



1700 PNC PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE, KENTUCKY 40202-2874
(502) 582-1601
FAX (502) 581-9564
www.ogdenlaw.com

J. GREGORY CORNETT

DIRECT DIAL 502-560-4210
DIRECT FAX 502-627-8710

gcornett@ogdenlaw.com

August 6, 2004

HAND DELIVERY

RECEIVED

AUG 06 2004

PUBLIC SERVICE
COMMISSION

Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RE: Paddock at Eastpoint, LLC, Louis K. Klemenz, and St. Joseph Catholic Orphan Society v. Louisville Gas and Electric Company
Case No. 2004-00293

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten (10) copies of Louisville Gas and Electric Company's Answer in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copy and return it to me in the enclosed self-addressed stamped envelope.

Should you have any questions or need any additional information, please contact me at your convenience.

Very truly yours,

J. Gregory Cornett

JGC/ec
Enclosures
cc: Parties of Record

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PADDOCK AT EASTPOINT, LLC,)	
LOUIS K. KLEMENZ, AND)	
ST. JOSEPH CATHOLIC)	
ORPHAN SOCIETY)	
)	
COMPLAINANTS)	
v.)	CASE NO. 2004-00293
)	
LOUISVILLE GAS AND)	
ELECTRIC COMPANY)	
)	
DEFENDANT)	

ANSWER OF LOUISVILLE GAS AND ELECTRIC COMPANY

The Defendant, Louisville Gas and Electric Company (“LG&E”), by counsel, for its Answer to the Petition of Plaintiffs, Paddock at Eastpoint, LLC, Louis K. Klemenz and St. Joseph Catholic Orphan Society, filed on July 22, 2004, states as follows:

1. With regard to the averments contained in numerical paragraph 1 of the Petition, LG&E, on information and belief, admits that Petitioner Paddock at Eastpoint, LLC (“Paddock”) owns a parcel of property adjacent to Interstate 265 in Jefferson County, Kentucky, and states that Petitioner St. Joseph Catholic Orphan Society (“St. Joseph”) has a remainder interest in another parcel of property adjacent to Interstate 265 in Jefferson County, Kentucky, which interest is subject to a life estate of Petitioner Louis K. Klemenz (“Klemenz”) in said property.

2. With regard to the averments contained in numerical paragraph 2 of the Petition, LG&E admits that it has notified Petitioners of its intent to acquire easements over the properties in which they have interests, as set forth above, along the east boundary line of the right of way of Interstate 265, for the purpose of constructing a 138 kV transmission line approximately 6.9

miles in length (the “Gene Snyder line”). LG&E also affirmatively states that this new line is a vital part of its plans to continue to deliver reliable electric service to its customers in the fastest-growing portion of the Louisville metropolitan area.

3. With regard to the averments contained in numerical paragraph 3 of the Petition, LG&E admits that it examined various alternative routes for the Gene Snyder line, some of which involved Petitioners’ properties and some of which did not. LG&E further states, however, that after studying all of the options, it determined that the location of the Gene Snyder line, as presently planned and being constructed along the eastern boundary of Interstate 265, was the most appropriate alternative. LG&E representatives have discussed the alternatives and the chosen route with interested parties or those parties’ representatives on multiple occasions. Specifically, representatives of LG&E met individually with all property owners affected by the new line or their representatives, participated in two public meetings in Louisville in January 2004, met on two other occasions with Louisville Metro Councilman Hal Heiner (whose district includes the properties in which Paddock, Klemenz and St. Joseph have an interest) and some of his staff, worked with Councilman Heiner and his staff to study alternative routes and the possibility of installing some or all of the Gene Snyder line underground, and participated in another public meeting at the Public Service Commission in May 2004. Copies of attendance sign-in sheets from the public meetings are attached collectively as Exhibit 1. A copy of a May 17, 2004 letter from Councilman Heiner is attached as Exhibit 2.

LG&E also admits that it has neither applied for nor obtained a Certificate of Public Convenience and Necessity (“CPCN”) for the Gene Snyder line, but denies that a CPCN is required by KRS 278.020 for the Gene Snyder line. LG&E affirmatively states that a CPCN is not required and will not be required for the Gene Snyder line.

