

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

JOINT APPLICATION OF )  
LOUISVILLE GAS AND ELECTRIC )  
COMPANY AND KENTUCKY UTILITES )  
COMPANY FOR THE CONSTRUCTION ) CASE NO.  
OF TRANSMISSION FACILITIES IN ) 2005-00467  
JEFFERSON, BULLITT, MEADE, AND )  
HARDIN COUNTIES, KENTUCKY )

JOINT APPLICATION OF )  
LOUISVILLE GAS AND ELECTRIC )  
COMPANY AND KENTUCKY UTILITIES )  
COMPANY FOR THE CONSTRUCTION ) CASE NO.  
OF ALTERNATIVE TRANSMISSION ) 2005-00472  
FACILITIES IN JEFFERSON, )  
BULLITT, MEADE, AND HARDIN )  
COUNTIES, KENTUCKY )

CUNNINGHAM, CDH PRESERVE, LLC, HARRISON AND HARDIN  
APPLICATION FOR REHEARING

\* \* \* \* \*

Come the Intervenors, Dennis L. Cunningham and Cathy L. Cunningham, CDH Preserve, LLC, Lisa Harrison and Jennifer Hardin, ("Cunningham/Hardin Intervenors") by and through counsel and file with the Public Service Commission their Application for Rehearing pursuant to KRS 278.400, as follows:

1. On May 26, 2006, the Public Service Commission ("PSC") entered an Order ("Order") in the above styled proceeding, which order notes that these Applicants were parties to the above proceeding and were in opposition to

the two applications for a Certificate of Public Convenience and Necessity ("CPNC") sought by Louisville Gas & Electric Company ("LG&E") and Kentucky Utilities ("KU"), collectively referred to as "LG&E/KU" or "Companies". That order granted a CPNC as requested in Case No. 2005-00467, and dismissed the request in Case No. 2005-00472 as moot. That order required a survey be filed after authorized changes and before construction begins, and authorized LG&E/KU to move to reopen the record for the limited purpose of resolving any disputes between any landowner and the companies for any proposed changes in the route of the line.

2. KRS 278.400 permits any party to a proceeding before the Public Service Commission, within 20 days after service of an order that makes a determination, and with service to be completed 3 days after the order is mailed, to apply for a hearing with respect to any matter determined. The application shall specify the matters on which a rehearing is sought.

**I. THE PSC SHOULD CURE THE FAILURE OF THE PSC TO MAKE FINDINGS AND CONCLUSIONS ON THE ISSUE OF COMPANY RESPONSE TO PUBLIC COMMENTS.**

3. The PSC Order correctly recites that as part of the procedural history of these proceedings, from January 6, 2006 through March 10, 2006, the PSC granted full and limited intervention to a number of individuals and entities including full intervention to these applicants, Cunningham/Hardin Intervenors. Page 3.

4. The PSC Order fails to indicate whether these Intervenors were in support of or opposed to the two proposed transmission lines, except for the Cunningham/Hardin Intervenors. Pursuant to KRS 278.400, the PSC should grant rehearing for the purpose of modifying the PSC Order to reflect the purpose sought by each of the Intervenors about which the PSC Order is silent. A determination of "*Public Convenience and Necessity*" requires a complete record of what the *public* said to the PSC. The determination required by the PSC is **not** what is convenient and necessary to the utility.

5. The PSC Order provides clearly inadequate summary of the KRS 278.020(8) local public hearing, held on March 6, 2006, stating merely that "One hundred nine people attended, with twenty-nine making oral comments and others submitting written comments." Page 3.

6. PSC Staff prepared an Intra-Agency Memorandum dated March 14, 2006 for the PSC that was submitted during

the formal hearing in this matter, which included a three page summary of that public hearing, including a summary of the oral comments, attached the sign in sheets and attached the written comments. These comments were overwhelmingly opposed to the two routes sought through Meade and Hardin Counties, including the opposition of State Representative Jimmie Lee and State Representative Gerry Lynn. According to this Staff Memorandum thirteen speakers made an explicit request that the PSC require more collocation with existing utility or transportation facilities. No member of the public spoke in support of these two routes, according to the Staff Memorandum.

