



Kentucky Resources Council

Post Office Box 1070
Frankfort, Kentucky 40602
502-875-2428
ashley@kyrc.org
www.kyrc.org

August 16, 2024

Andrew Berke, Administrator
USDA Rural Development
Rural Utilities Service
STOP 1510, Rm 4121-S
1400 Independence Ave., SW
Washington, DC 20250-1510

And via email to: Andrew.berke@usda.gov, Christopher.McLean@usda.gov,
Craig.potts@ky.gov, gregory.thomas@usda.gov

Dear Mr. Berke:

I am writing on behalf of Kentucky Resources Council concerning the proposed project by East Kentucky Power Co-operative (EKPC) to construct approximately 8.5 miles of new 69-kilovolt electric transmission line in Jackson and Madison counties, Kentucky, as well as the new Big Hill distribution substation to be constructed near the intersection of Ky. 421 and Red Lick Road in Madison County. The project has been referred to by EKPC as the “Big Hill to Three Links 69-kV substation and transmission line project” (hereinafter referred to as the “Big Hill line”).

On its public-facing website, EKPC has stated that it plans to build the Big Hill line, and claims its proposed project meets the criteria for a categorically excluded proposal requiring only the preparation of a site-specific Environmental Report (ER) under the National Environmental Policy Act (NEPA). Your agency is required to conduct a review to ensure that EKPC meets all appropriate environmental obligations under NEPA, the National Historic Preservation Act, and the Endangered Species Act.

For the reasons set forth below, this project does not qualify for a categorical exclusion (CE) pursuant to 7 C.F.R § 1970.54 (CEs involving small-scale development with an environmental report) and, pursuant to the factors set forth in your agency's NEPA regulations, classification requiring an environmental assessment (EA) or an environmental impact statement (EIS) is more appropriate than a CE classification. We urge your agency and the administration to forge a new path in implementing infrastructure improvements that takes into account the unique cultural and environmental values that will be significantly degraded if EKPC's Big Hill line is funded by your agency without further investigation.

I. Legal Background

An agency may identify categorical exclusions of actions that do not require preparation of either an EA or an EIS. A categorical exclusion "means a category of actions which do not individually or cumulatively have a significant effect on the human environment." 40 C.F.R. § 1508.4. To establish these categorical exclusions, the agency must determine that such projects have no major environmental effect. *Id.* But the agency must also allow "for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." *Id.* In such circumstances, an agency cannot rely on the categorical exclusion to avoid preparing an EA or an EIS.

Pursuant to this agency's regulations, for a project to qualify for a categorical exclusion, the RUS must determine that:

- (1) The proposal fits within a class of actions that is listed in §§ 1970.53 through 1970.55; (2) There are no extraordinary circumstances related to the proposal (see § 1970.52); and (3) The proposal is not "connected" to other actions with potentially significant impacts (see 40 C.F.R 1508.25(a)(1)) or is not considered a "cumulative action" (see 40 C.F.R 1508.25(a)(2)), and is not precluded by 40 C.F.R 1506.1.

7 C.F.R. § 1970.51. RUS must review the ER to determine if extraordinary circumstances exist and whether classification as an EA or an EIS is more appropriate than a CE classification. *Id.* § 1970.54.

"Extraordinary circumstances" are "unique situations presented by specific proposals, such as characteristics of the geographic area affected by the proposal, scientific controversy about the environmental effects of the proposal, uncertain effects or effects involving unique or unknown risks, and unresolved conflicts concerning alternate uses of available resources . . ." *Id.* § 1970.52(a). "Significant adverse environmental effects" that qualify as extraordinary circumstances **include, but are not limited to:** adverse effects on environmental resources such as historic properties, wetlands, federally listed species, and special sources of water. *Id.* § 1970.52(b)(4). The existence of controversy based on effects to the human environment brought to the Agency's attention by a Federal, tribal, state, or local government agency also qualifies as an extraordinary circumstance requiring additional NEPA analysis.

II. Extraordinary circumstances exist precluding application of a categorical exclusion, as the Big Hill Line would adversely impact unique environmental, cultural, and historical resources.

