to serve Ford Motor Company’s and its partner, SK Innovation’s, (collectively, “Ford”) new battery production facilities at the Glendale Megasite in Hardin County, and to meet the expected need for future development in the area including other customers supporting Ford.¹ The two new 345kV transmission lines are proposed to connect KU’s Brown North – Hardin County 345kV transmission line to a new 345kV/138kV substation east of Glendale, Kentucky to be called the Glendale South Substation.² One of the new 345kV

¹ KU’s Application at 1.

² *Id.* at 2.

lines is proposed to be 3.7 miles and tap on the eastern portion of the Brown North – Hardin County transmission line (“Glendale East Line”).³ The other new 345kV line is proposed to be 4.9 miles and tap the western portion (“Glendale West Line”).⁴ Both routes will terminate at the proposed Glendale South Substation.⁵

B. The Brown Parcels and the Browns’ Intervention.

The Browns own more than 130 acres of land in Hardin County with parcel numbers 190-30-00-020 and 207-00-00-010, which are adjacent to each other, directly east of downtown Glendale, and lie on either side of Kentucky Highway 222 Glendale Hodgenville Road W (“Brown Parcels”).⁶ The Brown property directly abuts the Glendale Megasite to the north.⁷ The 345 kV Glendale South Substation proposed to be sited on the north side of the Glendale Megasite would be located south of the Browns’ property, but not on it.⁸ The Glendale West Line, as proposed in KU’s application, proceeds north out of the proposed Glendale South Substation and crosses through the middle of both of the Browns’ parcels.⁹ The proposed Glendale East Line proceeds northeast out of the proposed Glendale South Substation and generally follows the southern boundary of one of the Brown Parcels, but does not cross it, before turning more north.¹⁰

³ *Id.* at 3.

⁴ *Id.*

⁵ *Id.*

⁶ Direct Testimony of Allen Summers (“Summers Direct Test.”) at 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 2-3.

The Browns received two notices from KU dated March 11, 2022 informing them that “KU plans to construct a 345 kV electric transmission line on [their] property,” and that “a property owner also has the right to request intervention in the case.”¹¹ The Browns also are identified as affected landowners in Exhibit 20 of KU’s Application.¹² As such, the Browns moved for leave to intervene in this case,¹³ which Commission granted by order dated April 25, 2022.¹⁴

C. The Browns’ Alternate Route Proposals.

The Brown Parcels are immediately to the north of, and adjacent to, the Glendale Megasite, on which the Ford battery plant will be constructed.¹⁵ Accordingly, the Browns have been advised that the highest and best use of their property will be for industrial use that is complimentary to the Ford plant.¹⁶ For this to happen – *i.e.*, for an industrial site or sites to be constructed on the Brown Parcels, a large unencumbered parcel or parcels is required.¹⁷ The Glendale West Line, as proposed in KU’s application, crosses through the middle of both Brown Parcels.¹⁸ Considering the substantial 200-foot right-of-way that KU claims is required for 345 kV transmission lines,¹⁹ the Brown Parcels would be substantially affected if the Glendale West Line were constructed as proposed by KU.²⁰ The 200-foot right-of-way would not only render

¹¹ Browns’ Motion for Leave to Intervene at 2 (April 7, 2022).

¹² *Id.*

¹³ See generally *id.*

¹⁴ Order (Ky. P.S.C. April 25, 2022).

¹⁵ Summers Direct Test. at 4

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See KU_R_BROWN_1_4 (April 21, 2022).

²⁰ Summers Direct Test. at 4; Direct Testimony of Michael P. Billings (“Billings Direct Test.”) at 3.

useless for commercial purposes a broad section across the middle of the Brown Parcels, but it would also have a substantial negative impact on the ability to use the remainder of the property for future commercial or industrial purposes.²¹

If the Glendale West Line were constructed as proposed by KU in its application, the line would divide the usable acreage of the Brown Parcels into smaller sections, and the Brown Parcels would be much more limited with respect to the types and sizes of structures or operations that could be constructed or sited for commercial or industrial use.²² In that event, the Browns could (and likely would) lose significant commercial opportunities if they no longer were to have a large contiguous piece of property able to be developed.²³ Specifically, if the Glendale West Line were constructed as proposed by KU in its application, it would leave approximately 545,000 square feet (or about 13 acres) of the Brown Parcels as either uneconomic remnants or of substantially decreased utility.²⁴