Planning for the Gene Snyder line began in 2000 and continued through 2003. In November 2003, LG&E received approval from the Kentucky Department of Transportation (“KDOT”) for the portions of the selected route along the east side of Interstate 265 that involve KDOT’s right of way, and began survey work and easement acquisition for that route. In March 2004, LG&E began clearing the easement area on properties where the easements or permission to use rights of way had already been obtained, and in May 2004 construction was started on the foundations for the poles themselves. On May 25, 2004, members of the PSC Staff conducted a field review and confirmed that construction of the Gene Snyder line was underway. By July 12, 2004, LG&E had: (1) completed all engineering design work for the Gene Snyder line; (2) obtained necessary permits, as noted above, from the KDOT; (3) obtained easements and permission to use rights of way required for 5.1 of the 6.9 miles of the planned route of the Gene Snyder line; (4) commenced and/ or completed negotiations to acquire the remaining easements needed for the line; (5) begun initial preparations for any condemnation actions which might be necessary; (6) built necessary roadwork to obtain access to the sites where new poles would be placed on properties where easements or permission to use rights of way had been granted; (7) performed clearing of vegetation from the planned route of the line on properties for which easements or permissions to use rights of way had been obtained; (8) ordered all materials expected to be needed for the new line as planned, including poles and wires; and (9) completed construction of 14 of the 59 poured concrete and steel-reinforced pole footings required for the line. The footings each contain specially-ordered anchor bolts of varying lengths, depending upon the size of the pole to go on that footing, which bolts go into the footings below grade and also protrude above grade for the purpose of connecting to each pole. Photographs showing some of the construction before July 12, 2004 are attached collectively as Exhibit 3.

Petitioners' claim that a CPCN is required by KRS 278.020 is apparently based on the version of that statute which was amended by the 2004 Regular Session of the General Assembly, which amendment requires, with certain exceptions, that a CPCN be obtained for the construction of a transmission line of 138 kV or more and 5,280 feet or longer in length. That amendment, however, did not take effect until July 13, 2004, well after the Gene Snyder line was under construction. Because construction on the Gene Snyder line had started before July 13, 2004, the date on which the amendment to KRS 278.020 took effect, application of that amendment to the Gene Snyder line would constitute improper retroactive application of the amended statute. See, e.g. KRS 446.080 (3) (stating that “[n]o statute shall be construed to be retroactive, unless expressly so declared”). Here, the amended version of KRS 278.020 does not declare that it is to be applied retroactively, and therefore the amendment cannot be applied in this case.

The version of KRS 278.020 which was in effect at the time construction on the Gene Snyder line was begun, and which must be applied here, did not require LG&E to obtain a CPCN before starting construction on the line. E.g. Duerson v. East Kentucky Power Coop., Ky.App., 843 S.W.2d 340 341 (1992) (holding that pre-amendment version of KRS 278.020 did not require CPCN to be obtained before construction of a transmission line, stating that “transmission lines are extensions in the ordinary course of business and, under the statute, do not require a” CPCN). A copy of the pre-amendment version of KRS 278.020 is attached as Exhibit 4.

4. With regard to the averments contained in numerical paragraph 4 of the Petition, LG&E affirmatively states, for the reasons set forth above, that the amendment to KRS 278.020 cannot lawfully be applied in this case, and therefore the question of whether or not the

exceptions set forth in subsection (2) of the statute apply, which subsection was added by the amendment effective on July 13, 2004, is not even in issue here.

