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April 10, 2014

UPS OVERNIGHT DELIVERY

Mr. Jeff R. DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RECEIVED

APR 11 2014

PUBLIC SERVICE
COMMISSION

Re: Jessamine-South Elkhorn Water District Response

Dear Mr. Derouen:

Delivered under cover of this letter is an original and ten (10) copies of my client's Motions to File Sur-Reply (with Sur-Reply attached) and to Incorporate Documents by Reference.

Sincerely,



Bruce E. Smith

Enclosures

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

APR 11 2014

PUBLIC SERVICE
COMMISSION

In the Matter of:

APPLICATION OF JESSAMINE-SOUTH ELKHORN)
WATER DISTRICT FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY TO)
CONSTRUCT AND FINANCE A WATERWORKS) CASE NO 2014 -00084
IMPROVEMENT PROJECT PURSUANT TO KRS)
278.020 AND 278.300)

APPLICANT'S MOTION TO FILE SUR-REPLY TO REPLY OF FOREST HILLS
RESIDENTS' ASSOCIATION, INC. AND T. LOGAN DAVIS TO APPLICANT'S
RESPONSE TO MOVANTS' MOTION TO INTERVENE

AND

MOTION TO INCORPORATE CERTAIN DOCUMENTS BY REFERENCE

The Applicant herein, Jessamine-South Elkhorn Water District (the "District"), by counsel respectfully moves that the Commission allow the District to file a Sur-Reply to the Reply of Forest Hills Residents' Association and T. Logan Davis ("Movant" that was filed with the Commission on April 8, 2014. The proposed Sur-Reply is tendered with this Motion and attached hereto.

The Movants' Reply clarifies that the Movants are seeking intervention as "nearby landowners" and alleges that as such, they are entitled to intervention. The Movants' Reply contains case citations that were not in the Movants' original Motion, but that the Movants now submit "command" the granting of their Motion to Intervene as "nearby landowners". Further, the Movants contend in their Reply that the intervention of the Attorney General is irrelevant to their Motion to Intervene, and the District seeks to briefly address this contention.

The District further moves that the Commission incorporate by reference pursuant to 807 KAR 5:001, Section 11(5) the following documents:

1. Motion to Intervene of Dennis Cunningham, dated June 4, 2005 in Case No. 2005-00142¹ (stamped “received” by the Commission on June 6, 2005);
2. Motion to Intervene of Dennis Cunningham, et al., dated and filed February 27, 2006 in Cases No. 2005-00467 and 2005-00472²; and
3. Motion to Intervene by listed customers/property owners dated December 23, 2005(stamped “received” by the Commission on December 27, 2005” in Case No. 2005-00467.³

The documents designated above are the actual Motions filed by intervening parties referred to by the Movants at page 5 of their Reply. The actual documents are directly relevant to the Movants’ claim that such interventions in these cases “command” that the Commission permit the Movants to intervene as “nearby landowners” in this water tank CPCN proceeding. The District respectfully moves that these records be incorporated by reference into the record in Case No. 2014-00084, so that the District may refer to the actual documents filed in those cases in responding to the Movants’ allegations with respect to these interventions.

¹ *In the Matter of Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky.*

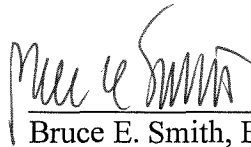
² Case Nos. 2005-00467, *In the Matter of Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky*; Case No. 2005-00472, *In the Matter of Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Alternative Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky.*

³ *Ibid*, Case No. 2005-00467

WHEREFORE, the District respectfully moves that the Commission accept the tendered Sur-Reply for filing herein and incorporate the documents described above by reference into this proceeding.

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AND



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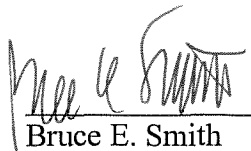
CO-COUNSEL FOR DISTRICT

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing Motion to File Sur-Reply and to Incorporate Documents was mailed to the following individuals, postage prepaid, on April 10, 2014.

