

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF EAST	)	
KENTUCKY POWER COOPERATIVE, INC. FOR	)	
AN AMENDMENT TO ITS CERTIFICATE OF	)	CASE NO.
PUBLIC CONVENIENCE AND NECESSITY FOR	)	2024-00263
THE CONSTRUCTION OF TRANSMISSION	)	
FACILITIES IN MADISON COUNTY, KENTUCKY	)	

ORDER

On September 30, 2024,<sup>1</sup> East Kentucky Power Cooperative, Inc. (EKPC) filed an application for an amendment to a Certificate of Public Convenience and Necessity (CPCN) granted by the Commission in Case No. 2022-00314.<sup>2</sup> In particular, EKPC requested approval to move the location of the switching station and sought to place the Commission on notice of a material increase in expense. The proposed amendment consisted of

[T]he Madison County Switching Station being constructed on a different parcel of land, which impacts the length and termination point of the 138 kV line, location of the future 138-69 kV step down transformer, and the 69 kV transmission lines which terminate at the switching station. The relocation will also impact the future location area of the New 138 kV Industrial Substation.<sup>3</sup>

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<sup>1</sup> By Order dated September 27, 2024, EKPC's application was found to be deficient for failing to comply with 807 KAR 5:120, Section 2(3). On September 30, 2024, EKPC filed additional information and the application was deemed filed. The September 27, 2024 Order also incorporated Case No. 2022-00314.

<sup>2</sup> Case No. 2022-00314, *Electronic Application of East Kentucky Power Cooperative, Inc. for a (1) Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Madison County, Kentucky; and (2) Declaratory Order Confirming that a Certificate of Public Convenience and Necessity is Not Required for Certain Facilities* (Ky. PSC Feb. 23, 2024).

<sup>3</sup> Application at 4.

The construction completion date has moved from December 2025 to December 2026.<sup>4</sup> The anticipated project cost is also increasing from \$7.5 million to \$11.692 million.<sup>5</sup> The increased cost is a result of property acquisition and the effects of inflation on labor and material.<sup>6</sup>

By Order issued on October 11, 2024, the Commission established a procedural schedule for the orderly processing of this matter and provided a deadline to request intervention. An informal conference was held on October 25, 2024. EKPC responded to one request for information from Commission Staff.<sup>7</sup> On November 20, 2024, EKPC filed a motion to submit this matter for a decision based upon the written record. There are no intervenors. The record is complete, and the matter stands ready for a decision.

#### LEGAL STANDARD

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 this Commission. To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.<sup>8</sup> "Need" requires:

[A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated. [T]he inadequacy must be due either

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<sup>4</sup> Application at 4.

<sup>5</sup> Application at 4; Application, Direct Testimony of Laura Lemaster (Lemaster Direct Testimony) at unnumbered PDF page 20.

<sup>6</sup> Application at 4.

<sup>7</sup> EKPC's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Nov. 1, 2024).

<sup>8</sup> *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885 (Ky. 1952).

to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.<sup>9</sup>

“Wasteful duplication” is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”<sup>10</sup> To demonstrate that a proposed facility does not result in wasteful duplication, the Commission has held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.<sup>11</sup> The fundamental principle of reasonable, least-cost alternative is embedded in such an analysis. Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.<sup>12</sup> All relevant factors must be balanced.<sup>13</sup>

### BACKGROUND

EKPC is an electric utility and generation and transmission cooperative that provides electric generation capacity and electricity to its sixteen owner-member distribution cooperatives, which in turn, distribute and sell electricity to approximately

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<sup>9</sup> *Kentucky Utilities Co.* at 890.

<sup>10</sup> *Kentucky Utilities Co.* at 890.

<sup>11</sup> Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

<sup>12</sup> See *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 390 S.W.2d 168, 175 (Ky. 1965). (See also Case No. 2005-00089, *The Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity to Construct a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005)).

<sup>13</sup> Case No. 2005-00089, Aug. 19, 2005 final Order at 6.

545,500 customers in 87 Kentucky counties.<sup>14</sup> EKPC owns and operates 2,963 megawatts (MW) of net summer generating capacity and 3,265 MW of net winter generating capacity.<sup>15</sup> EKPC owns coal-fired units, natural gas units, landfill-gas-to-energy facilities, and a community solar facility.<sup>16</sup> In addition, EKPC purchases approximately 170 megawatts (MW) of hydropower.<sup>17</sup>

EKPC has been a member of the PJM Interconnection, LLC (PJM) since June 1, 2013, and PJM operates EKPC's transmission system.<sup>18</sup> PJM is a regional transmission organization (RTO) approved by the Federal Energy Regulatory Commission (FERC).

#### PROPOSED AMENDMENT

In Case No. 2022-00314, the Commission determined that EKPC had shown a need for the proposed facilities and provided evidence that construction of the proposed facilities would not result in wasteful duplication; as such, the Commission granted a CPCN for the project. In Case No. 2022-00314, EKPC demonstrated mechanical and thermal loading issues under current conditions that necessitated both the 69 kV portion of the circuit and the Madison County Switching Station as evidenced by the power flow studies and updated load forecasts for the area to be served.<sup>19</sup> The Commission also found that the Madison County Switching Station was needed because of the system support that the new switching station would provide by splitting the circuit into four

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<sup>14</sup> Case No. 2022-00314, Oct. 27, 2022 Application at 2.

<sup>15</sup> Application at 2.

<sup>16</sup> Application at 2.

<sup>17</sup> Application at 2.

<sup>18</sup> Application at 3.

