

J. GREGORY CORNETT

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

gcornett@ogdenlaw.com

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

July 22, 2005

**HAND DELIVERY**

RECEIVED

JUL 21 2005

PUBLIC SERVICE  
COMMISSION

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 Portions of Cathy and Dennis Cunningham 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,

J. Gregory Cornett

JGC/ec  
Enclosures  
cc: Parties of Record

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**RECEIVED**

**In the Matter of:**

JUL 21 2005

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

PUBLIC SERVICE  
COMMISSION

\* \* \* \* \*

**OBJECTION OF LOUISVILLE GAS AND ELECTRIC COMPANY  
AND KENTUCKY UTILITIES COMPANY  
TO PORTIONS OF CATHY AND DENNIS CUNNINGHAM  
TESTIMONY AND MOTION TO STRIKE**

---

Louisville Gas and Electric Company and Kentucky Utilities Company (the "Companies") respectfully object to certain portions of the Direct Testimony of Cathy and Dennis Cunningham ("Cunninghams") and move to strike same. Specifically, the Companies object to the following portions of the Cunninghams' testimony, on hearsay grounds:

- The reference to wetlands designation and statements made by others in that regard, at page 3, lines 13 - 21;
- The reference to conversations with a purported expert, Petra Pless, at page 5, lines 7 - 17, together with the documents appended as Attachment 1;
- The Affidavit appended to the testimony as Attachment 2 and the regulations referred to therein and appended as Attachment 3.

All of the foregoing testimony and proffered exhibits are 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.<sup>1</sup> Hearsay is not admissible except as provided by the Kentucky Rules of Evidence or the rules of the Supreme Court.<sup>2</sup> The Kentucky Rules of Evidence provide that certain statements, though hearsay, are not excluded by the hearsay rules, but none of those exceptions apply here.

While the Companies are aware that the Commission is not bound by the technical rules of legal evidence in hearings before the Commission,<sup>3</sup> the abuse of the hearsay rule in the Cunninghams' 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. The Cunninghams have referred to purported conversations with other individuals, cited to publications for which no reliability or foundation have been established, and attached the affidavit of yet another person, and the Companies have no ability to cross-examine the authors of those documents or the other persons referred to. The result of this is a clear impingement on the Companies' right to due process of law. Not only are the Companies unable to cross-examine the declarants in the Cunninghams' 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 regarding the general applicability of the legal rules of evidence.

In addition, the Companies object to, and move to strike, the portions of the Cunninghams' testimony relating to environmental issues, which issues are not within the purview of this Commission in this proceeding pursuant to KRS 278.020. For that reason, the

---

<sup>1</sup> KRE 801(c).

<sup>2</sup> KRE 802.

<sup>3</sup> KRS 278.310.

testimony on those issues is irrelevant and should be stricken. Specifically, those portions of the testimony are as follows:

- page 3, beginning with the new sentence starting at line 1 - line 21;
- page 4, line 16 - page 5, line 17.

For the foregoing reasons, it is respectfully submitted that the hearsay portions of the testimony of Cathy and Dennis Cunningham, and the irrelevant portions relating to environmental issues, as cited above, should be stricken from the record of this proceeding.

Dated: July 22, 2005

Respectfully submitted,



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

Robert M. Watt, III  
Lindsey W. Ingram, III  
Stoll, Keenon & Park, LLP  
300 West Vine Street, Suite 2100  
Lexington, Kentucky 40507  
Telephone: (859) 231-3000

Elizabeth L. Cocanougher  
Senior Regulatory Counsel  
Louisville Gas and Electric Company  
220 West Main Street  
Post Office Box 32010  
Louisville, Kentucky 40232  
Telephone: (502) 627-4850

Counsel for Louisville Gas and Electric  
Company and Kentucky Utilities Company

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing Objection has been served by mailing a copy of same, postage prepaid to the following persons on this 22nd day of July 2005:

Mike Cannata  
Senior Consultant  
Liberty Consulting Group  
65A Ridge Road  
Deerfield, NH 03037

Betty Coyle  
1171 Blueball Church Road  
Elizabethtown, KY 42701

Samuel & Eydie E. Coyle  
1481 Blueball Church Road  
Elizabethtown, KY 42701

Cathy Cunningham  
CDH Preserve LLC  
2530 N Hwy 11 SE  
Elizabeth, IN 47117

Dennis L. Cunningham  
Manager  
2530 N Hwy 11 SE  
Elizabeth, IN 47117

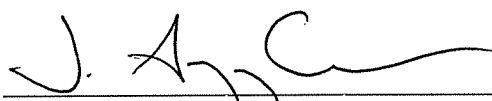
Honorable W. Henry Graddy  
W. H. Graddy & Associates  
P.O. Box 4307  
Midway, KY 40347

Robert N. Kiefer  
139 Finch Court  
Vine Grove, KY 40175

Mark Lautenschlager  
Senior Consultant  
819 Chipaway Drive  
Apollo Beach, FL 33572

Donald T. Spangenberg, Jr.  
Project Manager  
Liberty Consulting Group  
633 Fairfax Street  
Denver, CO 80220

Robert W. Griffith  
Jennifer B. Swyers  
Stites & Harbison, PLLC  
400 West Market Street, Suite 1800  
Louisville, KY 40202



\_\_\_\_\_  
Counsel for Louisville Gas and Electric Company  
and Kentucky Utilities Company