Robert M. Watt, III, Esq.
Monica H. Braun, Esq.
300 West Vine Street, Suite 2100
Lexington, KY 40507

Jennifer Black Hans, Esq.
Gregory T. Dutton, Esq.
Assistant Attorneys General
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204



Bruce E. Smith

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**APPLICATION OF JESSAMINE-SOUTH ELKHORN)
WATER DISTRICT FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY TO)
CONSTRUCT AND FINANCE A WATERWORKS) **CASE NO 2014 -00084**
IMPROVEMENT PROJECT PURSUANT TO KRS)
278.020 AND 278.300)**

**APPLICANT’S SUR-REPLY TO REPLY OF FOREST HILLS RESIDENTS’
ASSOCIATION, INC. AND T. LOGAN DAVIS TO APPLICANT’S RESPONSE TO
MOVANTS’ MOTION TO INTERVENE**

For its Sur-Reply to Movants’ Reply dated April 8, 2014, Applicant Jessamine-South Elkhorn Water District (the “District” or “JSEWD”) states as follows.

1. Movants’ Alleged Special Interest in this Proceeding

The Movants admit that neither the Forest Hills Residents Association, Inc, (“Association”) nor T. Logan Davis are asserting their right to intervention as District customers. Instead, they assert a special interest as “nearby landowners”.¹

If adopted by the Commission, the Movants assertion would create a new class of participants with a protected special interest in Certificate of Public Convenience and Necessity cases filed under KRS 278.020(1) – “nearby landowners”. In the Movants view, apparently any

¹ Reply at page 4.

“nearby landowner” (undefined) should be permitted, not merely to have an opportunity to present that landowner’s views to the Commission, but to have full rights as parties in any CPCN application to challenge the construction of a facility on a “nearby” location of which they disapprove.

The Movants’ Reply is helpful in that it clarifies that the Movants do not allege any direct interest in this proceeding other than that they are “nearby landowners”. The first question, then, is whether “nearby landowners” have a protectable interest in a CPCN application for a water storage tank even when the proposed project does not result in the acquisition of their property or an easement over their property, or any direct physical impact on their property whatsoever, particularly where there is no specific statutory provision that grants such “nearby landowners” a direct interest in the matter at issue.

KRS 278.020(1) does not confer any special rights or status on “nearby landowners” in an application such as this. That KRS section does specify that certain issues may be considered by the Commission, such as promoting the use of Kentucky coal or considering the interstate benefits of high voltage transmission lines. Conspicuously absent from that statute is any language which would confer any special status whatsoever on “nearby landowners”.² Such “nearby landowners” have no special status and no direct statutory interest in a CPCN application such as this case.

The Movants are actually requesting that the Commission drastically expand the definition of “direct interest”. The Movants, however, claim that the “Commission would be breaking from a long-established line of cases if it denied intervention to Movants in this case because (they

² Also conspicuously absent is any language that confers or implies additional jurisdiction on the Commission to consider aesthetic complaints or speculation about real estate values from “nearby landowners” in a proceeding under KRS 278.020(1) requesting a water tank CPCN. By contrast, see for instance KRS 278.708.

allege) the Commission has routinely allowed nearby landowners to intervene in CPCN cases regardless of the Attorney General's intervention."³ As the only authority for this extraordinary claim, the Movants cite three cases decided almost concurrently, in which the Commission allowed parties to intervene in high voltage electric lines cases.⁴

What the Movants do not say is that high voltage transmission line cases have their own statutory provisions, which specifically give special status to landowners in high voltage electric transmission line cases, and particularly where the line passes over such landowner's property. In such cases, the PSC if requested is required to hold a public hearing in an affected county. KRS 278.020(8). Intervention in all of the cases cited by the Movants is subject to these special rules that recognize a special and direct interest in some landowners, but only in such cases.⁵

It is very significant that the Movants attempt to equate their new designation of "nearby landowners" with the claims of Cathy and Dennis Cunningham in Case No. 2005-00142⁶, a CPCN application for approval of a high voltage electric line. Attached hereto is a copy of Dennis Cunningham's Motion to Intervene⁷. It illustrates the very clear difference in statutory protected interests in the District's Application and a case filed under KRS 278.020(8). **First**, Dennis Cunningham was an actual customer, and so stated. **Second**, Dennis Cunningham specifically sought intervention pursuant to KRS 278.020(8). Mr. Cunningham obviously understood the significance of that statute. **Third**, and perhaps most important, Mr. Cunningham was not merely

³ Motion at page 4.

