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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

JUL 26 2005

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

JOINT APPLICATION OF LOUISVILLE)	
GAS AND ELECTRIC COMPANY AND)	
KENTUCKY UTILITIES COMPANY FOR)	
A CERTIFICATE OF PUBLIC CONVENIENCE)	CASE NO.
AND NECESSITY FOR CONSTRUCTION)	2005-00142
OF TRANSMISSION FACILITIES IN)	
JEFFERSON, BULLITT, MEADE AND)	
HARDIN COUNTIES, KENTUCKY)	

* * * * *

DENNIS AND CATHY CUNNINGHAM THIRD MOTION TO DISMISS

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Intervenors, Cathy L. Cunningham and Dennis L. Cunningham, ("Cunninghams") by and through counsel, hereby request the Public Service Commission ("PSC") to dismiss the Application of Louisville Gas and Electric Company and Kentucky Utilities Company (the "Applicants").

1. This is the third such request by the Cunninghams. These parties recognize that three such requests are unusual in any proceeding. These parties further recognize that part of the basis for this third motion relates to matters that are outside the control of the PCS and are the consequence of the decision by the Kentucky General Assembly to impose unrealistic time constraints on the PSC to make a decision in transmission line cases. Nevertheless, as much sympathy as the Cunninghams have for the burden placed upon the PSC, they believe that the

time constraints they have been ordered to meet were not reasonable, that they have been denied the opportunity to prepare for and present their case, and that this process has not been a fair process but that it has denied them due process.

2. The Cunninghams previously moved to dismiss on July 12, 2005, which motion was based primarily on the fact that the transmission line that is the subject of this application is "needed" to distribute the new electricity to be generated by the proposed addition to the Trimble County Generating Station ("TC2"). Cunninghams argued that where that application for new generation had not been approved, it was premature to consider transmission lines to distribute that new electricity. That motion was denied.

3. The Cunninghams have filed a second motion to dismiss based upon learning that the applicants, LG&E/KU, have failed to complete required environmental and cultural/historical studies of the preferred alternative and the other alternatives to meet the needs of the applicants. These required studies, with public participation components, must be completed before the PSC has the information needed to make a public convenience and necessity determination. They have not been completed, and this provides a second basis for dismissal, until these studies are completed. This motion is pending, at this writing.

4. The Cunninghams MOVE the PSC to dismiss this application for two reasons, separate and distinct from those set forth in the prior motions.

LG&E/KU FAILURE TO PROPERLY RESPOND TO DATA REQUEST

5. It is axiomatic that discovery is essential to preparation for any contested litigation. Cunninghams made a data request to the applicants on June 30, 2005, as per the schedule of the PSC. Cunninghams attach hereto that request.

6. On July 7, 2005, the applicants tendered their response to the Cunninghams data request.

7. That response provided the Cunninghams with no new reports about the investigation of alternatives.

8. On July 19, 2005, the applicants filed what they described as "the complete Photo Science Geospatial Solutions report on the routes for the proposed transmission lines...." Applicants admit that it had not been filed previously. Applicants assert, in error, that it was requested in the Case No. 2005-00154 only. This response overlooks Cunninghams' request number 1.

9. The July 19, 2005 "report" is not a report at all - it is a power point presentation, with no narrative and selected detail. The "report" identifies the top four alternatives, but contains no text to explain what happened to the "other routes

studied" as shown on the second map in green. Clearly, there are actual reports that have been withheld from the Cunninghams.

10. Cunninghams requested all environmental studies in request 2, all cultural and historic studies in request 9, and all application for federal or state permits or approvals in request 5, and 6. Cunninghams received nothing that was responsive.

11. Subsequently, and almost by accident, Cunninghams learned that the applicants have begun the Section 106 process with the Kentucky Heritage Council, and that the US Fish and Wildlife agency has begun consultation with the applicants concerning endangered species.

12. The Cunninghams have been unfairly handicapped in the preparation and presentation of their case to the PSC by the failure of the applicants to fully and completely respond to the Cunninghams data request.

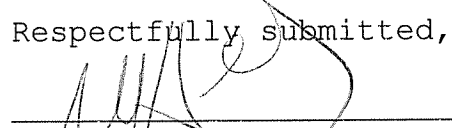
INSUFFICIENT TIME TO EMPLOY NEEDED EXPERT WITNESS

13. The Cunninghams previously sought an extension of time to file directed testimony because they were unsuccessful in their first two attempts to retain electrical engineering expertise in the area of transmission line routing, and the PSC granted an extension. Unfortunately, they were also unsuccessful with a third potential expert witness. The Cunninghams need additional time to prepare their case. They

have been required to "go to trial" without adequate time to prepare, and that is a denial of due process.

14. Based upon the foregoing, and in recognition that the TC2 has been postponed three years, the application should be dismissed, and LG&E/KU should be required to fully disclose all requested studies when and if they reapply.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was duly served by mailing, ~~first class postage prepaid~~ to the following:

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not delay WHG

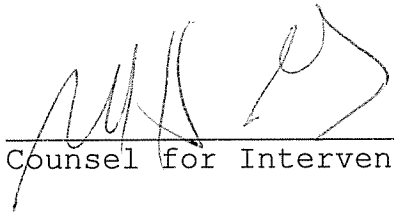
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This the 26 day of July, 2005.



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