5. LG&E denies the averments contained in numerical paragraph 5 of the Petition. For all of the reasons set forth above, the amended version of KRS 278.020 cannot lawfully be applied here. For the same reasons, 807 KAR 5:120E, an emergency regulation put in place to correspond with the amendment to KRS 278.020, cannot be lawfully applied here. Accordingly, Petitioners can claim no rights under either the amendment to KRS 278.020 or 807 KAR 5:120E. Under the pre-amendment version of KRS 278.020, which must be applied here, Petitioners have no standing to seek the relief sought in this proceeding. See, e.g. Satterwhite v. Public Service Commission, Ky., 474 S.W.2d 387, 388 (1972) (affirming dismissal of action filed by landowners whose property was being condemned in connection with the construction of new generating and transmission facilities, holding that the landowners were not “parties interested within the meaning of the provision of KRS 278.020” and had no right to participate in a public hearing because the issue of the location of the facilities “was not relevant to the issue of convenience and necessity”). (Internal quotes omitted.) LG&E remains willing to again meet with Petitioners or others who are concerned about the Gene Snyder line to discuss their concerns. However, a CPCN is not required and this action filed by the Petitioners is not provided for under applicable law.

FIRST AFFIRMATIVE DEFENSE

Petitioners lack standing to bring an action seeking the relief requested, and the Petition should be dismissed for that reason.

SECOND AFFIRMATIVE DEFENSE

Petitioners have failed to set forth a *prima facie* case that LG&E has violated KRS 278.020, as it existed at the time construction on the Gene Snyder line was started, or any other law, and the Petition should be dismissed for that reason.

THIRD AFFIRMATIVE DEFENSE

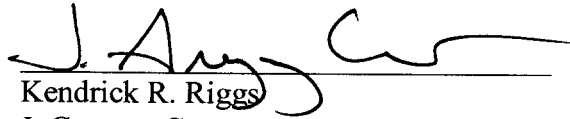
Petitioners have failed to set forth any claim upon which relief could be granted by this Commission, and the Petition should be dismissed for that reason.

WHEREFORE, for all of the reasons set forth above, Louisville Gas and Electric Company respectfully requests:

- (1) that the Petition herein be dismissed without further action being taken by the Commission;
- (2) alternatively, that an informal conference be scheduled in this matter for the purpose of discussing further proceedings, including the filing of a motion to dismiss and a briefing schedule for any response and reply briefs thereto, and that the Petition then be dismissed;
- (3) that this matter be closed on the Commission's docket; and
- (4) that LG&E be afforded any and all other relief to which it may be entitled.

Dated: August 6, 2004

Respectfully submitted,

A handwritten signature in black ink, appearing to read "K. Riggs", written over a horizontal line.

Kendrick R. Riggs
J. Gregory Cornett
Ogden Newell & Welch PLLC
1700 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
Telephone: (502) 582-1601

James Dimas
Senior Corporate Attorney
Louisville Gas and Electric Company
220 West Main Street
Post Office Box 32010
Louisville, Kentucky 40232
Telephone: (502) 627-2562

COUNSEL FOR LOUISVILLE GAS
AND ELECTRIC COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer was served on the following persons on the 6th day of August 2004, U.S. mail, postage prepaid:

John H. Dwyer, Jr.
Pedley Zielke Gordinier & Pence, LLC
2000 Meidinger Tower
462 South Fourth Avenue
Louisville, Kentucky 40202-2555

Harry Lee Meyer
Ogden & Ogden
1610 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202


Counsel for Louisville Gas and Electric Co.

10035 FOREST GREEN BLV.
40223

LG&E TRANSMISSION LINES MEETING

Monday, January 12, 2004

Look up
1005 English Station Rd.
40245
12975 Shelbyville Rd
40243
Cyclone
500 W. Jeff St
40202

NAME	REPRESENTING	PHONE	E-MAIL
------	--------------	-------	--------

Bob Long	Domestic Homes	426-4663	blong@chickwid.com homes.com
----------	----------------	----------	------------------------------

George Skeets	Christian Academy	244-3225	gskeets@christianacademyla.org
---------------	-------------------	----------	--------------------------------

Scott Hagan	Hagan Seay Pr Hagan Seay Properties	245-8800	SCOTT@HAGANSEAY.COM
-------------	--	----------	---------------------

Walter Meyer	St Joseph Altare Alpha Society	583-4455	hime@qlaw.com
--------------	-----------------------------------	----------	---------------