⁴ Motion at page 5.

⁵ Movants make no claim that KRS 278.020(8) applies to this proceeding, nor has this Application been filed in whole or in part pursuant to that statutory section.

⁶ *In the Matter of Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky.*

⁷ Pursuant to the District's Motion to file this Sur-Reply, the District has moved that this document be incorporated by reference into this proceeding. The attached copy from the Commission's web site is provided for convenience of referral.

a “nearby landowner” – his property, a nature preserve, was actually bisected by the proposed transmission line. The interest that the Movants assert and that of Mr. Cunningham could not be more diametrically opposed.

The Movants state that the Cunningham intervention **commands** that the Commission also allow the Movants to intervene.⁸ Far from “commanding” approval of the Movants Motion, the Cunningham intervention demonstrates why the authority cited by the Movants is inapplicable to the Movants’ claim. It also directly illustrates why the Movants’ claim of a protectable special interest cannot be sustained. A special interest created by KRS 278.020(8), with respect to the potentially extremely disruptive impact over many miles of high voltage electric transmission lines, does not apply generally to other proceedings that are not related to that statutory section or subject to the same potentially extreme impact.⁹

Movants do not cite any such legislative direction creating a special interest in a water tank siting case, because there is no such provision. The Movants are trying to bootstrap a special statutory rule into a case to which it has no relation. If the legislature intended to create a special interest for “nearby landowners” in water tank CPCN proceedings, it certainly could have done so, just as it did for certain landowners in KRS 278.020(8).

As further evidence that the legislature is fully capable of creating a special direct interest in certain landowners such as the Movants if it chooses, such a special interest has been specified for cell towers. KRS 278.665(2) requires that “every person who owns property contiguous to” the

⁸ Motion at page 5.

⁹ Other references by the Movants at page 5 of their Motion are similarly to interventions requested pursuant to KRS 278.020(8). The District has also moved that the relevant intervention motions be incorporated by reference into this proceeding. Each Motion notes both an interest as customers, and more significantly, that such motions are pursuant to KRS 278.020(8), which as noted above dramatically distinguishes these interventions from the Movants’ asserted special interest.

proposed site must be given notice by certified mail of the application and “informed of the opportunity to intervene”. There is no such provision conferring a special interest on “nearby landowners” in water tank CPCN cases.

Similarly, nearby landowners enjoy special status in merchant electric generating facility applications, including pre-application notice. KRS 278.706(2)(c). Indeed, any resident of a county is specifically held to be an interested party in such applications. KRS 278.712(4). Even more directly relevant to the Movants claim of a special interest, KRS 278.708 requires a site assessment report that specifically includes:

- 3(b) An evaluation of the compatibility of the facility with scenic surroundings;*
- 3(c) The potential changes in property values resulting from the siting, construction, and operation of the proposed facility for property owners adjacent to the facility*

Movants cite no similar provision giving them a direct interest due to their subjective view of scenic surroundings or speculations as to property values, because there is no such provision for water tank CPCN proceedings. What is clear is that the legislature is not only capable of creating a special direct interest for “nearby landowners” and specific authority for the Commission to consider other issues that are not otherwise properly considered in specific applications, it has done so in several specific instances, and has not done so for a water tank CPCN application pursuant to KRS 278.020(1). If the creation of a direct interest for “nearby landowners” in special cases such as EHV transmission lines, cell towers or merchant generating plants was already implied, there would be no need for the legislature to have created and designated such a special interest. Absent such authority, “nearby landowners”, however defined, have no special or direct interest

in this proceeding. This whole argument, however, does provide a concrete illustration of the extent to which granting the Movants' Motion will unduly complicate this proceeding.

