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AUG 11 2008

PUBLIC SERVICE
COMMISSION

W. Henry Graddy, IV
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August 7, 2008

Stephanie L. Stumbo
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

Re: Application to Rehear petition to intervene filed on behalf of Dennis and Cathy Cunningham, and CDH Preserve LLC in:
The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company, Case No. 2008-00148

Dear Ms. Stumbo:

Enclosed please find the original and ten (10) copies of the Application to Rehear the petition to intervene on behalf of Dennis and Cathy Cunningham, and CDH Preserve LLC in the above-referenced case.

If you have any questions, please contact me.

Very truly yours,


W. Henry Graddy, IV

Enclosures: Petition to Rehear (original and 10 copies)

Cc: Cathy Cunningham
Rick E. Lovekamp
Hon. Dennis G. Howard, II
Hon. Michael L. Kurtz
Geoffrey M. Young

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August 7, 2008

Hon. Kendrick R. Riggs
Hon. Robert M. Watts III
W. Duncan Crosby III
Stoll Keenon Ogden, PLLC
200 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202-2828

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PUBLIC SERVICE
COMMISSION

Hon. Allyson K. Sturgeon
Senior Corporate Counsel
E.ON U.S. LLC
220 West Main Street
Post Office Box 32010
Louisville KY 40232

Re: Application to Rehear the motion to intervene on behalf of Dennis and Cathy Cunningham, and CDH Preserve LLC;
The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company, Case No. 2008-00148

Dear Counsel for LG&E/KU:

Enclosed please find a copy of the Application to Rehear the motion to intervene filed on behalf of Dennis and Cathy Cunningham, and CDH Preserve LLC in the above-referenced case.

Please note that you failed to serve the undersigned with your Response in opposition to our previously filed Petition to Intervene. We request that, in the future, you show us the courtesy of providing us with a copy of any filing you make in response to any filing we have made. We are unable to read page 4 of your Response. Please provide us with that page.

If you have any questions, please contact me.

Very truly yours,

W. Henry Graddy, IV

Enclosures: Application to Rehear

Cc: ✓ Stephanie Stumbo
Cathy Cunningham
Rick E. Lovekamp
Hon. Dennis G. Howard, II
Hon. Michael L. Kurtz
Geoffrey M. Young

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

RECEIVED

AUG 11 2008

PUBLIC SERVICE
COMMISSION

In the Matter of:

THE 2008 JOINT INTEGRATED RESOURCE)	
PLAN OF LOUISVILLE GAS AND)	CASE NO.
ELECTRIC COMPANY AND KENTUCKY)	2008-00148
UTILITIES COMPANY)	

**CDH PRESERVE, LLC, DENNIS CUNNINGHAM,
And CATHY CUNNINGHAM
APPLICATION FOR REHEARING**

Pursuant to KRS 278.310 and 807 KAR 5:001 Section 3(8), and pursuant to KRS 278.400, CDH PRESERVE, LLC, DENNIS CUNNINGHAM, and CATHY CUNNINGHAM, by and through the undersigned counsel, respectfully APPLY for REHEARING of the Motion to the Commission to be granted Full Intervenor status in the above-captioned proceeding, which Motion was denied by Order of the Public Service Commission ("Commission") dated July 18, 2008, as follows:

1. The matter of intervention in any formal proceeding before the Commission is set forth in 807 KAR 5:001, Section 3(8)(b), which reads as follows:

(8) Intervention and parties. In any formal proceeding, any person who wishes to become a party to a proceeding before the commission may by timely motion request that he be granted leave to intervene. Such motion shall include his name and address and the name and address of any party he represents and in what capacity he is employed by such party.

(b) If a person granted leave to intervene desires to be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties, and to be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review, he shall submit in writing to the secretary a request for full intervention, which shall specify his interest in the proceeding. If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.

2. CDH PRESERVE, LLC, DENNIS CUNNINGHAM and CATHY CUNNINGHAM have a special interest in this proceeding not otherwise adequately represented. Dennis Cunningham and Cathy Cunningham are husband and wife and live at 2530 North Highway 11 SE, Elizabeth, Indiana, 47117. They have formed the limited liability company to own the property in Hardin County, in the name of CDH Preserve, LLC., which property is located at 2697 Bethlehem Academy Road, Cecilia, Kentucky. The Dennis and Cathy Cunningham purchased the first 46 acres in August, 2001, and they purchased an additional 104 acres in December, 2003. It is a beautiful rural landscape and they want to keep the farmland from being developed. They have 1/2 mile of road frontage on Bethlehem Academy Road, and 1/2 mile of road frontage on St. John's Road which makes up the 104 acres of prime farmland.