Given the unique cultural, historical, and environmental values in the area to be traversed by Big Hill line, "extraordinary circumstances" exist and this project requires an Environmental Assessment, and ultimately will require an EIS and the consideration

of alternatives. In other words, following an adequate review of all factors and values, this agency should conclude that it is not appropriate to apply the categorical exclusion in 7 C.F.R 1970.54, and must conduct further review under NEPA.

A. The area has been used for over a hundred years for forestry, recreation, research, and environmental education.

Question 6a of Rural Utilities Environmental Report checklist asks for a description of land use. The Big Hill Line traverses the Berea College Forest. This Forest is a unique public resource. It was purchased in 1897 and is among the oldest privately managed forests in the United States. According to the College, its 17 miles of hiking trails are visited by the public over 100,000 times per year. Berea College Forests are studied and are pioneering restoration efforts for species including American Chestnut, Shortleaf Pine and sustainability of White Oak. Berea College has invested in restoring this forest for over a hundred years. The forest and watershed are a resource for education and research programs for students and outside researchers alike. As one representative of the college explains:

These areas of the Berea College Forest are important for biodiversity. The proposed ROW plus the surrounding areas host 19 threatened and endangered species that depend on this habitat. The ROW also has 68 invasive species that will proliferate in the disturbed habitat, and as a result will require intensive spraying to control. The documented presence of over 900 species underscores the rich ecological significance of this region, which must be preserved for the benefit of both current and future generations.

John Abrams, Forest Researcher/Program Officer, Forestry Outreach Center. To permit the undoing of this work along the corridor proposed for the Big Hill transmission line can only be described as a very significant environmental impact.

In addition to the biodiversity value of the forest, its cultural and historic value cannot be overstated. Berea college was founded in the mid-1800's to educate people of all races and backgrounds. It has become a distinguished institution with a highly regarded academic program.¹ There are also numerous known artifacts of Native

¹ "U.S. News & World Report has repeatedly named Berea the No. 1 regional college in the South. The New York Times, The Chronicle of Higher Education, The Philadelphia Inquirer, The Times of London, and the "Solutions" segment of ABC World News have focused national and international attention on many aspects of the contemporary Berea experience. Full-tuition scholarships provided to all students, the effectiveness of the work program and students' involvement in community service projects are among the features highlighted. Such reports are expected to continue as Berea alumni distinguish themselves in all walks of life and in many parts of the world." <https://www.berea.edu/about/early-history>

American populations that used the area. A thorough inventory of any right of way would be necessary to ensure preservation of sites of historical importance.²

B. The proposed line is within the viewshed of historic buildings and areas.

Question 9 of the Environmental Report checklist asks whether the project is within the viewshed of buildings older than 50 years. Because of the landscape, the project is likely to be within the viewshed of many such buildings. The proposed project does appear to be within the viewshed of Windswept, a facility built in the 1950s in the style of Frank Lloyd Wright. It incorporates the natural environment and the impressive views into the building to create an environment that can be used for educational purposes. <https://www.eventective.com/berea-ky/windswept-690748.html>

Located just 10 minutes from campus, Windswept is an ideal place for your next gathering. Built by a disciple of Frank Lloyd Wright in the early 1950's, Windswept has a full service kitchen and over 2500 square feet of space for your guests. Conveniently separated into smaller rooms, it is often used for corporate meetings and leadership retreats, reunions and weddings. Step out onto the patio for a breathtaking view of the mountains and the valleys below.



C. The project will have an adverse effect on biologically important wetlands and special sources of water.

Question 16 asks if the project located in or could the project effect a wetland. This is of particular importance, as "significant adverse environmental effects" that qualify as extraordinary circumstances include adverse effects on wetlands or special sources of water. 7 C.F.R § 1970.52(b)(4). Given the impacts to wetlands and the Owsley Fork Reservoir, a more comprehensive environmental review is necessary.