7. The PSC Order fails to reflect what the public told the PSC at the local public hearing. A determination of "*Public Convenience and Necessity*" requires a complete record of what the *public* said to the PSC. The determination required by the PSC is **not** what is convenient and necessary to the utility. Unfortunately, the PSC Order, which omits any reference to the public concerns and requests - except for those who came to the formal hearing in Frankfort on March 28, 2006 and spoke there - appears to consider the local public hearing irrelevant, and appears to consider "*Utility Convenience and Necessity*" as the determination it must make.

8. Pursuant to KRS 278.400, the PSC should grant rehearing for the purpose of modifying the PSC Order to reflect the substance of the comments made at the local public hearing, about which the PSC Order is silent.

**II. THE PSC SHOULD CURE THE FAILURE OF THE PSC TO PROVIDE ANY FACTUAL OR LEGAL BASIS FOR DENYING CUNNINGHAM THE PROTECTION OF THE DOCTRINE OF *RES JUDICATA*.**

9. The PSC Order provides a Procedural History that these Applicants, Cunningham/Hardin Intervenors find to be factually incomplete and therefore misleading, as above described. In addition to the issues raised above, this section notes that Cunningham/Hardin Intervenors sought to make the entire record in Case No. 2005-00142 part of the record in this proceeding and this motion was granted. Page 4. This section notes that Cunningham/Hardin Intervenors moved to dismiss Case No. 2005-00467 based upon the doctrine of *res judicata*, but that the PSC denied this motion. The PSC Order fails to provide any factual or legal basis for such denial. Pursuant to KRS 278.400, the PSC should grant rehearing for the purpose of modifying the PSC Order to reflect the factual and legal basis for this denial, about which the PSC Order is silent.

10. The PSC Order then provides a Background, which refers to the Case No. 2005-00142, a proceeding involving

an application to approve a route by the same companies, which route was opposed by the Cunninghams and which application was denied and not appealed by LG&E/KU.

11. The PSC Order then provides an Analysis, beginning with reference to recent amendments to KRS 278.020. The Analysis includes the topics, Duplication of Facilities, Comprehensive Survey, Selection of Route, and Movement of the Line, before the Conclusion. Nowhere in the PSC Order is there a section that addresses Company Response to Public Comments.

12. In Case No. 2005-00142, the PSC determined that, "Finally, the Commission must address LG&E/KU's response to comments public witnesses gave at the July 5, 2005 [local public] hearing. In short, the Commission is disappointed with the approach the Company took and gives LG&E/KU and all other similar applicants notice that we expect a different response in future cases." Page 11. This analysis was followed by two pages of review from the record and discussion of the PSC understanding of what the General Assembly intended with the 2004 amendments to KRS 278.020, appearing to find that the General Assembly meant for the local public hearings to be "meaningful."

13. Since the PSC Order in this case omits any findings concerning what the public told the PSC at the

March 6, 2006 public hearing (see above) and omits any analysis of Company Response To Public Comments, it appears that the PSC has reversed the prior finding that the local public hearing shall be "meaningful" and now concludes that the PSC, as well as the companies, can ignore what the public said at the local public hearing. By this PSC Order, as written, the PSC has made the local public hearing on March 6, 2006 meaningless, and this PSC Order will support the precedent that public input from all future local public hearings can be ignored.

14. The silence in this PSC Order implies that the PSC determined that LG&E/KU somehow improved their response to public comments. If the PSC has reached that conclusion, the PSC Order must provide the factual basis in the record that supports such conclusion. See American Beauty Homes, Corp. v. Louisville and Jefferson County Planning and Zoning Com'r., 379 S.W.2d 450 (Ky. 1964), requiring that conclusions reached by administrative agencies be supported by evidence of record, without which such actions will be found to be arbitrary.