3. On July 18, 2008, the Commission entered an Order that denied the CDH/CUNNINGHAM Motion to intervene, asserting that the Cunninghams are the principals in CDH PRESERVE, LLC, "which was formed by the Cunninghams during the process of opposing the CPCN application:" This statement is in error. The

Cunninghams formed CDH PRESERVE, LLC prior to any notice to the Cunninghams that a CPCN was sought by the utilities. Specifically, CDH PRESERVE, LLC was formed on May 26, 2004. The Commission should amend and correct this factual error in the July 18, 2008 Order.

4. CDH PRESERVE, LLC, DENNIS CUNNINGHAM and CATHY CUNNINGHAM were granted Full Intervenor status in the related cases of PSC CASE No. 2005-00467 and CASE No. 2005-00472, and they were granted Full Intervenor Status in the earlier PSC CASE No. 2005-00142. These cases all involved the application of Louisville Gas & Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) for the construction of transmission facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky, proposed to cross the property of these Applicants for Intervention, where in each case, these Applicants for Intervention disputed the claim that such facilities were needed. These matters are currently on appeal, with motions for discretionary review filed by the PSC and by LG&E and KU and E.On U.S.A. LLC pending before the Kentucky Supreme Court.

4. CDH PRESERVE, LLC, DENNIS CUNNINGHAM and CATHY CUNNINGHAM are also the Defendants in litigation in Hardin County, Kentucky brought by KU seeking to condemn a right of way across their property – and through their nature preserve. These Defendants have challenged the claim of right to condemn their property while the Certificate of Public Convenience and Necessity for the transmission facilities is on appeal and on the basis that these facilities are not currently needed,

5. CDH PRESERVE, LLC, DENNIS CUNNINGHAM and CATHY CUNNINGHAM are customers and consumers of electrical power of KU.

6. The Commission entered an Order on July 18, 2008 that denied intervention to the Cunninghams and CDH Preserve, LLC, which order recited that LG&E/KU “point out in their response ...that Mr. and Mrs. Cunningham were parties to three prior cases before the Commission....” This recitation implies that the Cunninghams failed to disclose this existing and ongoing interest to the Commission in support of their Motion. In fact, the Motion filed by the Cuninghams/CDH Preserve, LLC expressly references each of these three Commission proceedings, at paragraph 3 [and paragraph 4 above], and references other litigation between these parties pending in Hardin County, at paragraph 4 [and paragraph 5 above].

7. The Order of the Commission then agrees with the argument of the Utilities that, “LG&E/KU allege in their response that this argument is merely a collateral attack on the CPCN.” Order page 11. The Commission has committed error in accepting this mis-characterization of the Cunningham/CDH motion. The Commission should rehear this matter and grant these Applicants the full intervention as requested for the following reasons:

A. This proceeding is an IRP – an Integrated Resource Planning proceeding.

It is NOT an application for a CPCN nor is it a rate case nor any other type of proceeding before the Commission that will result in an order or other action by the Commission. An IRP, as currently practiced, constitutes an investigation and results in a staff report. It is a fact gathering process. It may have persuasive influence on other proceedings before the Commission, including other proceedings that may result in Commission orders. However, participation as a party in an IRP proceeding cannot rise to the level of a direct

attack or collateral attack or any other kind of attack on a CPCN, because, quite bluntly, an IRP is a toothless proceeding.

Cunningham/CDH Preserve do not applaud this situation, and support proposed changes that would result in the IRP proceeding culminating in an order of the Commission. These applicants submit that the Commonwealth of Kentucky would be better served if the IRP proceedings were more accountable and more enforceable. However, that is not the case at present. The Utilities are so eager to silence other points of view that they exaggerate the impact of granting this intervention request. The Commission should rehear and reconsider the July 18, 2008 Order, and reject this Utility argument.

B. The PUBLIC Service Commission is a governmental entity that is mandated to serve the “Public” interest – not just the private interest of for-profit utilities. As the PUBLIC Service Commission, this Commission should welcome the participation of members of the public, especially those who have gone to the trouble and expense of retaining an attorney to seek to insure that their participation in the investigation involved in an IRP proceeding will follow Rules of Civil Procedure and other applicable rules.

