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September 1, 2005

**HAND DELIVERY**

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

RECEIVED  
SEP 01 2005  
PUBLIC SERVICE  
COMMISSION

**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 Response to Motion for Leave to File Supplemental Memorandum and Affidavit in Support of Intervenors' Third Motion to Dismiss 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**

SEP 01 2005

PUBLIC SERVICE  
COMMISSION

**In the Matter of:**

<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>	)	

**RESPONSE OF LOUISVILLE GAS AND ELECTRIC COMPANY  
AND KENTUCKY UTILITIES COMPANY TO  
MOTION FOR LEAVE TO FILE SUPPLEMENTAL  
MEMORANDUM AND AFFIDAVIT IN SUPPORT OF  
INTERVENORS' THIRD MOTION TO DISMISS**

\*\* \*\* \*

**INTRODUCTION**

Intervenors Dennis and Cathy Cunningham (the "Cunninghams") have filed a pleading entitled "Motion for Leave to File Supplemental Memorandum and Affidavit in Support of Intervenors' Third Motion to Dismiss" ("Cunninghams' Motion") in which they contend that Louisville Gas and Electric Company and Kentucky Utilities Company (the "Companies") failed to produce an environmental study during discovery in this proceeding. The Cunninghams have also tendered a Supplemental Memorandum and Affidavit in Support of their Third Motion to Dismiss ("Cunninghams' Supplemental Memorandum"). For all of the reasons set forth below, the Cunninghams' Motion is without merit and should be denied.

## ARGUMENT

The premise of the Cunninghams' Motion is their contention that the Companies "have withheld a significant environmental study from this Commission's review."<sup>1</sup> That contention is based upon information provided to counsel for the Cunninghams pursuant to a Freedom of Information Act ("FOIA") request filed with Fort Knox.<sup>2</sup> In an affidavit attached to the Cunninghams' Motion, Jennifer Swyers, counsel for the Cunninghams, states that she was informed by a Fort Knox records custodian that LG&E had "provided to Fort Knox a copy of a study it commissioned entitled *Biological Field Survey Report, Proposed Electric Utility Easement, June 2005.*"<sup>3</sup> Noticeably absent from that Affidavit, however, is any discussion of the circumstances surrounding the referenced "*Biological Field Survey Report.*"

In point of fact, the purported "significant environmental study" referred to by the Cunninghams as having been "withheld" during discovery was not even in the Companies' possession until after discovery responses were filed and, most importantly, is nothing but a draft document which is part of an ongoing environmental review fully disclosed by the Companies. Throughout this proceeding, the Companies have consistently stated that they are undertaking a number of actions, in parallel with this matter, to allow them to be in a position to complete construction of the line at issue by 2010 to be able to meet the growing needs of their native load customers.<sup>4</sup> One such action is the evaluation of any environmental issues that may need to be addressed or related permits that may be required.<sup>5</sup> That process is underway, but has not been

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<sup>1</sup> Cunninghams' Motion at 1.

<sup>2</sup> Cunninghams' Supplemental Memorandum at 3.

<sup>3</sup> Affidavit of Jennifer B. Swyers ("Swyers Affidavit") attached as Exhibit 1 to the Cunningham Supplemental Memorandum, at ¶ 3.

<sup>4</sup> Direct Testimony of J. Nate Mullins ("Mullins Direct") at 2-3; Transcript of Evidence of July 27, 2005 hearing ("TE") at 33, 77-78, 80-82, 212-15, 248.

<sup>5</sup> *Id.*

completed.<sup>6</sup> As Mr. Mullins explained during the hearing, that process includes the Companies' involvement with an ongoing "Environmental Assessment, pursuant to NEPA, for the portion of the line that's [proposed to cross] Fort Knox."<sup>7</sup> Again, however, that process is still proceeding and the Companies "haven't completed any environmental studies" at this stage.<sup>8</sup>

The *Biological Field Survey Report* referred to in the Swyers Affidavit is part of the Environmental Assessment which is underway as described by Mr. Mullins.<sup>9</sup> Specifically, that Environmental Assessment is required, and will ultimately be submitted, by Fort Knox, and the Companies are assisting in that Assessment.<sup>10</sup> As part of that Assessment, a contractor was retained to conduct a field survey and study along the proposed line easement across the property of Fort Knox.<sup>11</sup> The contractor then submitted a draft document to Fort Knox, on or about July 1, 2005, specifically requesting "review and comment" on that draft.<sup>12</sup> It is that draft which is referenced in the Swyer Affidavit as the *Biological Field Survey Report*.<sup>13</sup> That same draft was not provided to the Companies until July 14, 2005, a week after the Companies filed their data responses in this proceeding.<sup>14</sup> Of key importance is that fact that, even as of the present date, the *Field Survey Report* is still in draft form and has not been finalized.<sup>15</sup>

Thus, there was, and still is, no environmental study to be produced in connection with this proceeding. Although such studies are underway, none, including the draft *Biological Field Survey Report* which forms the basis for the Cunninghams' motion, is yet complete.