15. See Order in Case No. 2005-00154, a proceeding that was related to Case No. 2005-00142, and heard and decided on the same day last year. The Order in that case contains at page 10 an analysis of Company Response To

Public Comments, which was very similar to the analysis of this issues in Case No. 2005-00142.

16. See Order in Case No. 2005-00207, where at page 5, the order refers to the substance of statements made at the local public hearing, and included a section on Answer to Complaints, which included a reference to the orders in both 2005-00142, and 2005-00154, and a section titled Identification of and Response to Complaints, providing broad general guidance. Nothing in this order suggests that the PSC will no longer consider the substance of public comments and will no longer consider the company response to public complaints and will no longer determine whether the company has acted in good faith to address these comments and complaints, as this PSC ORDER fails to do.

17. Pursuant to KRS 278.400, the PSC should grant rehearing for the purpose of modifying the PSC Order to include an analysis of Company Response to Public Comments, about which the PSC Order is silent.

**III. THE PSC SHOULD ORDER THAT THE CPNC SHALL BE STAYED PENDING JUDICIAL REVIEW, WHERE DENYING SUCH STAY WILL MAKE JUDICIAL REVIEW MEANINGLESS.**

18. As noted, the PSC Order directs LG&E/KU to file a survey with the PSC before construction begins.



19. On May 30, 2006, four days after the PSC Order, LG&E/KU wrote to the Cunninghams (but not to the landowner, Intervenor CDH Preserve, LLC) to seek access to the CDH Preserve, LLC property to survey the route, to seek to proceed to construct the line across this property.

20. Under KRS 278.410, Cunningham/Hardin Intervenors have the right to seek review of the order of the PSC in the Franklin Circuit Court. That court has the power to provide injunctive relief in the manner and upon the terms provided by law.

21. Under KRS 278.450, the Cunningham/Hardin Intervenors have the right to appeal from the judgment of the Franklin Circuit Court.

22. Unless the PSC modifies the PSC Order to stay the effect of such order pending judicial review, the Cunningham/Hardin Intervenors due process right to judicial review may be made meaningless if such review occurs after the survey and construction of such line has commenced.

23. The PSC has the power and authority to modify the PSC Order in this case to suspend the effect of the order until the time to seek review in the Franklin Circuit Court has expired or, if such review is sought, until such time as the Cunningham/Hardin Intervenors have sought, and the

Franklin Circuit Court has determined their right to injunctive relief in that court.

24. Pursuant to KRS 278.400, the PSC should grant rehearing for the purpose of modifying the PSC Order to protect the Cunningham/Hardin Intervenors right of judicial review, to stay the effect of such order until the time to take review in the Franklin Circuit Court has expired and no such review has been sought, or, if review in the Franklin Circuit Court has been sought, to stay the order until the Franklin Circuit Court has considered and decided whether to impose a stay of such order by way of injunctive relief.

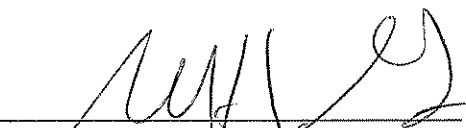
**WHEREFORE**, Counsel for Intervenors, Dennis L. Cunningham and Cathy L. Cunningham, CDH Preserve, LLC, Lisa Harrison and Jennifer Hardin, respectively prays the Public Service Commission to **GRANT** this Application for Rehearing to rehear and reconsider the determinations made in the PSC Order and to **MODIFY** such order to make the changes specified above:

- I. **THE PSC SHOULD CURE THE FAILURE OF THE PSC TO MAKE FINDINGS AND CONCLUSIONS ON THE ISSUE OF COMPANY RESPONSE TO PUBLIC COMMENTS.**
- II. **THE PSC SHOULD CURE THE FAILURE OF THE PSC TO PROVIDE ANHY FACTUAL OR LEGAL BASIS FOR DENYING**

CUNNINGHAM THE PROTECTION OF THE DOCTRINE OF RES  
JUDICATA.

