

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

THE ELECTRONIC APPLICATION OF KENTUCKY)
UTILITIES COMPNAY FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY FOR) Case No. 2022-00066
THE CONSTRUCITON OF TRANSMISSION)
FACILITIES IN HARDIN COUNTY, KENTUCKY)

**WADE FAMILY FARM MANAGEMENT, LLC’S
RESPONSE BRIEF**

Comes now, Wade Family Farm Management, LLC (“Wade Family Farm”), by counsel, pursuant to the Commission’s June 2, 2022 Order, and hereby tenders its Response Brief setting forth its response to the Brief filed by Kentucky Utilities Company (“KU”) in support of its Application seeking issuance of a Certificate of Public Convenience and Necessity (“CPCN”) by the Kentucky Public Service Commission (“Commission”) for the construction of certain electric transmission and substation facilities within Hardin County, Kentucky, respectfully stating as follows:

KU argues that because “no intervenor testimony questions the need for any of the six ‘sub-projects’ KU has proposed The legal question of “need” is undisputed.”¹ However, this argument disregards decades of established, binding precedent regarding the burden of proof to be shouldered by an applicant before an administrative agency.² KU must demonstrate that there is a “need” for two 345 kV electric transmission lines and that the construction of each of them will

¹ KU Brief, p. 3 (June 15, 2022).

² See *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46, 49 (Ky. App. 1980) citing *Lee v. International Harvester Co.*, 373 S.W.2d 418 (Ky. 1963).

not result in “wasteful duplication” to be awarded a CPCN for both lines. The absence of contrary evidence from an intervenor never means that the applicant’s evidence is sufficient to be deemed legally persuasive.³ In this proceeding, KU has failed to demonstrate either a need for two 345 kV lines or that their construction will not result in wasteful duplication as measured by an excessive investment in relation to efficiency and the unnecessary multiplicity of physical facilities in the Hardin County community.⁴ The Commission should resist KU’s invitation to stand the burden of proof applicable in this proceeding on its ear by embracing the notion that anyone but KU has a duty to prove its case in this docket.⁵

KU’s Brief is also noteworthy in that it recants prior testimony that it used “the same” methodology in this context as was used in Case No. 2019-00417 and the Kentucky Siting Model.⁶ KU’s Brief acknowledges that “[t]his is the same *basic* methodology Team Spatial used in Case No. 2019-00417....”⁷ The fact is that the objective methodology developed as part of the Kentucky Siting Model and expert judgment process is undermined by KU’s subjective changes to criteria, values, relative scoring and assigned weights.⁸ As variations of the Kentucky Siting

³ See *Mollette v. Kentucky Pers. Bd.*, 997 S.W.2d 492, 496–97 (Ky. Ct. App. 1999) (“The party having the burden of proof before an administrative agency must sustain that burden, and it is not necessary for an agency to show the negative of an issue when a prima facie case as to the positive has not been established.”); *Dawson v. Driver*, 420 S.W.2d 553, 555 (Ky. 1967) (“... if no evidence has been offered in a claimant's behalf, obviously a denial of the claim would need no defensive evidence to support it. The same is true whenever the claimant's evidence is not sufficiently persuasive to require a favorable finding as a matter of law.”).

⁴ See Wade Family Farm Brief, pp. 10-26 (June 15, 2022).

⁵ See, e.g., *Wagoner v. Blair Fork Coal Co.*, 534 S.W.2d 250, 252 (Ky. 1976) (“Administrative boards must execute the law committed to them fairly and honestly and treat everyone alike according to the standards and rules of action prescribed. Where there is a failure in this respect and it extends beyond the rudimentary requirements of fair play, it enters the realm of unreasonable and arbitrary action, from which the courts will save the citizen affected by it.”).

⁶ See Rebuttal Testimony of Elizabeth McFarland, p. 4 (May 27, 2022); *In the Matter of the Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity to Construct a 345 kV Transmission Line in Meade County, Kentucky*, Order, Case No. 2019-00417, p. 56 (Ky. P.S.C. Jan. 16, 2020).

⁷ KU Brief, p. 9 (emphasis added).