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<sup>6</sup> TE at 212-15.

<sup>7</sup> *Id.* at 248.

<sup>8</sup> *Id.* at 215.

<sup>9</sup> Affidavit of Benjamin "Brandon" Grillon ("Grillon Affidavit"), attached as Exhibit 1 hereto, at ¶¶ 4-6.

<sup>10</sup> Grillon Affidavit at ¶ 3.

<sup>11</sup> *Id.* at ¶ 4

<sup>12</sup> *Id.* at ¶ 4-5.

<sup>13</sup> *Id.* at ¶ 6.

<sup>14</sup> *Id.* at ¶ 5. The Companies responses to the Cunninghams' Data Requests were filed on July 7, 2005. Although the Cunninghams complain in their Memorandum that the Companies responses were "nonresponsive," it is important to note that no motion to compel was ever made by the Cunninghams. See Cunninghams' Memorandum at 1.

<sup>15</sup> Grillon Affidavit at ¶ 6.

Accordingly, the Companies' responses to the Cunninghams' data requests were true and accurate at the time they were filed, and remain true and accurate today. Despite the Cunninghams' unfounded assertion to the contrary, no environmental studies have been withheld from the Cunninghams or from this Commission.

It is clear, therefore, that the Cunninghams' most recent Motion is based on incomplete and inaccurate information, and is without merit. For all of these reasons, that Motion should be denied and the Cunninghams' tendered Supplemental Memorandum should be stricken from the record. Moreover, for all of the reasons already set forth in the Companies' Post-Hearing Brief in this matter, the Cunninghams' Motion to Dismiss should be denied and the Companies should be granted the relief requested in their Joint Application and in their Brief.

In the event that the Cunninghams' Supplemental Memorandum is not stricken from the record, however, there is one further issue raised by the Cunninghams which requires a response. Specifically, the Cunninghams have also complained in their Supplemental Memorandum that the Companies were untimely in providing certain information relating to the Photo Science process. Specifically, the Cunninghams state that the Companies' July 19, 2005 production "effectively placed Intervenors at a significant disadvantage in reviewing the application."<sup>16</sup> Again, counsel for the Cunninghams has been selective in the presentation of facts to the Commission. This issue was covered in depth during the cross-examination of Mr. Mullins at the hearing in this matter.<sup>17</sup> The Companies timely produced a copy of the written study relating to the line at issue to the Cunninghams on July 7, 2005. That production reflects the only study relating to the route selection process for the line at issue here.<sup>18</sup> Then, in an effort to provide a disclosure which was as complete as possible, the Companies produced a copy of an earlier

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<sup>16</sup> Cunninghams' Supplemental Memorandum, p. 2.

<sup>17</sup> TE at 186-211.

<sup>18</sup> *Id.* at 207.

PowerPoint presentation which had been given by Photo Science to educate the Companies' management on "the processes that [Photo Science and the Companies] were going to use to select the final route or the preferred route."<sup>19</sup> Because of the informational, preliminary nature of that presentation, "sample" route segments were used, not actual full routes, and the presentation was not even specific to the line at issue in this proceeding.<sup>20</sup> That presentation was therefore not a study of alternative routes, and thus was beyond that actually requested by the Cunninghams' data requests. There can be no basis for complaint about the timing of the production of a document that was not even requested by the Cunninghams, but which was only produced voluntarily by the Companies to provide a complete record.

The Companies fully and accurately responded to the Cunninghams' data responses, and fully complied with the Commission's procedural schedule. The Cunninghams were in no way "disadvantaged" by the Companies in any way, and were given extensive leeway by the Commission in receiving numerous extensions of time to file discovery responses and testimony, being allowed to utilize numerous out of court statements and publications as evidence, and being permitted to call witnesses who had not been disclosed as testifying in advance of the hearing. The Cunninghams' continuing complaints about a lack of time to participate in this proceeding are simply baseless.

### **CONCLUSION**

For all of the foregoing reasons, LG&E and KU respectfully request that the Cunninghams' Motion for Leave to File Supplemental Memorandum and Affidavit in Support of Intervenor's Third Motion to Dismiss be denied, and that the Supplemental Memorandum be stricken from the record. Furthermore, and for all of the reasons set forth in their Post-Hearing

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<sup>19</sup> *Id.* at 193.

<sup>20</sup> *Id.* at 192-93.

Brief, LG&E and KU request that the Cunninghams' Third Motion to Dismiss be denied and that LG&E and KU be granted the relief requested in their Joint Application and Post-Hearing Brief.