III. THE PSC SHOULD ORDER THAT THE CPNC SHALL BE STAYED  
PENDING JUDICIAL REVIEW, WHERE DENYING SUCH STAY  
WILL MAKE JUDICIAL REVIEW MEANINGLESS.

Respectfully submitted,

  
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And

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was  
duly served by first class mailing and postage prepaid to  
the following:

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Kentucky Public Service Commission  
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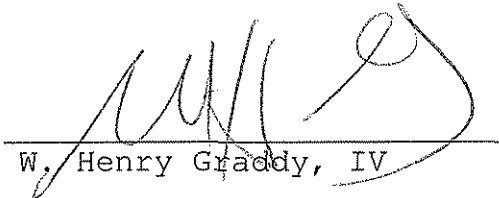
Hon. A. W. Turner  
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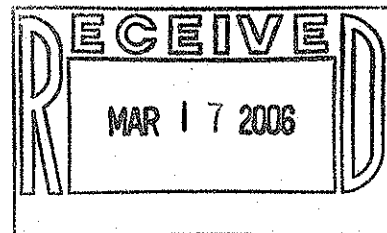
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This the 16 day of June, 2006.

  
\_\_\_\_\_  
W. Henry Graddy, IV



**INTRA-AGENCY MEMORANDUM**  
**KENTUCKY PUBLIC SERVICE COMMISSION**

**TO:** File: Case Nos. 2005-00467 and 2005-00472  
Louisville Gas & Electric Company and Kentucky Utilities Company  
Transmission Certificate Case

**FROM:** PSC staff

**DATE:** March 14, 2006

**RE:** Summary of comments received at public hearing - 3/6/06

The Kentucky Public Service Commission's (PSC) public hearing in Case Nos. 2005-00467 and 2005-00472 for an electric transmission line certificate requested by Louisville Gas and Electric Company and Kentucky Utilities Company (LG&E/KU or Applicants) convened at 6 p.m. EST on Monday, March 6, 2006, in the Pritchard Community Center, 404 S. Mulberry Street, Elizabethtown, Kentucky.

Present were Chairman Mark David Goss, Vice-Chairman Teresa Hill, Commissioner Greg Coker, and members of the PSC staff. The proceeding was videotaped.

One hundred nine members of the public attended the meeting. Twenty-nine of those people made oral comments to the PSC. Others also submitted written comments.

After Chairman Goss made introductory remarks, Hank Graddy and Bob Griffith, representing several of the intervenors, made opening statements. John Wolfram from LG&E/KU then made an opening statement on behalf of the Applicants.

The public comments were as follow:

- State Representative Jimmie Lee urged the Commission to deny a certificate for both lines. He said the 467 case is just a rehash of the line already rejected last year by the Commission. As for the 472 case, he said the Applicants should be required to collocate the line along existing rights-of-way. He said he understood why new lines must be built, but he urged the Commission not to require that they be over new property. He requested a re-examination of any cost studies showing collocated lines to be more expensive than ones over new property.
- State Representative Gerry Lynn endorsed the comments of Rep. Lee.
- Samuel Coyle owns three lots, and he said the proposed line would cut all of them corner to corner, taking the greatest possible portion of his land. The land is not good for farming, so he grows timber. He said if the timber is cut, the land will be useless. He urged more collocation.