⁸ See Wade Family Farm Brief, pp. 16-23.

Model and expert judgment process proliferate, the credibility of the entire methodology comes into question.

KU claims that it has “explained the appropriateness of the scoring method used in the Expert Judgment Model phase of the Siting Study (p. 61).”⁹ However, the Siting Study’s only “explanation” for the Expert Judgment Model was a single sentence that “the team determined the high-level siting criteria and assigned weights to represent the relative importance.”¹⁰ KU stated in discovery and at the hearing that it had no documentation to explain why KU and Team Spatial changed expert judgment weights from the Expert Judgment Model used in Case No. 2019-00417.

Similarly, no explanation was provided as to why KU used binary rankings for five of the six expert judgment criteria for scoring but “relative” ranks for the cost criteria. In KU’s Brief, it now claims that “[a] binary ‘1’ or ‘2’ should be used when scoring *qualitative* criteria (community issues, schedule delay risk, reliability, natural environment considerations, and construction/maintenance accessibility) as between two routes, but that a precise score reflecting relative values should be used for the cost criteria which is *quantifiable*.”¹¹ This is not the same scoring methodology used by Team Spatial in the Big Rivers Expert Judgment Model. The Big Rivers Expert Judgment Model did not use a binary “1” or “2” when scoring *qualitative* criteria between two routes but instead scored “1”, “1.2” and “1.5” depending on the *qualitative* criteria. KU claims that a “precise score” should be used for *quantifiable* criteria notwithstanding that the EPRI-GTC Overhead Electric Transmission Line Siting Methodology does not include or describe the use of this “precise” scoring methodology anywhere in the guidance.¹² KU declined to provide

⁹ KU Brief, p. 19.

¹⁰ KU Application, Exh. 2, p 60 (March 31, 2022).

¹¹ KU Brief, p. 19.

¹² EPRI-GTC Overhead Electric Transmission Line Siting Methodology, p. 2-44 (Feb. 2006).

an explanation or contemporaneous documentation identifying why the Expert Judgment Model weights and scoring were changed specifically for this project.

The balance of KU's Brief criticizes the expert witness retained by the Wade Family Farm. This, of course, does nothing to substantiate a need for two 345 kV electric transmission lines or demonstrate that their construction will not result in wasteful duplication. Wade Family Farms respectfully disagrees with KU's arguments regarding Mr. Marchaterre's testimony, which is adequately summarized throughout Wade Family Farm's Brief.

This case will be decided upon the Commission's willingness to grant a CPCN for a second high-voltage transmission line based solely upon a two-page Economic Development Cabinet flyer that has more disclaimers than a drug commercial. The Commission should find that this evidence alone is insufficient to demonstrate "need" and should deny KU's Application for dual 345 kV electric transmission line CPCNs. As between the proposed Western and Eastern transmission lines, only the Eastern line should be awarded a CPCN based upon the undisputed facts that it scores better and is less costly than the proposed Western line. An even if the Commission is inclined to award CPCNs for two 345 kV electric transmission lines, the Western line should be built along Route D instead of Route A for all of the reasons previously stated in the Wade Family Farm's Brief.

This 22nd day of June 2022.

Respectfully submitted,



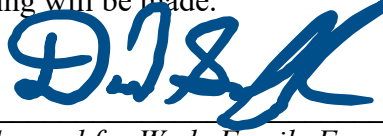
David S. Samford
L. Allyson Honaker
GOSS SAMFORD, PLLC
2365 Harrodsburg Road, Suite B-325
Lexington, KY 40504
(859) 368-7740

david@gossamfordlaw.com
allyson@gossamfordlaw.com

Counsel for Wade Family Farm Management, LLC

CERTIFICATE OF SERVICE

This will certify that the foregoing document was filed via the Commission's electronic filing system this 22nd day of June 2022; there are currently no parties that the Commission has excused from participation by electronic means in this proceeding and pursuant to prior Commission orders, no paper copies of this filing will be made.

A handwritten signature in blue ink, appearing to read 'D. J. & K.', is written over a horizontal line.

Counsel for Wade Family Farm Management, LLC