While the Browns' first preference would be not to have a transmission line cross the Brown Parcels at all, if the Commission grants KU's request for a CPCN to construct the Glendale West Line, the Browns proposed several alternative routes for that line.²⁵ The Browns' proposed alternative routes for the Glendale West Line minimize the impact of the proposed transmission line on the Brown Parcels, without a negative impact on neighboring property.²⁶

The Browns proposed alternative routes as follows:

²¹ *Id.*

²² Billings Direct Test. at 3.

²³ *Id.*

²⁴ See Brown_R_KPSC_1_1_Attachment1 at 2 (May 19, 2022).

²⁵ See Summers Direct Test. at 4-5, 6.

²⁶ *Id.* at 5.

Alternative B: Shows potential alternate route of the Glendale West 345 kV Transmission Line over existing sewer easements on the Brown Parcels to minimize impact to the Browns' property.²⁷

Alternative C: Shows potential alternate route of the Glendale West 345 kV Transmission Line to run along the western-most boundary line of the Brown Parcels and over existing sewer drainage easements to minimize impact.²⁸

Alternative D: Shows potential alternate route of the Glendale West 345 kV Transmission Line to run parallel and in tandem with the Glendale East 345 kV Transmission Line as it is proposed in KU's application. This alternative would route the Glendale West 345 kV Transmission Line completely around the Brown Parcels.²⁹

Alternative E: Shows potential alternate route of the Glendale West 345 kV Transmission Line to run towards the Glendale East 345 kV Transmission Line then across a small portion of one of the Brown Parcels before running parallel with the Glendale East 345 kV Transmission Line.³⁰

1. The Browns' Proposed Alternative Route C.

While each of the Browns' proposed alternative routes are feasible and constructible from an engineering perspective,³¹ if the Commission grants KU a CPCN to construct the Glendale West Line, the Browns prefer that Alternative C be constructed in lieu of the route proposed in KU's application.³²

If the Browns' Alternative C were constructed, the centerline as proposed by KU would be moved to the west and follow the western property boundary of the Brown Parcels approximately 100 feet from the property boundary to account for the right-of-way.³³ The termination dead-end tower on the north side of the Glendale South Substation would be moved

²⁷ Summers Direct Test. at 5, Exhibit 1.

²⁸ Summers Direct Test. at 5, Exhibit 2.

²⁹ Summers Direct Test. at 5, Exhibit 3.

³⁰ Summers Direct Test. at 5, Exhibit 4.

³¹ See Direct Testimony of Güneş Demirbaş ("Demirbaş Direct Test.") at 3.

³² Summers Direct Test. at 6.

³³ Demirbaş Direct Test. at 4.

towards the west by approximately 250 feet from the location proposed by KU.³⁴ The line would run north from the termination dead-end tower in a straight line to the northwest corner of the Brown Parcels passing through two tangent structures located on the Brown Parcels approximately 100 feet from the western property line of the Brown Parcels.³⁵ The line would then connect to a running angle structure located at the northwest corner of the Brown Parcels, before proceeding northwest toward the structure KU has proposed to locate on Parcel No. 189.00.00.018.05.³⁶ Figure 1 in the Appendix to Exhibit 3 of the Demirbaş Direct Testimony shows a rendering of Alternative C as described.³⁷

Based on the preliminary engineering review by the Browns' expert, Güneş Demirbaş P.E., Alternative C is approximately 200 feet shorter than the route proposed in KU's application.³⁸ Further, if structures are relocated (as demonstrated Figure 1 in the Appendix to Exhibit 3 of the Demirbaş Direct Testimony), and the angle of the line is moved towards the northwest corner of parcel number 190-00-30-020, Alternative C would neither increase the structure count nor require additional conductor length.³⁹ And, even though the structures would be moved towards the western boundary of the Brown Parcels, the line would remain within the 500-foot corridor proposed by KU, and the connection point to Glendale South Substation would not substantially change.⁴⁰

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *See Id.* at Exhibit 3, Appendix 1 (May 12, 2022).

³⁸ *Id.* at 4.

