

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	)	CASE NO.
AND ASSOCIATED FACILITIES IN BREATHITT,	)	2021-00346
FLOYD AND KNOTT COUNTIES, KENTUCKY	)	
(GARRETT AREA IMPROVEMENTS 138 KV	)	
TRANSMISSION PROJECT)	)	

ORDER

On March 25, 2022, Kentucky Power Company (Kentucky Power) filed a motion, pursuant to KRS 278.400, requesting partial rehearing of the Commission’s March 8, 2022 final Order in this proceeding that, among other things, granted Kentucky Power a Certificate of Public Convenience and Necessity (CPCN) to construct a 138 kilovolt (kV) transmission project. On March 28, 2022, Brent Allen (Mr. Allen), the only intervenor in this case, filed a response to Kentucky Power’s motion for partial rehearing. This matter now stands submitted for a decision.

KENTUCKY POWER’S MOTION FOR PARTIAL REHEARING

Kentucky Power requested two clarifications of ordering paragraph 9 of the March 8, 2022 Order, and a clarification or an amendment of the Order confirming that the filing of notice and a request for approval by Kentucky Power will satisfy ordering paragraph 8, without the need to reopen this case or file a new application.<sup>1</sup>

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<sup>1</sup> Motion for Rehearing (filed Mar. 25, 2022) at 1.

### Clarification of Ordering Paragraph 9

The March 8, 2022 final 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.”<sup>2</sup> Kentucky Power stated that it understood “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 the tree being removed.<sup>3</sup> Kentucky Power requested 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.<sup>4</sup>

Kentucky Power also requested 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 conditions.<sup>5</sup> Kentucky Power stated this is because 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.<sup>6</sup>

### Clarification of Ordering Paragraph 8

Kentucky Power stated that ordering paragraph 8 of the Commission’s March 8, 2022 final Order requires Kentucky Power to seek Commission approval to move the centerline more than 100 feet in any direction from the location as shown on the maps

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<sup>2</sup> Order (Ky. PSC Mar. 8, 2022) at 31, ordering paragraph 9.

<sup>3</sup> Petition for Rehearing at 5.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 5–6.

<sup>6</sup> *Id.* at 6.

filed in this proceeding.<sup>7</sup> Kentucky Power seeks clarification on the procedure it is to use to seek Commission approval to move the centerline and proposed to satisfy ordering paragraph 8 by a notice and written request for approval that 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.<sup>8</sup> Kentucky Power stated the written request for approval would be served on any affected landowner even if not a party to this proceeding.<sup>9</sup> Kentucky Power further requested that it not be required to file a new or amended CPCN application to comply with ordering paragraph 8.<sup>10</sup>

#### INTERVENOR RESPONSE

Mr. Allen responded that Kentucky Power's motion for partial rehearing should be denied.<sup>11</sup> Mr. Allen's response did not address the specific items for which Kentucky Power seeks rehearing, but he stated that if Kentucky Power is granted partial rehearing it is apparent that the Commission is a "rubber stamp" for Kentucky Power.<sup>12</sup> Mr. Allen stated that his letter, dated March 4, 2022, was not addressed in the Commission's final Order.<sup>13</sup> Additionally, Mr. Allen stated that he was not afforded the opportunity to "depose witnesses by the Kentucky Power Company or the experts from the Kentucky Public

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<sup>7</sup> *Id.* at 6.

<sup>8</sup> *Id.* at 8–9.

<sup>9</sup> *Id.* at 9.

<sup>10</sup> *Id.*

<sup>11</sup> Intervenor Response (filed Mar. 28, 2022) at 1.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Id.* at 1.

Service Commission.”<sup>14</sup> Further, Mr. Allen stated that 80 percent of Kentucky Power’s transmission lines are on the slopes of ridges, and he provided a photograph purporting to show electric transmission lines on a ridge in Prestonsburg, Kentucky.<sup>15</sup>

## DISCUSSION AND FINDINGS

### Legal Standard

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”<sup>16</sup> An Order can only be unlawful if it violates a state or federal statute or constitutional provision.<sup>17</sup>

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

Having reviewed the motion and the response, and being otherwise sufficiently advised, the Commission finds Kentucky Power has identified issues that were omitted

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 2.

<sup>16</sup> *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

<sup>17</sup> *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

from the final Order in this case. Therefore the Commission finds that this proceeding is reopened for the purpose of providing clarification on the two aspects of ordering paragraph 9, and on the procedure to be used to comply with ordering paragraph 8 as identified in Kentucky Power's motion for partial rehearing.

The Commission finds that Kentucky Power shall consider the height of an individual tree, as well as its species and the likelihood that it will grow into the 80-foot zone before the next inspection before removing individual trees from outside of the 80-foot zone. The Commission also finds that Kentucky Power should consider the efficacy of trimming individual trees to keep them outside of the right-of-way before removing the tree. The Commission finds that measurement of the 80-foot zone shall be the estimated height of the transmission line under maximum loading conditions. Therefore, the Commission finds that ordering paragraph 9 of the March 8, 2022 final Order in this proceeding is amended to read as follows:

Before removing any tree from Mr. Allen's property that is more than 80 feet below the transmission line at maximum loading conditions, Kentucky Power shall consider the efficacy of trimming the tree compared to removing it; as well as the species of the tree and the likelihood that the tree will grow into the 80-foot zone before the next inspection.

The Commission finds that Kentucky Power has identified a need to establish a process for Kentucky Power to seek Commission approval to move the centerline outside of the 100-foot zone established in ordering paragraph 8. Therefore, the Commission finds that this proceeding is reopened to establish such a process.

Kentucky Power shall file a motion in this proceeding to request approval to move the centerline of the transmission line more than 100 feet in any direction from the centerline, as it appears on the maps filed into the record of this proceeding. The motion

shall identify the proposed location of the centerline, the affected landowner(s), and state in detail, and with technical specificity, the need for the proposed modification of the centerline. Kentucky Power shall provide documentation to support the need for the proposed modification. Kentucky Power shall serve the motion for approval to move the centerline on any affected landowner(s), even if not a party to this proceeding. Upon receiving adequate information to thoroughly consider the request, the Commission will use its best efforts to rule upon such motions within 14 days.

Mr. Allen's response to Kentucky Power's motion for partial rehearing states that the Commission's final Order did not address a letter he filed on March 4, 2022. Mr. Allen did not file a motion for rehearing in this case. Mr. Allen's response also states he was not afforded the opportunity to depose witnesses. There is no mechanism in the Commission's regulations for conducting depositions. The Commission takes notice of the photographs provided by Mr. Allen depicting electric transmission lines along the slope of ridges.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's motion for partial rehearing is granted for the purpose of providing clarification on the issues raised in the motion.

2. Ordering paragraph 9 is stricken from the Commission's March 8, 2022 final Order and replaced with the following:

Before removing any tree from Mr. Allen's property that is more than 80 feet below the transmission line at maximum loading conditions, Kentucky Power shall consider the efficacy of trimming the tree compared to removing it; as well as the species of the tree and the likelihood that the tree will grow into the 80-foot zone before the next inspection.

3. Kentucky Power shall follow the procedure set out in this Order in compliance with ordering paragraph 8 of the Commission's March 8, 2022 final Order.

4. All other provisions of the March 8, 2022 final Order that are not in conflict with the terms of this Order remain in full force and effect.

5. This case is closed and removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION

  
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Chairman

  
\_\_\_\_\_  
Vice Chairman

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Commissioner



ATTEST:

  
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