- Dennis Cunningham and his wife own 150 acres. He said he should have the freedom to own his own land. He urged more collocation.
- Loetta Morris said her family's property would be impacted by the alternative line location. She said the property is already encumbered by a water easement, and she does not want it further encumbered.
- Aloma Williams Dew, representing the Sierra Club, urged collocation. She said the current two proposals threaten undeveloped areas, wetlands, and forests. She said the herbicides that the Applicants will use can affect wildlife and ground water. The lines will also have an adverse impact on the views in the area.
- Jennifer Hardin urged collocation. She said the proposed route will adversely affect 110 farms. Given the number and variety of the impacts (such as the loss of timber and the effect on future development), she questioned the adequacy of the compensation that owners would get in eminent domain cases.
- Johnny Jameson said a reliance on big transmission lines makes them vulnerable to ice storms. He suggested they should be placed along interstate highways and other roads.
- Mary Jent, who lives on a farm that has been in the family for 60 years, said the line will run between her house and the place where her son intended to build a house. It would cut her front field in half. She worries about the effect on her grandchildren.
- Joseph Bush urged collocation.
- Floyd Dobson questioned the adequacy of any compensation, saying the line would ruin his land for timber potential. He has lived on his 45 acres for 53 years, and he wants to leave it to his offspring in its current condition.
- Eugene Sheeran urged collocation to protect farms. He said the line would impact his full 80 acres of agricultural land, and he pointed out that when the farm land is gone, it's gone.
- James Thompson lives on an 80-acre farm, which would be cut in half in value by the line. He noted the taking of young timber, which is not ready to harvest, the visual impact, and the effects on the wildlife and migratory birds that use his land. He said he lives half a mile from the Cunninghams' preserve, and he would suffer in the same way they will.
- Richard Goodman would be affected by the alternate line location. He complained about not having been contacted or having enough information. He said he already has one line on his land.
- Hansell Pyle, Jr., said the 60-foot high, 50-year-old pines on his land would have to be cut. All his income comes from cattle farming, and he said if the line will impact wildlife and migratory birds, it will impact his cattle too. He urged collocation.
- Cathy Cunningham opposes both routes. She said the preferred route would take 1700 feet of prime road frontage on her land. She complained that the Applicants will disperse the electricity carried by the new line onto the wholesale market.
- Dan Hardaway's 110 acres will be impacted by both routes. He has 12,000 black walnuts trees that are 25 years old that will be adversely affected.

- Larry Edelen has two tracts of land that will be affected. He worried about the visual impact and how his tractor GPS equipment will operate.
- Charley House opposes both lines. His mother has 109 acres, which includes his father's grave, that will be impacted; and he owns 206 acres. His land already has one line on it, and the new line would connect with that one on his property. He wondered about underground transmission.
- Pat Losey said both lines would cut through the middle of her land. She has horses, cemeteries, and 53 acres of virgin timber that would be affected.
- Annette Straney opposes both lines. She has two farms, one of which would be cut in half, and she worried about the impact on her GPS equipment.
- Harold Sampson urged collocation. He said landowners should be allowed to maintain the value of their land even if collocation is more expensive. He said he has sinkholes where the lines would run, and there are cemeteries nearby.
- Edwin Snyder owns 700 acres, and both routes would go almost through the center. He has tree farms, and consultants have advised him on how best to preserve the timber. With the new line, he would lose a 200 foot swath and the consequent income. On his land are pioneer cabin sites and a house and outbuildings that are on the National Historic Registry. He said he has always tried to be a good citizen, demonstrated by his agreeing to have a water tower on the edge of his property. He does not believe he should also have to have this line.
- Bill Hay, a magistrate in Meade County, said the line runs through his district. He urged the Commission not to approve it unless it was absolutely required.
- Curtis Sutherland said the motivation for the proposed line is simply greed. He said the line should go straight rather than curve around as the Applicants have proposed.
- Terry Jenkins questioned the Applicants' estimates of the cost of collocation. She said the Commission should seek an independent source to determine the cost.
- Christy Hager spoke on behalf of her recently deceased grandfather. She said he would have wanted the Commission to deny the proposed route, which runs through the middle of his land.
- Alicia Null said the line would cut through her parents' property where she had hoped to build a house. She complained about the visual impact of the line and urged collocation.

Public comments concluded at about 9 pm EST, at which point Chairman Goss adjourned the hearing.