The project spans from a proposed distribution substation located at KY 421 and Red Lick Road in Madison County (approximate coordinates: 37.571973, -84.206465)

² See map of cultural resources attached as Figure 2 to Owsley Fork Water Quality Impact Study: Big Hill Transmission Line Construction, January 2024, prepared by Bell Engineering, Lexington, KY for the City of Berea.

of alternatives. In other words, following an adequate review of all factors and values, this agency should conclude that it is not appropriate to apply the categorical exclusion in 7 C.F.R 1970.54, and must conduct further review under NEPA.

A. The area has been used for over a hundred years for forestry, recreation, research, and environmental education.

Question 6a of Rural Utilities Environmental Report checklist asks for a description of land use. The Big Hill Line traverses the Berea College Forest. This Forest is a unique public resource. It was purchased in 1897 and is among the oldest privately managed forests in the United States. According to the College, its 17 miles of hiking trails are visited by the public over 100,000 times per year. Berea College Forests are studied and are pioneering restoration efforts for species including American Chestnut, Shortleaf Pine and sustainability of White Oak. Berea College has invested in restoring this forest for over a hundred years. The forest and watershed are a resource for education and research programs for students and outside researchers alike. As one representative of the college explains:

These areas of the Berea College Forest are important for biodiversity. The proposed ROW plus the surrounding areas host 19 threatened and endangered species that depend on this habitat. The ROW also has 68 invasive species that will proliferate in the disturbed habitat, and as a result will require intensive spraying to control. The documented presence of over 900 species underscores the rich ecological significance of this region, which must be preserved for the benefit of both current and future generations.

John Abrams, Forest Researcher/Program Officer, Forestry Outreach Center. To permit the undoing of this work along the corridor proposed for the Big Hill transmission line can only be described as a very significant environmental impact.

In addition to the biodiversity value of the forest, its cultural and historic value cannot be overstated. Berea college was founded in the mid-1800's to educate people of all races and backgrounds. It has become a distinguished institution with a highly regarded academic program.¹ There are also numerous known artifacts of Native

¹ "U.S. News & World Report has repeatedly named Berea the No. 1 regional college in the South, The New York Times, The Chronicle of Higher Education, The Philadelphia Inquirer, The Times of London, and the "Solutions" segment of ABC World News have focused national and international attention on many aspects of the contemporary Berea experience. Full-tuition scholarships provided to all students, the effectiveness of the work program and students' involvement in community service projects are among the features highlighted. Such reports are expected to continue as Berea alumni distinguish themselves in all walks of life and in many parts of the world." <https://www.berea.edu/about/early-history>

to the origin at the three links and sand gap transmission line at Three Links Road and Johnson Road (approximate coordinates: 37.464762, -84.190460). Judging from the coordinates provided by EKPC against the U.S. Fish and Wildlife Service's National Wetlands Inventory, there are several types of wetlands, some of them that are likely jurisdictional waters of the United States, that will be impacted by this project.

The project route crosses many freshwater ponds in the area, which are categorized as palustrine wetlands. Palustrine wetlands are all nontidal wetlands dominated by trees shrubs, persistent emergent, emergent mosses or lichens, and all such wetlands that occur in tidal areas where salinity due to ocean-derived salts is below 0.5ppt. It also includes wetlands lacking such vegetation, but with all the following four characteristics: (1) area less than 8 ha (20 acres); (2) active wave-formed or bedrock shoreline features lacking; (3) water depth in the deepest part of basin less than 2.5m (.2 ft) at low water; and (4) salinity due to ocean-derived salts less than 0.5ppt. These ponds have unconsolidated bottoms, permanently flooded, and result from a dike or impoundment. In other words, the wetlands have been created or modified by a man-made barrier or dam that obstructs the inflow or outflow of water.

Additionally, both Red Lick Creek and Horse Lick Creek are fresh waterbodies that support riverine habitats. Riverine wetlands are all wetlands and deepwater habitats contained within a channel, with two exceptions (1) wetlands dominated by trees, shrubs, persistent emergent mosses, or lichens, and (2) habitats with water containing ocean-derived salts of 0.5 ppt or greater. A channel is an open conduit either naturally or artificially created with periodically or continuously contains moving water, or which forms a connecting link between two bodies of standing water.