Kathy Sly	LG&E	627-3715	Kathy.Slay@lgeenergy.com
-----------	------	----------	--------------------------

Jim Dims	LG&E	627-3712	JIM.DIMS@LGEENERGY.COM
----------	------	----------	------------------------

Bob McAuffe	LG&E	664-3445	BOB10853@AOL
-------------	------	----------	--------------

Jim Kennedy	Old Henry Neighborhood Organization	245-6375	
-------------	--	----------	--

J.B. Chapman	City of Middle town	245-639-9240	
--------------	------------------------	--------------	--

Mark Jordan	LG&E	627-2824	MARK.JORDAN@LGEENERGY.COM
-------------	------	----------	---------------------------

George	LG&E	627-2930	george.siemant@lgeenergy.com
--------	------	----------	------------------------------

George	LG&E	627-2323	george.siemant@lgeenergy.com
--------	------	----------	------------------------------

Paul Ray	Town of	997-7091	Ray.Paul@townofperry.com
----------	---------	----------	--------------------------

2714 River Green
40206
next door to M. Alan Stuckle Metro Council Dist. 17

1-29-04
10:00 a.m.

George SKEETERS gskeeters@christianacademyku.org 244-3225 x1024

Wendy HARGROVE wendy@hargrove.com 245-8800

Bob LONG blong@downwardhollow.com 773-5845

Al PATTERSON ^{ONE - PATTERSON LLC}
13620 Shelbyville Rd 40245 245-6352

Debbie Harris Debbie.Harris@ky.gov 367-6411 (Highway Dept)

J. Byron Chapman Mayor Middletown 245-9240

MARK S. JOHNSON MARK.JOHNSON@lgenergy.com 627-2824

Scott Hagan ~~scott@hargrove.com~~ 245-8800

Harvey Lee Meeyer hlm@igloo.com 583-4455

Laura M. Douglas laura.douglas@lgenergy.com ⁶²⁷⁻³⁹⁶⁰

George Siemens george.siemens@lgenergy.com 627-2323

Kathy Slay kathy.slay@lgenergy.com 627-3715

Jim Dims jim.dims@lgenergy.com 627-3712

Beth Allen beth.allen@lookymetro.org 574-5170

CM Stuckel

Carl Ray

Jim Kennedy

✓
Corkin
James A.

LG&E Transmission Line Extension

5/12/04

Name	Representing
Rebecca Goodman	PSC - Legal
Beth O'Donnell	Exec. Director
George Siemens	LG&E Energy
Walt Wright	PSC Legal Staff
ELEE Russell	PSC
GARY GRUBBS	PSC - ENGR.
Paul Thompson	LG&E Energy
NATE Mullins	LG&E Energy
BERNIE BOWLING	ST. JOSEPH CHILDREN'S Hosp
Scott Hays	Hagan Bay Properties
Harvey McMurtry	St Joseph PA Cherokee Hosp
Bob Amato	KPSC
AARON GREENWELL	KPSC
John Rogness III	"
JEFF SHAW	"
ISAAC SCOTT	"
Andrew Melnykovich	"
Tom Dorman	PSC
Michael Beer	LG&E
Laura Douglas	LG&E



Louisville Metro Council

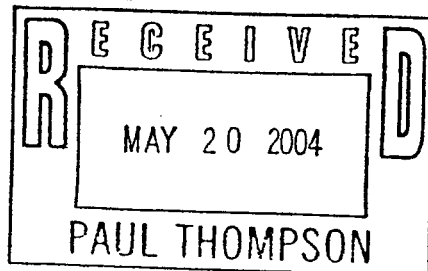
Hal Heiner
District 19 Councilman

Republican Caucus Vice Chair

Stephen Ott
Legislative Assistant

May 17, 2004

Paul Thompson
Senior Vice President
LG&E, Energy Services
220 West Main Street
Louisville, Kentucky 40232



Dear Paul,

Thank you for your letter outlining the LG&E position on underground installation of transmission lines as well as reviewing the suggested alternate route. I appreciated the overview from your Lexington engineers concerning the economic and physical difficulties of an alternate route.