Dated: September 1, 2005

Respectfully submitted,



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220 West Main Street  
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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 pleading has been served by mailing a copy of same, postage prepaid to the following persons on this 1st day of September 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  
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Elizabeth, IN 47117

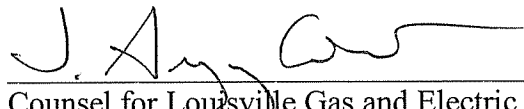
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Louisville, KY 40202

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



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

**In the Matter of:**

<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>	)	

**AFFIDAVIT OF BENJAMIN "BRANDON" GRILLON**

Affiant, having first been duly sworn, states as follows:

1. My name is Benjamin "Brandon" Grillon. I am employed as a Senior Civil Engineer for LG&E Energy Services, Inc., providing services to Louisville Gas and Electric Company and Kentucky Utilities Company (the "Companies"). I have personal knowledge of the matters stated herein.

2. I was present during the evidentiary hearing in this matter on July 27, 2005, and I have reviewed the Motion for Leave to File Supplemental Memorandum and Affidavit in Support of Intervenors' Third Motion to Dismiss, the Supplemental Memorandum, and the Affidavit of Jennifer Swyers recently filed on behalf of Dennis and Cathy Cunningham in this proceeding.

3. The Companies are currently assisting Fort Knox in conducting an Environmental Assessment for the portion of the transmission line at issue here which is proposed to cross Fort Knox. It is my understanding that the Environmental Assessment is required by, and will ultimately be submitted by, Fort Knox.

4. As part of that Environmental Assessment, a contractor, Jordan Jones & Goulding (“JJ&G”), was retained to conduct a field survey and study along the proposed line easement across the property of Fort Knox. JJ&G is also to prepare a *Biological Field Survey Report* setting forth the results of its work. A draft of the *Biological Field Survey Report* was completed in June 2005 and subsequently circulated for review and comment.

5. Specifically, JJ&G submitted a draft document to Fort Knox, on July 1, 2005, specifically requesting “review and comment” on that draft. That draft was then provided to the Companies by JJ&G on July 14, 2005. Copies of the transmittal documents accompanying the draft as sent to Fort Knox and to the Companies, and FedEx receipts showing dates of delivery, were provided to me by JJ&G in preparation for this Affidavit and are attached collectively as Exhibit A hereto.

6. The *Biological Field Survey Report* referred to in the Affidavit of Jennifer Swyers is, on information and belief, the draft document provided to Fort Knox by JJ&G on July 1, 2005. That *Report* is still in draft form and is not complete as of this date, and the Environmental Assessment is itself still ongoing.

Further, the Affiant sayeth not.





JORDAN  
JONES &  
GOULDING  
6801 Governors Lake Parkway  
Norcross, Georgia 30071  
Phone: (770) 455-8555  
Fax: (770) 455-7391

# LETTER OF TRANSMITTAL

July 13, 2005

JOB NO.  
4332013

Attention: Brandon Grillon

TO: Louisville Gas and Electric  
Attention: Mr. Brandon Grillon  
One Quality Street  
Lexington, KY 40507  
859-367-5763

RE: Proposed Electric Utility Easement – Ft. Knox, KY  
Biological Field Survey and Maps

Brandon:

WE ARE SENDING YOU  ATTACHED  UNDER SEPARATE COVER \_\_\_\_\_ THE FOLLOWING ITEMS:

- SHOP DRAWINGS     PRINTS     PLANS     CERTIFICATION  
 COPY OF LETTER     PAYROLLS     TEST REPORTS     \_\_\_\_\_

COPIES	DATE	NO.	DESCRIPTION
1	7/13/05		Proposed Electric Utility Easement – Biological Field Survey Report (bound)
1	7/13/05		Biological Field Survey Report – Figures 7a-7l (24 x 36)

THESE ARE TRANSMITTED AS CHECKED BELOW

- FOR APPROVAL     NO EXCEPTION TAKEN     SUBMIT \_\_\_\_\_ COPIES FOR DISTRIBUTION  
 FOR YOUR USE/FILES     MAKE CORRECTIONS NOTED     RETURN \_\_\_\_\_ CORRECTED COPIES  
 AS REQUESTED     AMEND AND RESUBMIT     RESUBMIT \_\_\_\_\_ COPIES FOR APPROVAL  
 FOR REVIEW AND COMMENT     REJECTED - (SEE REMARKS)     RETURN \_\_\_\_\_ APPROVED COPIES  
 \_\_\_\_\_

REMARKS:

Brandon:

We have enclosed one copy of the Fort Knox Biological Field Survey Report and Map for your records and review. Please call me if you have any questions.