³⁹ *Id.* at 5.

⁴⁰ *Id.*

Nor would any additional cost be anticipated by constructing the Browns' Alternative C in lieu of the route proposed in KU's application.⁴¹ In fact, because Alternative C would not require any additional structures than those already proposed by KU, and because the route would be approximately 200 feet shorter than the route proposed by KU, Mr. Demirbaş estimated that Alternative C would cost approximately \$50,000 less to construct than the route proposed in KU's application.⁴²

Finally, Alternative C (including the required right-of-way) also would still be located entirely within the confines of the Brown Parcels, and within the 500-foot deviation corridor that KU has requested within which to move the line after receiving a CPCN from this Commission.⁴³ As such, Alternative C would not require any additional landowner notifications or additional easement acquisition. Indeed, the owners of two adjacent parcels --Jeff Key, Larry Jagers, and Carol Jagers -- submitted public comments on May 16, 2022, stating their support for the alternate routes developed and proposed by the Brown family.

D. KU's Rebuttal and Hearing Testimony.

KU filed the Rebuttal Testimony of Elizabeth J. McFarland ("McFarland Rebuttal Test.") on May 27, 2022. Within that testimony, KU committed to the following:

If the results of KU's ongoing geotechnical work for Alternative C do not present any problems that cannot be solved with reasonable effort and expense, then, yes, Brown Alternative C is constructible and engineeringly feasible on the Brown property. Thus, KU will construct it assuming the Commission approves the requested 500-foot centerline deviation request.⁴⁴

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 4.

⁴⁴ McFarland Rebuttal Test. at 12-13.

KU reaffirmed these statements at the June 1, 2022 hearing in this matter when Ms. McFarland further testified that assuming geotechnical boring tests do not indicate challenges or issues that would make construction of the Browns' Alternative C no longer feasible from an engineering perspective, then KU would move the route of the Glendale West Line to the Browns' preferred Alternative C route if KU's request for a 500-foot deviation corridor is granted by the Commission.⁴⁵ KU further confirmed that the entire right-of-way would remain within the confines of the Brown Parcels, and that no additional property owners would be affected by the decision to move the route of the Glendale West Line to follow the Browns' Alternative C route.⁴⁶

II. LEGAL STANDARD

A. Certificate of Public Convenience and Necessity.

The Commission's standard of review regarding a CPCN is well settled. Under KRS 278.020(1), no utility may construct or acquire any facility to be used in providing utility service to the public until it has obtained a CPCN from the Commission. KRS 278.020(1) provides for the grant of a certificate of public convenience and necessity upon KU's showing of the need for the proposed construction *and* the absence of wasteful duplication.⁴⁷ Need may be demonstrated by, *inter alia*, the existence of "a substantial deficiency of service facilities beyond what could be supplied by normal improvements in the ordinary course of business...."⁴⁸ Wasteful duplication comprises two elements: (a) excess of capacity over need; or (b) excess investment in relation to

⁴⁵ See VR 13:29:30 (June 1, 2022).

⁴⁶ See VR 13:31:30; VR 13:30:30.

⁴⁷ *Kentucky Utilities Co. v. Public Serv. Comm'n*, 252 S.W.2d 885, 890 (Ky. 1952).

⁴⁸ *Id.*

productivity and efficiency to be gained from the proposed construction.⁴⁹ The absence of wasteful duplication also requires a demonstration that all reasonable alternatives were examined,⁵⁰ and all relevant factors must be balanced.⁵¹

III. ARGUMENT

While the Browns' first preference would be that KU not construct a transmission line across the Brown Parcels at all, if the Commission grants KU's application for a CPCN to construct the Glendale West Line, then the transmission line should be routed consistent with the Browns' preferred Alternative C in lieu of the route as proposed in KU's application.

A. KU Has Agreed To Construct The Glendale West Line Along The Browns' Preferred Alternative C If The Commission Grants KU's Request For The 500-Foot Deviation Corridor.

KU has agreed to construct the Glendale West Line along the route of the Browns' Alternative C so long as "KU's ongoing geotechnical work for Alternative C do[es] not present any problems that cannot be solved with reasonable effort and expense."⁵² This commitment by KU to construct the Browns' proposed Alternative C is contingent on the Commission granting KU's request for a 500-foot deviation corridor within which to move the transmission line after receiving a CPCN.