Red Lick Creek is near the proposed distribution substation. It is a 93.89 acre riverine habitat (classification # R5UBH), it is an unknown perennial stream, it has an unconsolidated bottom which includes all wetlands and deepwater habitats with at least 25% cover of particles smaller than stones (less than 6-7 cm), and a vegetative cover less than 30%, and is permanently flooded.

Horse Lick Creek is located near the beginning of the proposed transmission line. It is a 7.45-acre riverine habitat (classification #R4SBC). It is labeled an intermittent channel; surface water is present for extended periods especially early in the growing season but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface. It is classified as a stream bed, which includes all wetlands contained within the intermittent subsystem of the Riverine System.

These wetlands are biologically important because they support the existing biological diversity in the area. The impact to wetlands in the route for the construction of the proposed project constitutes an extraordinary circumstance that disqualifies it from being considered a categorical exclusion under NEPA.

Furthermore, construction of Big Hill Line would have a negative impact on the quality of the Owsley Fork Reservoir, according to a Water Quality Impact Study procured by the City of Berea. The study reviewed impacts on the quality of the reservoir due to the construction activities, as the Owsley Fork Reservoir is the primary water source for the City of Berea and Southern Madison Water District. The study revealed that the construction of the EKPC high-voltage transmission line **would have a negative impact on the quality of the Owsley Fork Reservoir**. The report outlines mitigation and best management practices for construction that, if implemented, the engineer opined would not result in a significant enough impact on water quality to warrant opposition to the project. However, the fact remains that the engineer determined the project would negatively impact the Owsley Fork Reservoir, and EKPC has not agreed to implement the mitigation and best management practices recommended in the study. The impacts to the Owsley Fork Reservoir constitute an extraordinary circumstance that disqualifies it from being considered a categorical exclusion under NEPA, and requires that an Environmental Assessment be prepared and that these impacts be further studied.

D. The project may impact the monarch butterfly, a candidate species for listing under the ESA

The wetlands in the project area support the monarch butterfly (*danaus plexippus*), which is a candidate for listing under the Endangered Species Act (ESA). In 2020, USFWS determined that the monarch butterfly warranted listing as an endangered or threatened species under ESA. Its habitat includes wetlands and it can only lay its eggs on milkweed plants, whose habitat also includes wetlands. According to the Berea College Forestry Outreach Center's naturalist project data, the monarch butterfly was last observed around the Big Hill area west of Owsley Fork Reservoir. "Butterfly milkweed" or (*asclepias tuberosa*) was last observed from Big Hill Road in Berea, west of Owsley Fork Reservoir. The proposed project route runs west of the Owsley Fork Reservoir and through the wetlands that support these species, meaning this project and the human activities related to running the transmission line, can adversely impact the species themselves and disrupt their habitat. The presence of a candidate species and its critical habitat in the route for the construction of the proposed project constitutes an extraordinary circumstance that disqualifies it from being considered a categorical exclusion under NEPA.

E. This project will impact soils of prime importance.

Question 20 asks if the project will affect soils of prime importance. While most of the project line does not run through land that is considered prime farmland, the proposed substation ends in locations where there are soils considered prime farmland (Class II) and farmland of statewide importance (Class III). Additionally, the soils around Horse Lick Creek, which is near the transmission line will tie into existing lines, are considered prime farmland (Class II). See <https://kygeonet.ky.gov/kysoils/>.

to the origin at the three links and sand gap transmission line at Three Links Road and Johnson Road (approximate coordinates: 37.464762, -84.190460). Judging from the coordinates provided by EKPC against the U.S. Fish and Wildlife Service's National Wetlands Inventory, there are several types of wetlands, some of them that are likely jurisdictional waters of the United States, that will be impacted by this project.