As discussed, our office pursued placement of the towers in the Lagrange Road right-of-way with the State Highway Department. Their response, after a field investigation, was that the towers would be a safety hazard due to the narrow right of way adjacent to the rail line. This would necessitate placing the towers in the front yards of many houses along Old LaGrange Road thereby creating a tremendous aesthetic burden on these of homes.

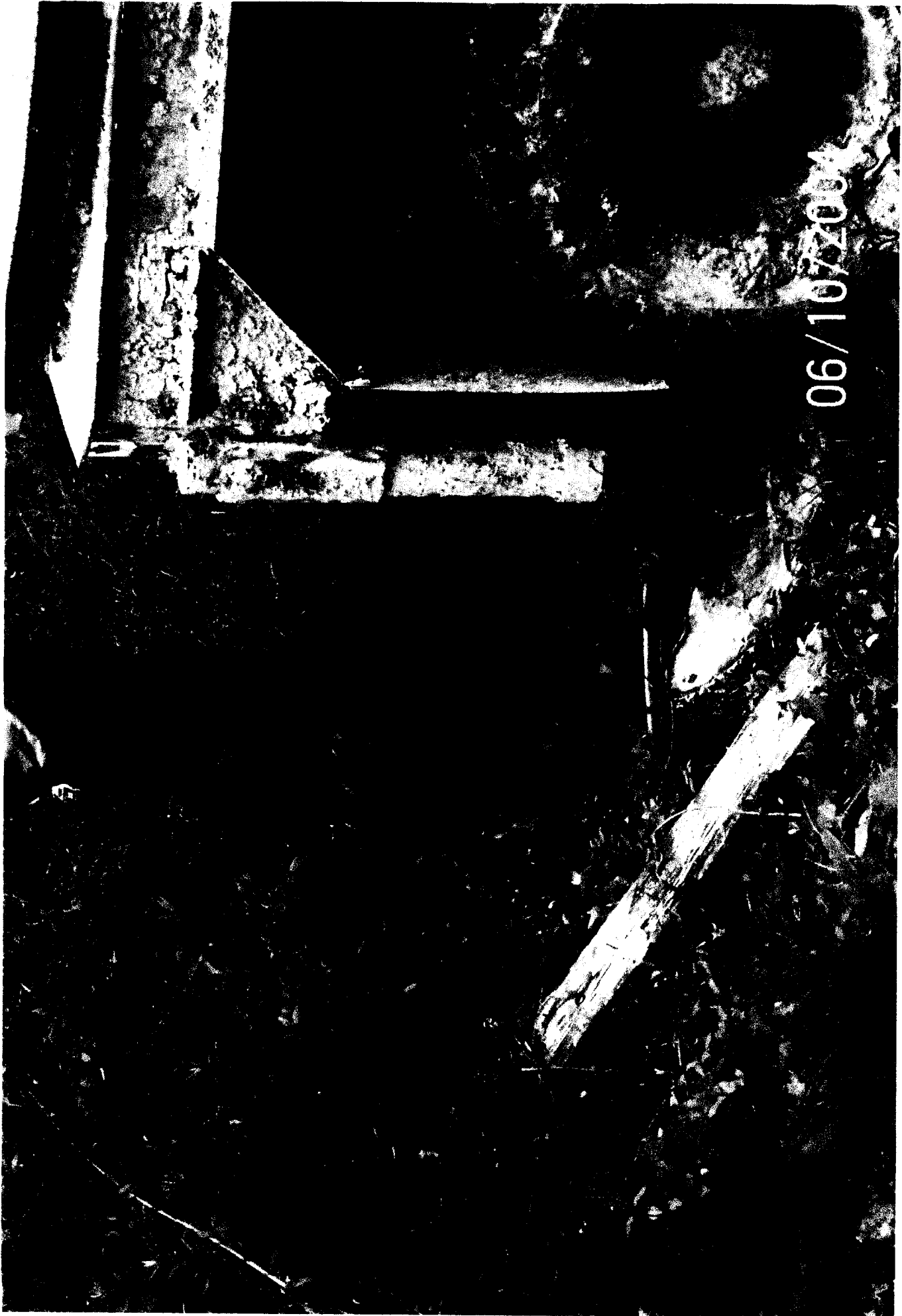
I will be sending a letter to the attendees of the previous meetings outlining the fact that any alternate would have cost a minimum of 150% of the original plan cost. Due to Public Service Commission constraints, aesthetic concerns of the alternate route and the desirability of providing the lowest cost service to your customers mandated this line follow the original route along Interstate 265.

