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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

JUL 13 2005

PUBLIC SERVICE
COMMISSION

IN RE THE MATTER OF:

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

* * * * *

DENNIS AND CATHY CUNNINGHAM MOTION TO DISMISS

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Come the Interveners, Dennis and Cathy Cunningham, by and through counsel, and MOVE the Public Service Commission to DISMISS THIS APPLICATION WITHOUT PREJUDICE, for the reasons that follow:

FAILURE TO GIVE PROPER NOTICE

1. The above joint application by Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") was filed on or about May 11, 2005 pursuant to KRS 278.020(2), a 2004 amendment to statutes applicable to proceedings before the Public Service Commission related to electric transmission lines over one hundred thirty-eight (138) kilovolts and over one mile in length.

2. By this application LG&E/KU seek to construct a 345 kilovolt transmission line of approximately 41.9 miles

through Jefferson, Bullitt, Meade and Hardin Counties, Kentucky.

3. Kentucky Administrative Regulation 807 KAR 5:120 relates to KRS 278.020(2), (8), and requires the applicant to provide a verified statement of notice to each property owner over whose property the transmission line right-of-way is proposed to cross, which notice shall include (a) notice of the proposed construction; (b) the commission docket number for the application and a proposed map of the right-of-way; (c) address and telephone number of the executive director of the commission; (d) a description of that property owner's right to request a public hearing, and (e) a description of the project.

4. The following persons are listed in the application as property owners entitled to the above notice, but they each have reported to the undersigned that they have not received any notice from the applicants, LG&E/KU and that the only notice they have received is notice from Cathy Cunningham:

- a. Ronald Beard
- b. Alice Addington POA Kevin Addington
- c. Judy Padgett
- d. Wayne Walker (#10 on application list)

5. Based upon the above failure to give notice as required, the Public Service Commission should DISMISS THE APPLICATION WITHOUT PREJUDICE, to permit the Applicants to cure this procedural defect with a subsequent application and proper notice.

THE APPLICATION FOR TRANSMISSION LINES IS PREMATURE

6. The LG&E/KU application describes the Statement of Necessity, at paragraph 5, as transmission lines that will be utilized to transmit electric power from a "proposed 750 MW nominal net (732 MW summer rating) supercritical pulverized coal fired base load generating unit to be located at the Trimble County Generating Station (TC2")...."

7. The proposed new generation at TC2 has not yet been given a Certificate of public convenience and necessity. In fact, the hearing on that application, PSC Case No. 2004-00507 was held last month, on June 28, 2005. This application was strongly contested by the Office of the Attorney General of Kentucky that the Applicants had failed to meet their burden of proof concerning the need for TC2 at this time.

8. The Applicants, LG&E/KU, have acknowledged some softness in their claimed need for TC2, where, in 2005, they revised their 2002 integrated medium and long-term

energy forecasts, by about 3 percent, which allowed the Applicants to defer the TC2 generation schedule from 2007 to 2010. See Liberty Consulting Group Final Report ("Liberty") to PSC, page II-12.

9. The Applicants, LG&E, and their supporting study by MISO, Midwest Independent System Operator, and Liberty appear to agree that the Mill Creek to Hardin County transmission line that is the subject of this application is not needed for TC2 when it comes on line, as proposed by the Applicants, but that it is predicted to be needed to meet an upcoming voltage problem "within 5 to 8 years after TC2 began commercial operation...." Liberty, page III-4. Liberty continues: "At some point in the future, this 345 kV line from Mill Creek to Hardin County (Liberty Facility #G) will be needed." Liberty, page III-4.

10. Neither the Applicants, MISO, nor Liberty conducted an evaluation of the "upcoming voltage problems" in Hardin County from the perspective of whether other utilities, such as East Kentucky Power Cooperative/Big Rivers Electric or Warren RECC/East Kentucky Power or Peabody Coal/Thoroughbred will or may construct facilities that will address the "upcoming voltage problems." Likewise, there may be other "ancillary service" options that may address the "upcoming voltage problems" that

deserve to be investigated fully before the Public Service Commission should take action that would approve this transmission line.

11. The Applicants, and by necessity, Liberty have only focused on the supply aspect of determining public convenience and necessity. Where the horizon for the projected need for TC2 has been extended by the Applicants to 2010, and where the claimed need for the Mill Creek to Hardin County transmission line is described as 5 to 8 years after TC2 began commercial operation, the Public Service Commission should consider evidence of changing demand, both within Kentucky and across the United States of America to find that there are too many uncertainties to make a prudent decision by September 8, 2005. This consideration should consider the increasing emphasis nationwide on improved energy efficiency.

12. KRS 278.020(8) sets the standard for PSC determination of whether to issue a certificate that public convenience and necessity require the construction of an electrical transmission: that decision "shall be deemed to be a determination by the commission that, as of the date of issuance, the construction of the line is a prudent investment." At present, the PSC lacks the necessary proof that the Mill Creek to Hardin County line, at a cost of

\$59.1 million dollars, is a prudent investment when compared to MISO Option #3, meeting the needs of TC2 at a cost of \$52.1 million dollars.

13. The Kentucky General Assembly correctly anticipated that separating transmission line hearings from power generation hearings before the PSC could have the potential to unreasonably delay bringing needed electrical power on line. Where the General Assembly has not enacted a statutory deadline date for a decision on a certificate for power generation, the General Assembly has enacted a very severe statutory deadline for decisions to be made regarding transmission lines. See KRS 278.020(8). This legislative mandate should be interpreted as legislative intent and recognition that the transmission line decisions should be made after the power generation decision has been made, but made very rapidly so as to not delay delivery of power once the new generation has been constructed.

WHEREFORE, the Interveners, Dennis Cunningham and Cathy Cunningham, MOVE THE PUBLIC SERVICE COMMISSION TO DISMISS THE ABOVE APPLICATION WITHOUT PREJUDICE FOR FAILURE OF NOTICE AND FOR PREMATURITY, and to order that the Applicants, LG&E/KU may reapply at any time after the final determination of the need for TC2 has been made, and provided that the Applicants shall include in their

resubmitted application an investigation of reasonable and feasible alternatives to address the "upcoming voltage problems" in Hardin County, which shall include an evaluation of then pending actions of other utilities and other technologies, including energy efficiency.

Respectfully submitted,

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By:


W. Henry Graddy, IV

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy has been duly served by first-class mail upon the following:

Hon. A.W. Turner
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602

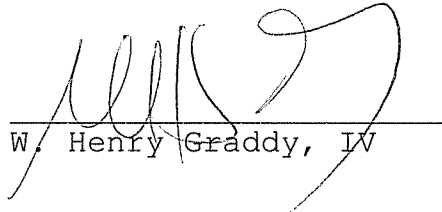
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This the 12 day of July, 2005.



W. Henry Graddy, IV