

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 19 2008

PUBLIC SERVICE
COMMISSION

In the Matter of:

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

**RESPONSE OF LOUISVILLE GAS AND ELECTRIC
COMPANY AND KENTUCKY UTILITIES COMPANY TO
THE MOTIONS OF GEOFFREY M. YOUNG, DENNIS
CUNNINGHAM, CATHY CUNNINGHAM, CDH PRESERVE LLC
AND ELIZABETH R. BENNETT FOR FULL INTERVENTION**

Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively “LG&E/KU” or the “Companies”) respectfully submit this response to the Motions of Movants, Geoffrey M. Young and Dennis Cunningham, Cathy Cunningham, CDH Preserve, LLC (“CDH”) and Elizabeth R. Bennett, for full intervention. The proposed intervenors do not have a special interest in this proceeding which is not otherwise represented and they are not likely to present issues or to develop facts that will assist the Commission in fully considering the issues in this proceeding without unduly complicating or disrupting the proceedings. Thus, the Motions should be denied.

Mr. and Ms. Cunningham are husband and wife and principals in CDH, which owns real estate in Hardin County, Kentucky, over which the Companies propose to construct a 345 kV transmission line. Mr. Young has appeared in at least three proceedings as a witness for Mr. and Ms. Cunningham and CDH opposing the construction of the line and the right to condemn an

easement for the transmission line.¹ The Cunninghams, CDH and others have sued the United States Department of the Army, the Fort Knox Garrison Commander, and the Companies in the United States District Court for the Western District of Kentucky alleging violations of the National Historic Preservation Act in connection with the same 345 kV transmission line.² Ms. Bennett is an attorney for the Cunninghams and CDH, being identified as part of W.H. Graddy & Associates, which appears as counsel for the Cunninghams, CDH and Ms. Bennett in their Motion for full intervention herein. According to the Motion, Ms. Bennett also is assisting in litigation against the Companies related to the issuance of an air quality permit for the Companies' new base load generating unit at their Trimble County Generating Station ("TC2"). Motion at 3. Thus, while there are four individuals and one entity that seek intervention, they are, in fact, all part of the Cunningham team³ whose mission is the defeat of the plans to construct the 345 kV transmission line over the CDH property.

Since this Commission has already granted the Companies a certificate of public convenience and necessity to construct the 345 kV transmission line, which certificate is the subject of an appeal by the Cunninghams, CDH and others, this proceeding is not the place to continue to contest the plans to construct the line. As indicated above, there are proceedings and forums, other than this case, in which the Cunninghams and CDH are currently pursuing their campaign against the transmission line. As to the pretextual grounds for intervention in the Motion, even those grounds do not support the Motion for full intervention.

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*, Case No. 2005-00142; *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 Nos. 2005-00467 and 2005-00472; *Kentucky Utilities Company v CDH Preserve, LLC and Farm Credit Services of Mid-America, FLCA*, Hardin Circuit Court Civil Action No. 07-CI-01875.

² *Harrison, et al v United States Department of the Army, et al*, Civil Action No. 3:08cv-105-H.

³ Interestingly, the Motion of the Cunninghams, CDH and Bennett contains text that is identical to text in Mr. Young's Motion. Compare paragraph 3 of Mr. Young's Motion with paragraphs 8 and 10 of the Motion of the Cunninghams, CDH and Ms. Bennett.

Their Motion is governed by the provisions of 807 KAR 5:001, Section 3(8)(b), which states:

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.

The Movants do not satisfy the regulatory requirements for full intervention in this proceeding.

First, all of the Movants are identified as customers of KU or LG&E, implying that such status gives them a special interest in this proceeding entitling them to full intervention. The Commission has been clear that a proposed intervenor's status as a customer is not a special interest entitling such person to full intervention, especially when, as here, the Attorney General has been granted full intervention. *In the Matter of: An Investigation Into East Kentucky Power Cooperative, Inc 's Continued Need for Certificated Generation*, Case No. 2006-00564, Order dated April 19, 2007, at 4-5 ("The interests of ratepayers are represented, as a matter of law, by the Attorney General. See KRS 367.150(8)(a). The Sierra Club's interest in costs to ratepayers is too remote to stand out as an interest not otherwise adequately represented in this proceeding.")

Second, the Movants identify their environmental concerns that they will presumably introduce in this proceeding if they are granted full intervention. The jurisdiction of the Commission is confined to the regulation of rates and service of utilities, KRS 278.040, not environmental issues.⁴ While environmental impacts of a utility's integrated resource plan are

⁴ In the public hearing in Elizabethtown, Kentucky, on March 6, 2006, in Case Nos. 2007-00467 and 2007-00472, the Chair of Commission advised those present that the Commission has no authority over environmental matters, whether they involve public or private lands.

Error

An error occurred while processing this page. See the system log for more details.

Commission detailed why he did not have a special interest and why his intervention would not assist the Commission and would be disruptive.

Fourth, all of the Movants, except Ms. Bennett, describe other cases in which they have been granted full intervention or, in the case of Mr Young, have testified on behalf of entities that were granted full intervention. That circumstance is not support for these Motions for full intervention. The Commission addressed the same argument by an entity seeking full intervention and denied the motion in *In the Matter of: Application of Kentucky-American Water Company for Approval of Accounting Accruals*, Case No. 2003-00478, Order dated May 3, 2004, at 3 (“As to FLOW’s claim that it is entitled to a presumption that it is likely to assist the Commission in this case because it has assisted the Commission in past cases, each case and each party’s request to intervene in such cases must be considered individually.”)

For all of the foregoing reasons, it is respectfully submitted that the Motions for full intervention of Geoffrey M. Young and of Dennis Cunningham, Cathy Cunningham, CDH Preserve, LLC and Elizabeth R. Bennett should be denied.

Dated: June 19, 2008

Respectfully submitted,



Kendrick R. Riggs
Robert M. Watt III
W. Duncan Crosby III
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202-2828
Telephone: (502) 333-6000

Allyson K. Sturgeon
Senior Corporate Counsel
E.ON U.S. LLC
220 West Main Street
Post Office Box 32010
Louisville, Kentucky 40232
Telephone: (502) 627-2088

Counsel for Louisville Gas and Electric
Company and Kentucky Utilities Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response was sent to the following parties of record by U.S. mail, postage prepaid, on this 19th day of June, 2008.

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

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



Counsel for Louisville Gas and Electric
Company and Kentucky Utilities
Company