Your willingness to review alternate solutions and meet with the effected landowners is a pattern I hope you will adopt early in the design phase for future projects. Your company is an important partner with Louisville Metro Government in making sure Louisville holds onto its designation as one of the nation's most livable cities. I look forward to a close working relationship.

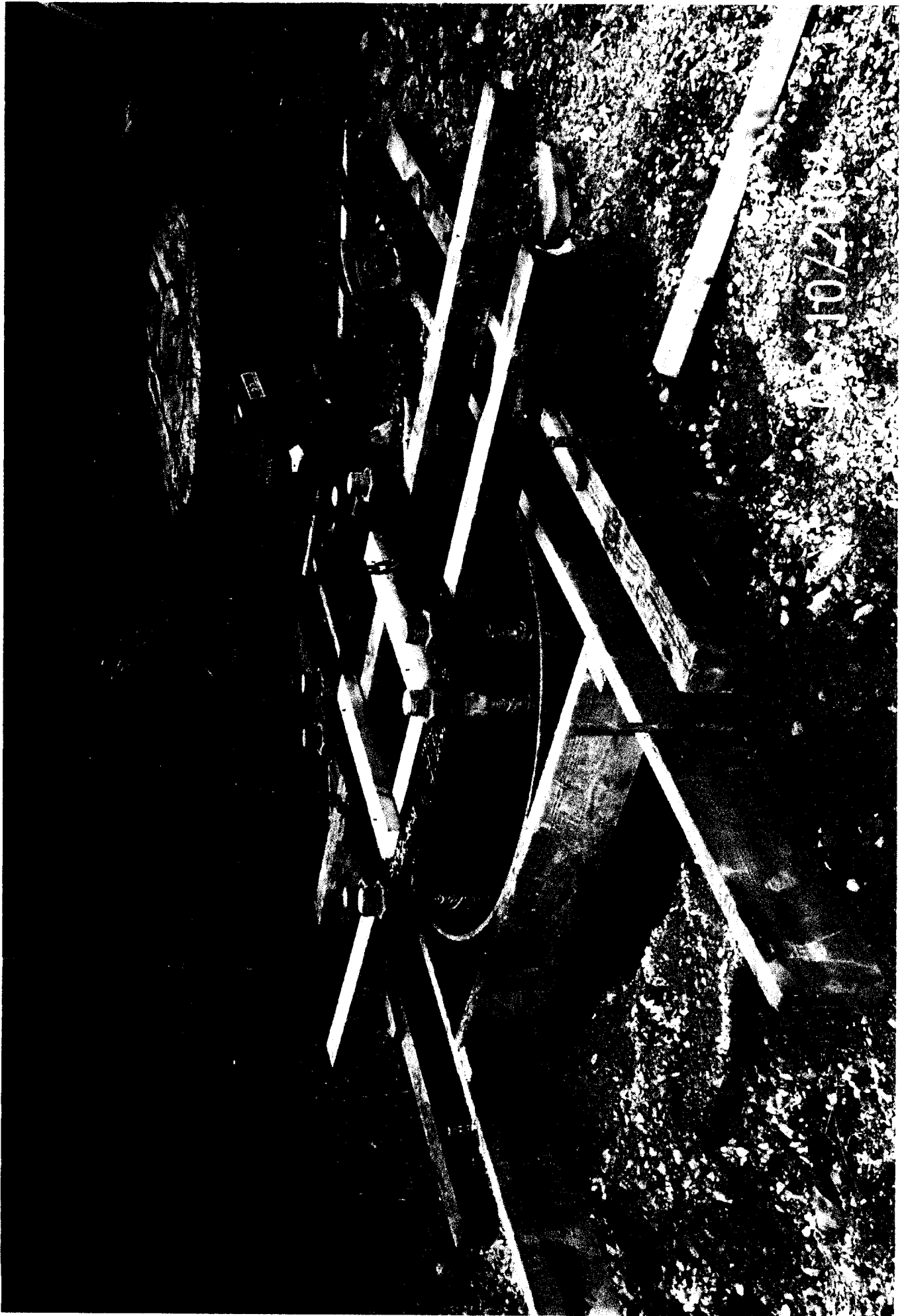
Sincerely,

Hal Heiner

cc: George R. Siemens, Jr., Vice President
External Affairs



06/10/2004







application for a certificate to construct a base load electric generating facility, may consider the policy of the General Assembly to foster and encourage use of Kentucky coal by electric utilities serving the Commonwealth. Unless exercised within one (1) year from the grant thereof, exclusive of any delay due to the order of any court or failure to obtain any necessary grant or consent, the authority conferred by the issuance of the certificate of convenience and necessity shall be void, but the beginning of any new construction or facility in good faith within the time prescribed by the commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate.

- (2) No utility shall exercise any right or privilege under any franchise or permit, after the exercise of that right or privilege has been voluntarily suspended or discontinued for more than one (1) year, without first obtaining from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity authorizing the exercise of that right or privilege.
- (3) No utility shall apply for or obtain any franchise, license, or permit from any city or other governmental agency until it has obtained from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity showing that there is a demand and need for the service sought to be rendered.
- (4) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.
- (5) No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility. This presumption may be rebutted by a showing that ownership does not in fact confer control. Application for any approval or authorization shall be made to the commission in writing, verified by oath or affirmation, and be in a form and contain the information as the commission requires. The commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest. The commission may make investigation and hold hearings in the matter as it deems necessary, and thereafter may grant any application under this subsection in whole or in part and with modification and upon terms and conditions as it deems necessary or appropriate. The commission shall grant, modify, refuse, or prescribe appropriate terms