The project route crosses many freshwater ponds in the area, which are categorized as palustrine wetlands. Palustrine wetlands are all nontidal wetlands dominated by trees shrubs, persistent emergent, emergent mosses or lichens, and all such wetlands that occur in tidal areas where salinity due to ocean-derived salts is below 0.5ppt. It also includes wetlands lacking such vegetation, but with all the following four characteristics: (1) area less than 8 ha (20 acres); (2) active wave-formed or bedrock shoreline features lacking; (3) water depth in the deepest part of basin less than 2.5m (.2 ft) at low water; and (4) salinity due to ocean-derived salts less than 0.5ppt. These ponds have unconsolidated bottoms, permanently flooded, and result from a dike or impoundment. In other words, the wetlands have been created or modified by a man-made barrier or dam that obstructs the inflow or outflow of water.

Additionally, both Red Lick Creek and Horse Lick Creek are fresh waterbodies that support riverine habitats. Riverine wetlands are all wetlands and deepwater habitats contained within a channel, with two exceptions (1) wetlands dominated by trees, shrubs, persistent emergent mosses, or lichens, and (2) habitats with water containing ocean-derived salts of 0.5 ppt or greater. A channel is an open conduit either naturally or artificially created with periodically or continuously contains moving water, or which forms a connecting link between two bodies of standing water.

Red Lick Creek is near the proposed distribution substation. It is a 93.89 acre riverine habitat (classification # R5UBH), it is an unknown perennial stream, it has an unconsolidated bottom which includes all wetlands and deepwater habitats with at least 25% cover of particles smaller than stones (less than 6-7 cm), and a vegetative cover less than 30%, and is permanently flooded.

Horse Lick Creek is located near the beginning of the proposed transmission line. It is a 7.45-acre riverine habitat (classification #R4SBC). It is labeled an intermittent channel; surface water is present for extended periods especially early in the growing season but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface. It is classified as a stream bed, which includes all wetlands contained within the intermittent subsystem of the Riverine System.

These wetlands are biologically important because they support the existing biological diversity in the area. The impact to wetlands in the route for the construction of the proposed project constitutes an extraordinary circumstance that disqualifies it from being considered a categorical exclusion under NEPA.

F. This project has the potential to adversely affect drinking water resources as well as warm water aquatic habitat and outstanding state resource waters.

Potential impacts adverse impacts on special sources of water may result from the construction and operation of transmission lines and their rights-of-way, requiring additional analysis under NEPA. Question 27 asks if the project will affect any Water Resources (Sole Source Aquifers, well-head protection areas, watershed protection areas, etc.). The proposed project likely runs through two source water protection areas. The Irvine Municipal Utilities source water protection area (KY0330205) spans approximately 187.661.00 acres, water withdrawal number 0882. The Berea College Water Department (KY 0760030) spans approximately 4,568.02 acres, water withdrawal number 1078.

While many of the waters of the Commonwealth in this area remain unassessed by the Kentucky Energy and Environment Cabinet, there are two that have been assessed and support warm water aquatic habitats: Fork Station Camp Creek and Owsley Fork Reservoir.

Additionally, the proposed project will likely impact waterbodies whose particular segments remain unassessed, but whose downstream segments are protected as outstanding water resources or have been assessed and not supporting particular habitats. For example, the segment of Horse Lick Creek involved in this project has not been assessed by the Cabinet, but a downstream portion of the stream does not support warm water aquatic habitat or reach the criteria for outstanding state resource water. Another example is South Fork Station Camp Creek, who at different parts of the other segments is considered exceptional quality water per 401 KAR 101:030. Because the waters that will be implicated by this project are not assessed but flow to either impaired or exceptional waters, it triggers the obligation to further consider the health of these water segments so as to not further impair downstream waterbodies.

For reference, see the following status of these waters.

- Cavanaugh Creek of South fork Station Camp Creek 37.55370, -83.94222 / headwaters
- Rock lick creek of south fork station camp creek 37.539508, -84.010769 / Headwaters Jackson
- South Fork Station Camp Creek of Station Camp Creek , Mouth to Rock Lick Creek – coordinates 37.53286, -83.90931 / 37.55370, -83.94222
- Station camp creek of ky river land use change to south fork station camp creek 37.58261, -83.92802/ 37.53287, -83.90929

II. Extraordinary circumstances exist precluding application of a categorical exclusion, as the Big Hill Line has generated significant controversy and substantial citizen opposition.

