

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF)	
LOUISVILLE GAS AND ELECTRIC)	
COMPANY AND KENTUCKY UTILITIES)	
COMPANY FOR THE CONSTRUCTION)	CASE NO. 2005-00467
OF TRANSMISSION FACILITIES IN)	
JEFFERSON, BULLITT, MEADE, AND)	
HARDIN COUNTIES, KENTUCKY)	

JOINT APPLICATION OF)	
LOUISVILLE GAS AND ELECTRIC)	
COMPANY AND KENTUCKY UTILITIES)	
COMPANY FOR THE CONSTRUCTION)	CASE NO. 2005-00472
OF ALTERNATIVE TRANSMISSION)	
FACILITIES IN JEFFERSON,)	
BULLITT, MEADE, AND HARDIN)	
COUNTIES, KENTUCKY)	

O R D E R

This Order addresses the application for rehearing filed on June 16, 2006 by Intervenor Dennis L. Cunningham; Cathy Cunningham; CDH Preserve, Inc.; Lisa Harrison; and Jennifer Hardin (“Intervenors”).¹ This case presented the consolidated joint applications of Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (together “LG&E/KU”) for a Certificate of Public Convenience and Necessity (“CPCN”) for a proposed 42.03 mile 345 kV transmission line, or for an

¹ The Commission notes that two other intervenors, Mary Jent and Violet W. Monroe, sent letters that could be interpreted as requests for rehearing, both of which were filed on June 23, 2006. Neither included a certificate of service. Because these letters were untimely and failed to comply with Commission rules, including filing the correct number of copies and serving all parties with copies, the Commission will not consider them.

alternative 43.9 mile route. On May 26, 2006, the Commission issued its Order granting the application in Case No. 2005-00467 and dismissing the application in Case No. 2005-00472 as moot.

Intervenors raise three issues with the Commission's action in these dockets. They argue that the Order failed to address two points, and they seek a stay of the Order pending appeal.

The first point the Intervenors believe was erroneously omitted from the Order deals with public comments and LG&E/KU's response to them. The standard that the Commission must apply in deciding such a case is whether the public convenience and necessity require the construction, and LG&E/KU satisfied that burden here. The Commission held a public hearing in Elizabethtown, and Staff prepared and filed a summary of the public comments presented there. All three Commissioners attended that hearing and heard the comments. We therefore do not believe any additions to the Order are required. Nevertheless, the Commission agrees with Intervenors that the vast majority of public comments in this case were in opposition to granting either application.

Regarding the response to the opposition, the Commission heard the testimony of Kathleen Slay regarding both pre- and post-application contacts with the public as well as Intervenors' extensive cross-examination of her. Further, the record of the hearing in Elizabethtown indicated individualized handling of the public's questions and complaints both before and after the formal hearing there. While we agree with LG&E/KU that a specific finding on this issue is not essential to our decision,² we

² Response to application for rehearing at 5.

nevertheless do find that LG&E/KU's response was adequate and met the requirements set forth in our Order in Case Nos. 2005-00142 and 2005-00154.³

Intervenors assert that the second issue we should have addressed in our Order is our reason for denying their motion to dismiss on *res judicata* grounds. The reason for the denial is again in the record of the case because it was the subject of oral argument before the hearing. The Commission will, however, explain the rationale further here. LG&E/KU filed an application for a very similar (but not identical) line in Case No. 2005-00142, and we rejected that application. The reason for the rejection was their failure to demonstrate that they had conducted a comprehensive survey of alternative locations for the line. Rather than foreclose a future application for the same or a similar line, the Commission explicitly authorized such an application, stating, "The Commission invites LG&E/KU to reapply for a CPCN to construct the needed transmission facilities after the Company has conducted a more thorough review of all reasonable alternatives, including locating the line partially or fully along existing transmission corridors."⁴ The denial of the application in that case, then, was not on the merits of the proposed route. "Res judicata is a doctrine that bars subsequent suits between the same parties and their privies on a cause of action that was previously

³ Case No. 2005-00142, Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company For a Certificate of Public Convenience and Necessity For the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky; Case No. 2005-00154, Application of Kentucky Utilities Company For a Certificate of Public Convenience and Necessity For the Construction of Transmission Facilities in Franklin, Woodford and Anderson Counties, Kentucky.

⁴ September 8, 2005, Order at 11.

decided upon its merits."⁵ Hence, the doctrine of *res judicata* does not bar the subsequent application.

Finally, Intervenor request that the Commission stay the final Order in this case pending judicial review. The Intervenor recognize that if they appeal to the Franklin Circuit Court under KRS 278.410, "[t]hat court has the power to provide injunctive relief in the manner and upon the terms provided by law."⁶ They report that LG&E/KU has sought to survey part of their property since issuance of the Order, and they state, "Unless the [Commission] modifies the . . . Order to stay the effect of such order pending judicial review, the . . . Intervenor due process right to judicial review may be made meaningless if such review occurs after the survey and construction of such line has commenced."⁷

The Commission has traditionally been very reluctant to stay its Orders.⁸ Especially in a case such as this one, in which Intervenor can apply to the Franklin Circuit Court for immediate relief, the Commission finds no reason to infringe upon the prerogatives of the Court. The request for a stay should therefore be denied.

⁵ *Buis v. Elliott*, 142 S.W.3d 137, 139 (Ky. 2004) (emphasis added). Accord, e.g., *City of Louisville v. Louisville Professional Firefighters Association*, 813 S.W.2d 804 (Ky. 1991).

⁶ Application for Rehearing at 9.

⁷ *Id.*

⁸ E.g., Order of June 20, 1997 in Case No.1996-00489, The Application of Kentucky Power Company d/b/a American Electric Power to Assess a Surcharge Under KRS 278.183 to Recover Costs of Compliance With the Clean Air Act and Those Environmental Requirements Which Apply to Coal Combustion Wastes and By-Products .

IT IS THEREFORE ORDERED that Intervenors' application for rehearing in this case is denied.

Done at Frankfort, Kentucky, this 6th day of July, 2006.

By the Commission

ATTEST:


Executive Director