

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

This matter arises upon the request for intervention of Volney Brent Allen (Mr. Allen), filed November 16, 2021, and the supplement to that request filed by Mr. Allen on November 19, 2021. Mr. Allen seeks full intervention. As a basis for his November 16, 2021 request, Mr. Allen alleged that: (1) Kentucky Power Company (Kentucky Power) has not surveyed his property; (2) the map submitted by Kentucky Power in this proceeding indicates the planned transmission line goes out of the way to avoid two properties owned by individuals who have made political contributions; (3) the Indiana bat, an endangered species lives on his property and will be disturbed by the proposed transmission project; (4) the “Daniel Boone Rock,” an historical artifact is in the path of the proposed route; (5) there is an 8-inch natural gas transmission line owned by Diversified Gas and Oil Corporation laying on the top of the ground on Mr. Allen’s property; (6) silt drainage from the project will damage two ponds on Mr. Allen’s property and the fish living in them; and (7) the negative effects electromagnetic radiation will have on his family’s health. In the supplement Mr. Allen filed on November 19, 2021, he stated

that Kentucky Power uses strong herbicides in its right-of-way and that those herbicides pose a threat to three species of fish and water fowl living on his property. In addition, Mr. Allen stated that he uses water from his ponds to fill his swimming pool, and the herbicides used by Kentucky Power would therefore end up in his swimming pool.

On November 23, 2021, Kentucky Power filed a response to Mr. Allen's request and his supplemental filing. Kentucky Power stated that the proposed right-of-way crosses over Mr. Allen's property, making Mr. Allen an "interested person" as that term is used in KRS 278.020(9).<sup>1</sup> However, Kentucky Power asserted that Mr. Allen has not demonstrated that he has a special interest in the case not otherwise represented, or that his intervention is likely to present issues and develop facts that will assist the Commission in fully evaluating the matter without unduly complicating or disrupting the proceedings, as required by Commission regulation 807 KAR 5:001, Section 4(11)(a)(1). Kentucky Power also stated that a special interest "seemingly is one that relates to the issues to be determined by the Commission under KRS 278.020: the need for the facilities and the absence of wasteful duplication."<sup>2</sup> Kentucky Power characterized Mr. Allen's concerns as being due to the location of the proposed transmission line or concerns about the purported effect the transmission line will have on Mr. Allen's family's health.

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<sup>1</sup> KRS 278.020(9) in relevant part states, "In a proceeding on an application filed pursuant to this section, any interested person, including a person over whose property the proposed transmission line will cross, may request intervention, and the commission shall, if requested, conduct a public hearing in the county in which the transmission line is proposed to be constructed, or if the transmission line is proposed to be in more than one county, in one of the counties."

<sup>2</sup> Kentucky Power's Response in Opposition to the Motion of Volney Brent Allen for Full Intervention at 2.

Kentucky Power argued that neither of these types of concerns have any bearing on the need for the proposed line or whether the line will result in wasteful duplication.<sup>3</sup>

Kentucky Power stated that the route it has chosen is shorter than an alternative route, it crosses fewer parcels and landowners, and it requires less tree clearing, is more easily constructed and requires fewer structures than the alternate route.<sup>4</sup> Kentucky Power also pointed out that it will obtain all required permits and will otherwise operate in compliance with all environmental laws and other requirements in building the transmission line if the project is approved.<sup>5</sup>

#### LEGAL STANDARD

The only person who has a statutory right to intervene in a Commission case is the Attorney General of the Commonwealth of Kentucky (Attorney General), pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sole discretion of the Commission.<sup>6</sup>

The statutory standard for permissive intervention, KRS 278.040(2), requires that “the person seeking intervention must have an interest in the ‘rates’ or ‘service’ of a utility, since those are the only two subjects under the jurisdiction of the PSC.”<sup>7</sup>

The regulatory standard for permissive intervention, set forth in 807 KAR 5:001, Section 4, is twofold. Commission regulation 807 KAR 5:001, Section 4(11) requires a

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<sup>3</sup> *Id.* at 3.

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

<sup>5</sup> *Id.*

<sup>6</sup> *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

<sup>7</sup> *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 at 3 (Ky. App. Feb. 2, 2007).

person to set forth in the motion to intervene either (1) a special interest in the proceeding that is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

In cases involving an application for a Certificate of Public Convenience and Necessity (CPCN) to construct an electric transmission line, the Commission also considers KRS 278.020(9) which includes a person over whose property a proposed transmission line will cross as an “interested person” who may request intervention.

#### DISCUSSION AND FINDINGS

Based on a review of the pleadings at issue and being otherwise sufficiently advised, the Commission finds that Mr. Allen demonstrated that he has a special interest in the proceeding over which the Commission has jurisdiction that is not otherwise adequately represented, for the reasons discussed below.

The proposed transmission line will cross property owned by Mr. Allen. It is reasonable to expect property in the direct path of the proposed line to be impacted by the construction of the line if the CPCN is granted. KRS 278.020(9) recognizes Mr. Allen as an interested person in this matter. There is no other party to this proceeding representing the interests of landowners in the proposed path of the transmission line. Kentucky Power accurately states that it is required to obtain all permits and comply with environmental regulations in order to construct the transmission line if the CPCN is granted. However, Kentucky Power’s obligation to operate within the limits of applicable law is not a substitute for adequate representation.

Because he owns property over which the proposed line will cross, Mr. Allen has a special interest that is not otherwise adequately represented in this proceeding. Mr. Allen's special interest is an interest in the service provided by Kentucky Power, because the definition of "service" found in KRS 278.010(13) "includes any practice or requirement in any way relating to the service of any utility. . . ." Kentucky Power is a utility and is required to obtain a CPCN before constructing the proposed transmission line. Therefore, the CPCN review process is related to Kentucky Power's service. It is not necessary for the Commission to analyze the likelihood of Mr. Allen presenting issues or developing facts to assist the Commission in fully considering the matter without unduly complicating the matter, because the regulatory standard found in 807 KAR 5:001, Section 4(11) requires a party seeking intervention to satisfy only one prong of a two-prong test, and the Commission has found Mr. Allen meets the "special interest not otherwise represented" prong of the test.

Based on the above, the Commission finds that Mr. Allen should be granted full rights of a party in this proceeding. The Commission directs Mr. Allen to the Commission's July 22, 2021 Order in Case No. 2020-00085<sup>8</sup> regarding filings with the Commission.

IT IS HEREBY ORDERED that:

1. The motion of Mr. Allen to intervene is granted.

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<sup>8</sup> Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

2. Mr. Allen shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.

3. Mr. Allen shall comply with all provisions of the Commission's regulations, 807 KAR 5:001, Section 8, related to the service and electronic filing of documents.

4. Mr. Allen shall adhere to the procedural schedule set forth in the Commission's November 17, 2021 Order and as amended by subsequent Orders.

5. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of entry of this Order, Mr. Allen shall file a written statement with the Commission that:

a. Certifies that he, or his agent, possesses the facilities to receive electronic transmissions; and

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

By the Commission

ENTERED  
DEC 07 2021  
rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2021-00346

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