Question 28 asks if the project has generated significant controversy. According to one attendee, more than 300 people attended an EKPC open house about the project, and several hundred signed a letter opposing the project that was sent to the Public Service Commission. There is clearly significant public interest in preserving the biodiversity and other important values that are threatened by this project.

III. It is imperative that alternatives be explored that could serve the power needs of EKPC customers and protect these unique cultural, historic, and ecological values.

The important work of enhancing the grid to increase resilience and electrification can and must be achieved without irreversible degradation of significant environmental, cultural and historical values.

With the growing emphasis on infrastructure improvements to increase climate resilience, conflicts between on the one hand important biodiversity resources, recreational values, and historical and cultural importance, and on the other, enhancements to existing electrical infrastructure, are likely to increase. **We believe that in this case, your agency has both the legal obligation to conduct more than a cursory environmental report, and the ability to catalyze a win-win solution that can provide a model approach for similar conflicts in the future.**

Most importantly, it appears that EKPC has not explored alternatives that could add capacity without impairing the important resources that are at risk with this project. Adding this line to connect this area to an existing fossil fuel plant rather than considering a battery storage solution or potentially distributed solar appears to be a short-sighted approach to this problem.

For the foregoing reasons, we urge you to slow down the funding decision, increase the level of environmental review, and facilitate meetings with the parties to explore further alternatives.

Sincerely,

Ashley Wilmes

Ashley Wilmes, Esq.
Executive Director
Kentucky Resources Council
ashley@kyrc.org

F. This project has the potential to adversely affect drinking water resources as well as warm water aquatic habitat and outstanding state resource waters.

Potential impacts adverse impacts on special sources of water may result from the construction and operation of transmission lines and their rights-of-way, requiring additional analysis under NEPA. Question 27 asks if the project will affect any Water Resources (Sole Source Aquifers, well-head protection areas, watershed protection areas, etc.). The proposed project likely runs through two source water protection areas. The Irvine Municipal Utilities source water protection area (KY0330205) spans approximately 187 661.00 acres, water withdrawal number 0882. The Berea College Water Department (KY 0760030) spans approximately 4,568.02 acres, water withdrawal number 1078.

While many of the waters of the Commonwealth in this area remain unassessed by the Kentucky Energy and Environment Cabinet, there are two that have been assessed and support warm water aquatic habitats: Fork Station Camp Creek and Owsley Fork Reservoir.

Additionally, the proposed project will likely impact waterbodies whose particular segments remain unassessed, but whose downstream segments are protected as outstanding water resources or have been assessed and not supporting particular habitats. For example, the segment of Horse Lick Creek involved in this project has not been assessed by the Cabinet, but a downstream portion of the stream does not support warm water aquatic habitat or reach the criteria for outstanding state resource water. Another example is South Fork Station Camp Creek, who at different parts of the other segments is considered exceptional quality water per 401 KAR 101:030. Because the waters that will be implicated by this project are not assessed but flow to either impaired or exceptional waters, it triggers the obligation to further consider the health of these water segments so as to not further impair downstream waterbodies. For reference, see the following status of these waters.

- Cavanaugh Creek of South fork Station Camp Creek 37.55370, -83.94222 / headwaters
- Rock lick creek of south fork station camp creek 37.539508, -84.010769 / Headwaters Jackson
- South Fork Station Camp Creek of Station Camp Creek , Mouth to Rock Lick Creek – coordinates 37.53286, -83.90931 / 37.55370, -83.94222
- Station camp creek of ky river land use change to south fork station camp creek 37. 58261, -83.92802/ 37.53287, -83.90929

cc: Christopher McLean, Assistant Administrator
Thomas Carew, State Director, Kentucky
Kentucky State Office of Rural Development
Craig Potts, Kentucky State Historic Preservation Officer
Greg Thomas, USDA Rural Development Area