Because there is no evidence of record that the Browns' Alternative Route C should not or could not be constructed, and because KU committed to construct the Browns' Alternative C

⁴⁹ Id.

⁵⁰ *In the Matter of: Joint Application Of Louisville Gas and Electric Company And Kentucky Utilities Company For A Certificate of Public Convenience and Necessity For The Construction of Transmission Facilities In Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky*, Case No. 2005-00142 (Ky. P.S.C. September 8, 2005).

⁵¹ Order, *In the Matter of: The Application Of East Kentucky Power Cooperative, Inc. For A Certificate Of Public Convenience And Necessity To Construct A 138 kV Transmission Line In Rowan County, Kentucky*, Case No. 2005-00089 at 6 (Ky. PSC Aug. 19, 2005).

⁵² McFarland Rebuttal Test. at 12-13

if the Commission grants KU's request for a 500-foot deviation corridor, the Commission should order KU to move the Glendale West Line as proposed in KU's application to be routed instead along the Browns' proposed Alternative C within the 500-foot deviation corridor.

B. If The Commission Denies KU's Request For A 500-Foot Deviation Corridor, Then The Browns' Evidence Shows That The Commission Should Order KU To Construct The Glendale West Line Along The Browns' Proposed Alternative C.

If the Commission denies KU's request for a 500-foot deviation corridor, then KU's commitment in rebuttal and hearing testimony to construct the Glendale West Line along the Browns' proposed Alternative C is moot. However, the Browns' evidence of record shows that the Glendale West Line should be constructed along the Browns' proposed Alternative C regardless of whether KU agrees or is granted the 500-foot deviation corridor.

As stated previously, the Browns' expert testimony shows that Alternative C is approximately 200 feet shorter than the route proposed in KU's application.⁵³ If structures are relocated and the angle of the line is moved towards the northwest corner of parcel number 190-00-30-020, Alternative C would neither increase the structure count nor require additional conductor length.⁵⁴ As such, Alternative C would cost approximately \$50,000 less to construct than the route proposed in KU's application.⁵⁵ Thus, the Browns' evidence shows that the Glendale West Line as proposed in KU's application (only as to the portion of the line that crosses the Brown Parcels) would result in wasteful duplication because it would require additional conductor length and would cost more than the Browns' Alternative C.

⁵³ *Id.* at 4.

⁵⁴ *Id.* at 5.

⁵⁵ *Id.*

Moreover, Alternative C (including the required right-of-way) also would still be located entirely within the confines of the Brown Parcels,⁵⁶ would not affect any additional property owners other than the Browns,⁵⁷ and would not require any additional landowner notifications or additional easement acquisition.

Therefore, the evidence of record shows that the Browns' proposed Alternative C is the least-cost alternative and that KU's proposed route over the Brown Parcels would result in wasteful duplication. As such, if the Commission grants KU a CPCN to construct the Glendale West Line, then the Commission should order that the Glendale West Line be constructed along the Browns' proposed Alternative C regardless of whether KU agrees or is granted the 500-foot deviation corridor.

IV. CONCLUSION

The Browns have shown that their proposed route Alternative C is feasible and capable of being constructed at a cost of approximately \$50,000 less than the route proposed in KU's application. Therefore, if the Commission grants KU a CPCN to construct the Glendale West Line, and if the Commission grants KU's request for a 500-foot deviation corridor, then the Commission should order KU to move the Glendale West Line as proposed in KU's application to be routed instead along the Browns' proposed Alternative C within the 500-foot deviation corridor. In the alternative, if the Commission grants KU a CPCN to construct the Glendale West Line, then the Commission should order that the Glendale West Line be constructed along

⁵⁶ *Id.* at 4; VR 13:31:30.

⁵⁷ *See* VR 13:31:30; VR 13:30:30. Moreover, as indicated above, the owners of the two adjacent properties (Mr. Keys and Mr. & Mrs. Jagers) submitted public comments on May 16, 2022, stating their support for the alternate routes developed and proposed by the Brown family.

the Browns' proposed Alternative C regardless of whether KU agrees or is granted the 500-foot deviation corridor.

Respectfully submitted,



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