<sup>19</sup> Case No. 2022-00314, Feb. 23, 2023 final Order at 12.

separate circuits with no more than 9.6 miles on any one circuit.<sup>20</sup> According to the Case No. 2022-00314 final Order, the switching station would ensure better system protection by limiting the distance between circuit breakers.<sup>21</sup>

In this case, EKPC did not propose to change anything structurally or related to the engineering of the Madison County Switching Station, rather it proposed relocation of the Madison County Switching Station.<sup>22</sup> The proposed new location is approximately 3000 feet to the northeast, thus would affect several items approved in final Order in Case No. 2022-00314.<sup>23</sup> EKPC stated that the shift results in the realignment of 1,700 linear feet of transmission line.<sup>24</sup> The proposed relocation would also impact the length and termination point of the 138 kV line, location of the future 138-69 kV step down transformer, and the 69 kV transmission lines which terminate at the switching station as well as the future location area of the New 138 kV Industrial Substation.<sup>25</sup> However, it is notable that this amendment application did not address any portion of the approved project past the Madison County Switching Station.

In addition, EKPC provided information related to the expense of the project, an approximate \$4 million increase, and the expected 12 month delay in completion date of the switching station from December 2025 to December 2026.<sup>26</sup> According to EKPC,

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<sup>20</sup> Case No. 2022-00314, Feb. 23, 2023 final Order at 12.

<sup>21</sup> Case No. 2022-00314, Feb. 23, 2023 final Order at 12.

<sup>22</sup> Application at 4.

<sup>23</sup> Application at 4, Lemaster Direct Testimony at unnumbered PDF page 22.

<sup>24</sup> Lemaster Direct Testimony at unnumbered PDF page 19.

<sup>25</sup> Application at 4.

<sup>26</sup> Lemaster Direct Testimony at unnumbered PDF page 20.

both the purchase of property as well as the increased cost of labor and materials have driven the projected project estimate.<sup>27</sup> Unlike when EKPC presented the project in Case No. 2022-00314, EKPC did secure an option to purchase the land where this proposed relocation would occur.<sup>28</sup>

Having considered the record and being otherwise advised, the Commission finds that EKPC should be granted an amendment to its original CPCN approval in Case No. 2022-00314. EKPC's relocation of the Madison County Switching Station is approved to the new location along with the relocation of the transmission line. In reaching this conclusion, the Commission notes that there is not sufficient evidence of record that the determination of need made in the original case has changed.

In addition to a determination of need, the Commission must also look at wasteful duplication and determine whether EKPC selected the most reasonable, least cost option. Here, EKPC was limited in its alternatives because it previously received a CPCN for a specific project in a particular location. Based upon the record, the Commission finds that EKPC did evaluate the best location based on a willing property seller while still finding a location suitable for the project. In Case No. 2022-00314, EKPC did not own, nor had it received any type of assurance that it would have an option to purchase, the property needed for the proposed Madison County Switching Station. Some of the material consequences of failing to acquire the necessary property rights are now clear. The project's expense has materially increased, and therefore, the project has been delayed. In the future, the Commission encourages EKPC to secure, in some contractual form,

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<sup>27</sup> Lemaster Direct Testimony at unnumbered PDF page 21-22, 24-25.

<sup>28</sup> Lemaster Direct Testimony at unnumbered PDF page 20-23.

proposed project sites and right-of-way prior to filing applications for future CPCNs in order to reduce expenses and the likelihood an amendment will be needed.

In review of the application, it appears that a strong likelihood exists that EKPC will have to further amend the original CPCN, and the Commission is compelled to make several additional findings. The Commission notes that EKPC's application failed to provide notice to every affected landowner.<sup>29</sup> Going forward, the Commission expects that EKPC will provide notice to any new affected landowner or any landowner whose property may be impacted in a different way as a result of the changes to the originally proposed project, and as amended herein. The approved amendment includes 1,700 linear feet of new transmission line. As with the original approval, the Commission reiterates that EKPC requested no deviation from the right-of-way requirements beginning at the proposed centerline and 50 feet on each side of the centerline of the new transmission line. The Commission finds that EKPC should not deviate from the proposed transmission line and right-of-way proposed in this project. Should EKPC need to deviate, EKPC should file a motion in the original case and request approval for the change. In addition, once EKPC finalizes the remaining affected portions of the project, EKPC shall file for another amendment of the original CPCN so the Commission can assure that all affected landowners have been given notice, and EKPC has appropriately assessed alternatives to the proposed amendments. Finally, the Commission is concerned with the substantial increase in the project's estimated costs and finds that EKPC should continue exploring cost-effective efforts to minimize expenses, as well as accurately assess and forecast project cost estimates on future projects.

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<sup>29</sup> This deficiency was subsequently resolved, and the application accepted.

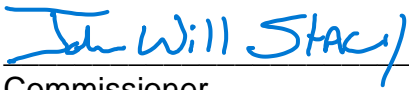
IT IS THEREFORE ORDERED that:

1. EKPC's proposed amendment to relocate the Madison County Switching Station and the 1,700 linear feet of transmission line is approved.
2. EKPC shall not deviate from the centerline of the right-of-way as approved in this Order without approval of the Commission following the filing a motion to deviate.
3. EKPC shall file an application for any additional amendment(s) to the approved project, as amended by this Order, to ensure compliance with KRS 278 and 807 KAR Chapter 5.
4. Nothing in this Order shall be construed to relieve EKPC of the requirements in the final Order in Case No. 2022-00314 and all terms not in conflict with this Order shall remain in effect.
5. This case is closed and removed from the Commission's docket.



PUBLIC SERVICE COMMISSION

  
Chairman

  
Commissioner

  
Commissioner

ATTEST:

 *RP*  
Executive Director

ENTERED  
DEC 23 2024 AH  
KENTUCKY PUBLIC  
SERVICE COMMISSION

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