1. The Presence of the Attorney General as a Party is Material

The Movants suggest that the intervention of the Attorney General in this proceeding is essentially meaningless as regards their proposed intervention. This is simply incorrect. The Movants do not establish how their intervention, which consists of one property owner and a non-customer mandatory association, gives such an individual and Association an interest that is not adequately represented by the Attorney General. As "nearby landowners" is not even defined, there is no basis for the Commission to find that this individual landowner has an interest that is any different from that of any other individual landowner. The Attorney General has already stated through his duly appointed agents that he is ready and willing to consult with and consider the legitimate interests of stakeholders such as Mr. Davis and to adequately represent those interests.¹⁰ The Movants have not presented any evidence to demonstrate that the Attorney General is not willing and able to represent the interests asserted by the Movants as well as the legitimate interests of all other landowners in the vicinity, however "nearby landowners" might be defined.

The gravamen of the Movants' complaints is that they do not believe that any other party will work quite as hard to prevent the construction of any elevated water tank, no matter how necessary for the public interest, on the Switzer site. Aside from this implacable position, the Movants have no interest that is any different from any other ratepayer or customer, or for that matter "nearby landowner", many of whom might wish to intervene as parties as well to express their opposition to any site other than the Switzer site, which has been owned and designated for

¹⁰ Response of the Attorney General dated April 2, 2014 at page 5.

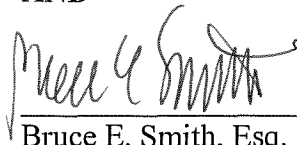
this purpose since long before the Forest Hills subdivision was even a draft drawing. The Commission should not permit the Movants to take this new application off on the same tangents as occurred previously. Instead, the Commission should stick to the paramount considerations in this application – service quality and reliability, as well as economic efficiency and cost – all of which are completely within the purview and expertise of the Attorney General.

Wherefore, the District respectfully requests that the Commission deny the Movants' Motion to Intervene, and allow the Movants to submit any comments that they have on the record as provided by 807 KAR 5:001(4)(11)(e).

Respectfully Submitted,

Anthony G. Martin, Esq.
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AND



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CO-COUNSEL FOR DISTRICT

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing Sur-Reply was mailed to the following individuals, postage prepaid, on April 10, 2014:

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300 West Vine Street, Suite 2100
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Gregory T. Dutton, Esq.
Assistant Attorneys General
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Frankfort, KY 40601-8204



Bruce E. Smith

Dennis L. Cunningham
CDH Preserve, LLC

2530 N Hwy 11 SE
Elizabeth, IN 47117
812-969-2015

June 4, 2005

Ms. Beth O'Donnell
Executive Director KY PSC
211 Sower Boulevard
PO Box 615
Frankfort, KY 40602

RECEIVED

JUN 6 2005

Secretary
Public Service Commission
211 Sower Boulevard
PO Box 615
Frankfort, KY 40602

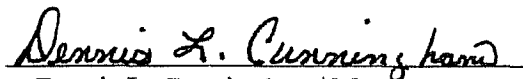
PUBLIC SERVICE
COMMISSION

RE: Docket Number 2005-00142
KU/LGE/E-ON Proposed 345,000 KV Transmission Line

Dear Executive Director;

Please find enclosed my Motion to Intervene in the matter of Docket Number 2005-00142 proposed 345,000 KV Transmission Line to be constructed by KU/LGE/E-ON on our private Nature Preserve located at 2697 Bethlehem Academy Road, Cecilia, Kentucky 42724 in the county of Hardin.

Sincerely,


Dennis L. Cunningham/ Manager
CDH Preserve, LLC

Enclosure: Motion to Intervene

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 6 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)
AND NECESSITY FOR CONSTRUCTION)
OF TRANSMISSION FACILITIES IN)
JEFFERSON, BULLITT, MEADE AND)
HARDIN COUNTIES, KENTUCKY)**

DOCKET NO. 2005-00142

MOTION TO INTERVENE

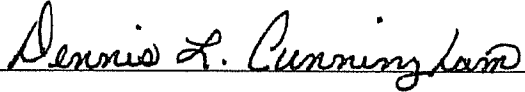
Comes, Dennis L. Cunningham, and for his Motion to Intervene in the above-captioned proceeding states as follows:

1. Movant is one half owner of real property located at 2697 Bethlehem Academy Road, Cecilia, Kentucky 42724, that will be directly affected by the proposed Transmission Line to run from Elizabethtown Substation to Mill Creek Generation Station.
2. The property is Movant's 150 acre private Nature Preserve as deed is recorded in said name of CDH Preserve, LLC a real estate holding company registered with the state of Kentucky and Indiana for the purpose of land preservation and is engaged in the protection of all wildlife and their habitat for future generations.
3. The property is visited by endangered species namely the Endangered Whooping Crane and is the summer residence of the Endangered Indiana Bat.
4. The property has a five (5) acre lake to be dissected through the center by proposed Transmission Line that threatens and endangers the life of thousands of birds, resident and migrating, along with adverse health affects on fish, frogs, turtles, and other resident wildlife such as deer, turkey, raccoons, and opossums by herbicide contamination during and after construction.
5. The property has twenty-five (25) acres of wetland woods to be dissected through the center by proposed Transmission Line and threatens endangered plant species and wet lands and wildlife habitats through clear cutting and use of herbicides during and after construction.

6. The property is a watershed for over 400 acres of wetland woods, old growth forest and farm land where run off water drains through the five (5) acre lake and twenty-five (25) acres of wetland woods from neighboring properties.
7. Movant is a KU/LG&E/E-ON consumer and rate changes due to construction cost of Transmission Line and TC-2 addition will have a direct impact on his electric rates.
8. Movant is adamant in his request that Certificate of Need and Necessity be denied since the application submitted by LG&E for Transmission Lines and TC-2 expansion is not necessary in order to meet the future energy demands of its customers and was submitted solely for “organic growth in Kentucky” on behalf of their parent company E-ON a private investor owned Foreign Power Broker with headquarters in Germany.

Wherefore Dennis L. Cunningham moves pursuant to KRS Section 278.020 (8) and 807 KAR 5:001 3 (8) to intervene.

Respectfully Submitted;



Dennis L. Cunningham/Manager
CDH Preserve, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was duly served this 4th day of June, 2005, by mailing, United States mail, first class postage prepaid, to the below listed persons:

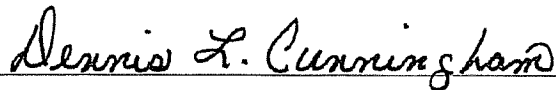
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Robert M. Watt, III
Lindsey W. Ingram, III
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Attorney General Greg Stumbo
Office of the Attorney General
State Capitol, Suite 118
Frankfort, Kentucky 40601

LaJuana S. Wilcher, Secretary
Environmental and Public Protection Cabinet
Kentucky Public Service Commission
P.O. Box 615
Frankfort, Kentucky 40602-0615



Dennis L. Cunningham/Manager
CDH Preserve, LLC

2530 N Hwy 11 SE
Elizabeth IN 47117

PLACE STAMP OR ENVELOPE TO THE RIGHT
OR ADDRESS POINT AT DOTTED LINE
CERTIFIED MAIL



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JUN 6 2005

PUBLIC SERVICE
COMMISSION

Ms. Beth O'Donnell, Executive Director
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Sincerely,



Cathy L. Cunningham/ Manager
CDH Preserve, LLC

Enclosure: Motion to Intervene

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION RECEIVED

In the Matter of:

JUN 6 2005

JOINT APPLICATION OF LOUISVILLE
GAS AND ELECTRIC COMPANY AND)
KENTUCKY UTILITIES COMPANY FOR)
A CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY FOR CONSTRUCTION)
OF TRANSMISSION FACILITIES IN)
JEFFERSON, BULLITT, MEADE AND)
HARDIN COUNTIES, KENTUCKY)

PUBLIC SERVICE
COMMISSION

DOCKET NO. 2005-00142

MOTION TO INTERVENE

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Wherefore Cathy L. Cunningham moves pursuant to KRS Section 278.020 (8) and 807 KAR 5:001 3 (8) to intervene.

Respectfully Submitted;

A handwritten signature in cursive script that reads "Cathy L. Cunningham". The signature is written in black ink and is positioned above a horizontal line.

Cathy L. Cunningham/Manager
CDH Preserve, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was duly served this 4th day of June, 2005, by mailing, United States mail, first class postage prepaid, to the below listed persons:

Kendrick R. Riggs
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1700 PNC Plaza
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