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July 20, 2005

HAND DELIVERY

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

RE: 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. 2005-00142

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten copies of Louisville Gas and Electric Company's and Kentucky Utilities Company's Objection to Hearsay Portions of Geoffrey M. Young Testimony and Motion to Strike 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 copies and return them 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,

A handwritten signature in black ink, appearing to be "J. Gregory Cornett".

J. Gregory Cornett

JGC/ec

Enclosures

cc: Parties of Record

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)	
A CERTIFICATE OF PUBLIC CONVENIENCE)	CASE NO.
AND NECESSITY FOR THE CONSTRUCTION)	2005-00142
OF TRANSMISSION FACILITIES IN)	
JEFFERSON, BULLITT, MEADE AND)	
HARDIN COUNTIES, KENTUCKY)	

* * * * *

**OBJECTION OF LOUISVILLE GAS AND ELECTRIC
COMPANY AND KENTUCKY UTILITIES COMPANY
TO HEARSAY PORTIONS OF GEOFFREY M. YOUNG
TESTIMONY AND MOTION TO STRIKE**

Louisville Gas and Electric Company and Kentucky Utilities Company (the “Companies”) respectfully object to the hearsay portions of the Prepared Testimony of Geoffrey M. Young and move to strike same. Specifically, the Companies object to the following portions of the Young testimony:

- The excerpt from the article by Gellings and Yeager at page 6, line 7, through page 10, line 1;
- The paraphrase from the Shaesy article at page 10, line 9 through line 24;
- The AEP press statement at page 11, line 9, through page 12, line 4;
- The paraphrase from the book *Small Is Profitable* at page 13, line 18, through page 15, line 7;
- The example from the book *Natural Capitalism* at page 18, line 3, through page 19, line 11.

All of the foregoing testimony is hearsay: statements, other than ones made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matters asserted.¹ Hearsay is not admissible except as provided by the Kentucky Rules of Evidence or the rules of the Supreme Court.² The Kentucky Rules of Evidence provide that certain statements, though hearsay, are not excluded by the hearsay rules and include the following category:

(18) *Learned Treatises*. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.³

The hearsay statement, however, will not be admitted unless it is established that it is reliable authority. For example, in *Spencer v. Red River Lodging*⁴, the court refused to admit the testimony of an expert about information contained in industry publications when the expert failed to establish their reliability.

That situation exists here. Mr. Young has quoted extensively from Internet articles, industry publications, utility press releases, books and the like. Yet, he offers absolutely no testimony as to the reliability of the authorities. He refers to the book *Small Is Profitable* as “revolutionary”⁵ and to the book *Natural Capitalism* as a “readable

¹ KRE 801(c).

² KRE 802.

³ KRE 803(18). See, *Heilman v. Snyder*, 520 S.W.2d 321 (Ky. 1975).

⁴ 865 So.2d 337, 344-345 (La. App. 2 Cir. 2004).

⁵ Young Testimony at page 13, line 19.

overview.”⁶ Yet he offers no information about the reliability of the information contained in any of the publications cited in his testimony.

Moreover, much of the information cited is not on the “subject of history, medicine, or other science or art” as required by the hearsay exception. It is more appropriately described as policy, philosophy or news rather than “history, medicine, or other science or art.” For example, Mr. Young offers an AEP press statement, a book that shows 207 ways that the size of electrical resources affects their economic value and an example of the use of pumps in a carpet company. These are not the “learned treatises” that the drafters of the Federal and Kentucky Rules of Evidence had in mind.

While the Companies are aware that the Commission is not bound by the technical rules of legal evidence in hearings before the Commission,⁷ the abuse of the hearsay rule in Mr. Young’s testimony is so pervasive as to constitute unacceptable prejudice to the Companies. One of the reasons hearsay is inadmissible is that opposing parties are not in a position to cross-examine the declarants. Such is the case here. Mr. Young has quoted extensively from five publications and the Companies have no ability to cross-examine the authors of those publications, a clear impingement on their right to due process of law. Not only are the Companies unable to cross-examine the declarants in Mr. Young’s testimony, under the procedural schedule in this proceeding, the Companies do not even have the ability to conduct discovery from the intervenors. Thus, the prejudice to the Companies overrides the statutory provision about the applicability of the legal rules of evidence.

For the foregoing reasons, it is respectfully submitted that the hearsay portions of

⁶ Young Testimony at page 17, line 19.

⁷ KRS 278.310.

the testimony of Geoffrey M. Young, cited above, should be stricken from the record of this proceeding.

Dated: July 20, 2005

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that the foregoing pleading has been served by mailing a copy of same, postage prepaid to the following persons on this 20th day of July 2005:

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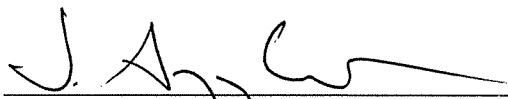
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