It is not sufficient to dismiss an application for additional public participation because the Kentucky Attorney General is directed by statute to represent consumers before the Commission. In fact, that general, statewide mandate prevents the Attorney General from advocating from the perspective of those persons who have unique and special injury by caused or potentially caused by the Utilities. It is that specific interest of the Cunninghams and CDH Preserve, LLC that no one else represents and that is a

perspective that will inform the Commission staff, and, we believe, improve the quality and usefulness of the staff report in this proceeding.

The Public Service Commission should welcome enhanced public participation. In fact, that is precisely what the Kentucky General Assembly mandated with the 2004 amendments to KRS 278.020(8) providing for a public hearing in the county where a new electrical transmission line is proposed that will require a CPCN. No such similar mandate applies to an IRP proceeding, but none should be needed. As a matter of good public policy, the Commission should support the participation of members of the public, in particular where such members have been or will be particularly and uniquely impacted by Commission actions.

C. Finally, it was not the Cunninghams and CDH Preserve, LLC who introduced “environmental issues” into this proceeding – it was the Utilities. These Applicants seek to respond to issues the Utilities have introduced in this action. The Commission is referred to the April 23, 2008 Utility Application, Volume III, page 8, titled, **“Aggressive Green Scenario.”** In that portion of the Application, the Utilities attempt to set up a “straw man” and then “knock down” the straw man as unreasonable. The “Aggressive Green Scenario” is parallel to those advocates who dismiss renewable energy as “Environmental Extremists.” They have every right to be dismissive and disparaging – so long as the other side is allowed a chance to present the other point of view. Here, the Utilities seek to be dismissive of what they refer to as the “Aggressive Green Scenario.” The Cunninghams and CDH Preserve, LLC would like to provide the Commission staff with a response.

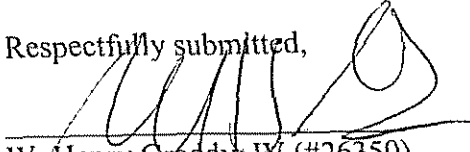
It is myopic for this Commission to assert that the Commission jurisdiction does not extend to “environmental issues.” Everything the Commission does is an environmental issue. Granted – this Commission cannot issue Clean Air Act construct and discharge permits. No one argues otherwise. But the jurisdiction of this Commission has already been invoked by these Utilities to address “environmental issues” such as the merits and demerits of the “Aggressive Green Strategy.” The Commission does not serve the public and handicaps its own decision-making capacity when it decides it only wants to hear one point of view.

8. The contents, facts and authorities of the Petition to Intervene filed on June 13, 2008 by the Cunninghams and CDH Preserve, LLC are incorporated herein by reference as if set forth fully herein, except as set forth in paragraph 9, below.

9. For purposes of avoiding confusion about who is the client and who is the attorney, Elizabeth Bennett does NOT apply to the Commission to rehear the Order of July 18, 2008, and will limit her participation to that of one of the attorneys for the Cunninghams and CDH Preserve LLC.

WHEREFORE, CDH PRESERVE, LLC, DENNIS CUNNINGHAM, and CATHY CUNNINGHAM respectfully APPLY to the Commission to REHEAR their Motion requesting leave to be granted Full Intervenor status in the above-captioned proceeding based upon a finding that they each have a special interest not adequately represented by other parties, and where they are able to help the Commission’s decision-making process without prejudice to any party.

Respectfully submitted,



W. Henry Graddy, IV (#26350)
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Midway KY 40347
hgraddy@aol.com
859-846-4905
859-846-4914 fax

CERTIFICATE OF SERVICE

I hereby certify that an original and ten copies of the foregoing Application for Rehearing of the Petition to Intervene were delivered to the office of Stephanie Stumbo, Executive Director of the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, KY 40601, and that copies were mailed to the following parties on this 7th day of August, 2008.

Rick E. Lovekamp
Manager, Regulatory Affairs
E.ON US Services, Inc.
220 West Main Street
Louisville, KY 40202

Honorable Dennis G. Howard II
Office of the Attorney General
Utility & Rate Intervention Division
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204

Honorable Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

Geoffrey M. Young
454 Kimberly Place
Lexington, KY 40503
Phone: 859-278-4966
E-mail: energetic@windstream.net

This the 7 day of August, 2008



W. Henry Graddy, IV

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