Thanks,

Dan Rice  
678-333-0457

COPY TO Clay Doherty \_\_\_\_\_ SIGNED: \_\_\_\_\_



**JORDAN  
JONES &  
GOULDING**

6801 Governors Lake Parkway  
Norcross, Georgia 30071  
Phone: (770) 455-8555  
Fax: (770) 455-7391

# LETTER OF TRANSMITTAL

June 30, 2005

JOB NO.  
04332013

ATTENTION: Linda Gail Pollock (IMSE-KNX-OSE)

TO: Environmental Management Division  
Directorate of Base Operations Support  
ATTN: IMSE-KNX-OSE  
6th Avenue, Bldg 1110B  
Ft Knox, KY 40121-5000

RE: Proposed Electric Utility Easement – Ft. Knox, KY  
Biological Field Survey and Maps

502-624-3629

Ms. Pollock:

WE ARE SENDING YOU  ATTACHED  UNDER SEPARATE COVER \_\_\_\_\_ THE FOLLOWING ITEMS:

- SHOP DRAWINGS       PRINTS       PLANS       CERTIFICATION
- COPY OF LETTER       PAYROLLS       TEST REPORTS       \_\_\_\_\_

COPIES	DATE	NO.	DESCRIPTION
5	6/30/05		Proposed Electric Utility Easement – Biological Field Survey Report
5	6/30/05		Biological Field Survey Report – Figures 7a-7l (24 x 36)

### THESE ARE TRANSMITTED AS CHECKED BELOW

- FOR APPROVAL       NO EXCEPTION TAKEN       SUBMIT \_\_\_\_\_ COPIES FOR DISTRIBUTION
- FOR YOUR USE/FILES       MAKE CORRECTIONS NOTED       RETURN \_\_\_\_\_ CORRECTED COPIES
- AS REQUESTED       AMEND AND RESUBMIT       RESUBMIT \_\_\_\_\_ COPIES FOR APPROVAL
- FOR REVIEW AND COMMENT       REJECTED - (SEE REMARKS)       RETURN \_\_\_\_\_ APPROVED COPIES
- \_\_\_\_\_

### REMARKS:

Ms Pollock:

Please call me or Clay Doherty (912.354.7565) with any questions.

Thanks,

Dan (678-333-0457)

COPY TO \_\_\_\_\_

SIGNED: \_\_\_\_\_



Invoice Number: 04332013  
 Invoice Date: Jul 19, 2005  
 Account Number: 1005-1950-0  
 Page: 24 of 41

**FedEx Express Shipment Detail By Payor Type (Original)**

43310 10000

**Picked up: Jul 13, 2005      Payor: Shipper      Reference: 04332013**

- Fuel Surcharge - FedEx has applied a fuel surcharge of 10.50% to this shipment.
- Distance Based Pricing, Zone 3
- FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.

<b>INET</b>		<b>Sender</b>	<b>Recipient</b>	
Tracking ID	791134775951	Stephanie Hill	Brandon Grillon	
Service Type	FedEx Priority Overnight	JORDAN, JONES, & GOULDING, INC	Louisville Gas and Electric	
Package Type	FedEx Pak	8801 GOVERNORS LAKE PARKWAY	One Quality Street	
Zone	3	NORCROSS GA 30071 US	LEXINGTON KY 40507 US	
Packages	1			
Weight	1.0 lbs, 0.5 kgs	Transportation Charge		20.25
Delivered	Jul 14, 2005 09:53	Fuel Surcharge		1.81
Svc Area	AA	Discount		-3.04
Signed by	L.BROWN			
FedEx Use	000000000/0001508/	<b>Total Charge</b>	<b>USD \$</b>	<b>19.02</b>

43310 10000

**Picked up: Jun 30, 2005      Payor: Shipper      Reference: 04332013**

- Fuel Surcharge - FedEx has applied a fuel surcharge of 11.50% to this shipment.
- Distance Based Pricing, Zone 4
- FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.

<b>INET</b>		<b>Sender</b>	<b>Recipient</b>	
Tracking ID	790072001069	Stephanie Hill	Linda Gail Pollock	
Service Type	FedEx Standard Overnight	JORDAN, JONES, & GOULDING, INC	Environmental Management Divis	
Package Type	Customer Packaging	6801 GOVERNORS LAKE PARKWAY	6th Ave Bldg. 1110B	
Zone	4	NORCROSS GA 30071 US	FORT KNOX KY 40121 US	
Packages	1			
Weight	3.0 lbs, 1.4 kgs	Transportation Charge		26.50
Delivered	Jul 01, 2005 13:21	Discount		-3.98
Svc Area	A3	Fuel Surcharge		2.59
Signed by	M.HASTY			
FedEx Use	001602861/0001327/	<b>Total Charge</b>	<b>USD \$</b>	<b>25.11</b>