278.020 Certificate of convenience and necessity required for construction provision of utility service or of utility; exception; approval required for acquisition or transfer of ownership; severability of provisions

- (1) No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction. Upon the filing of an application for a certificate, and after any public hearing which the commission may in its discretion conduct for all interested parties, the commission may issue or refuse to issue the certificate, or issue it in part and refuse it in part, except that the commission shall not refuse or modify an application submitted under KRS 278.023 without consent by the parties to the agreement. The commission, when considering an

and conditions with respect to every such application within sixty (60) days after the filing of the application therefor, unless it is necessary, for good cause shown, to continue the application for up to sixty (60) additional days. The order continuing the application shall state fully the facts that make continuance necessary. In the absence of that action within that period of time, any proposed acquisition shall be deemed to be approved.

- (6) Subsection (5) of this section shall not apply to any acquisition of control of any:
- (a) Utility which derives a greater percentage of its gross revenue from business in another jurisdiction than from business in this state if the commission determines that the other jurisdiction has statutes or rules which are applicable and are being applied and which afford protection to ratepayers in this state substantially equal to that afforded such ratepayers by subsection (5) of this section;
 - (b) Utility by an acquirer who directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the utility, including any entity created at the direction of such utility for purposes of corporate reorganization; or
 - (c) Utility pursuant to the terms of any indebtedness of the utility, provided the issuance of indebtedness was approved by the commission.
- (7) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to that end the provisions are declared to be severable.

HISTORY: 2001 c 35, § 1, eff. 6-21-01; 1998 c 388, § 1, eff. 7-15-98; 1994 c 144, § 1, eff. 7-15-94; 1992 c 102, § 2, eff. 7-14-92; 1988 c 22, § 5, c 12, § 3, c 335, § 1; 1986 c 368, § 1; 1982 c 130, § 1, c 82, § 5; 1978 c 379, § 6; 1974 c 388, § 3; 1972 c 83, § 5; 1942 c 208, § 1; KS 3952-25