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

OCT 06 2009
PUBLIC SERVICE
COMMISSION

In the Matter of:

**THE APPLICATION OF KENTUCKY)
UTILITIES COMPLANY FOR)
CERTIFICATES OF PUBLIC NECESSITY) CASE NO. 2009-00197
AND APPROVAL OF ITS 2009)
COMPLIANCE PLAN FOR RECOVERY)
BY ENVIRONMENTAL SURCHARGE)**

And

**THE APPLICATION OF LOUISVILLE GAS)
AND ELECTRIC COMPANY FOR)
CERTIFICATE OF PUBLIC) CASE NO. 2009-00198
CONVENIENCE AND NECESSITY AND)
APPROVAL OF ITS 2009 COMPLIANCE)
PLAN FOR RECOVERY BY)
ENVIRONMENTAL SURCHARGE)**

**CDH PRESERVE, LLC, DENNIS CUNNINGHAM,
AND CATHY CUNNINGHAM,
MOTION FOR LEAVE TO INTERVENE
AND FOR LEAVE TO FILE DIRECT TESTIMONY
BY NOT LATER THAN NOVEMBER 5, 2009**

Pursuant to KRS 278.310 and 807 KAR 5:001 Section 3(8), CDH PRESERVE, LLC, DENNIS CUNNINGHAM, and CATHY CUNNINGHAM, by and through the undersigned counsel, respectfully MOVE the Commission to be granted Full Intervenor status in the above-captioned proceedings, and to extend the time for the filing of direct testimony by the Intervenors until November 5, 2009, 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 in Hardin County, Kentucky. 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. 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, pending before the Kentucky Supreme Court.

4. CDH PRESERVE, LLC is also the Defendant in litigation in Hardin County, Kentucky brought by KU seeking to condemn a right of way across their property – and through the nature preserve. This Defendant and other property owners 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. That matter is also on appeal, now pending in the Kentucky Court of Appeals, which has issued a stay of construction to protect the right of meaningful judicial review. See PSC Case No, 2009-00325.

5. CDH PRESERVE, LLC, DENNIS CUNNINGHAM and CATHY CUNNINGHAM are customers and consumers of electrical power of KU and will be impacted by the KRS 278.183 surcharge if it is approved.

6. KU and LG&E operate several power plants in Kentucky that emit various pollutants into the air. See the above reference to TC2. This proposed facility would be located proximate to an existing coal-fired power plant in Trimble County (“TC1”). In addition, KU and LG&E operate other plants that cause significant air pollution including the E.W. Brown Station in Mercer County, which has three old, coal-burning power plants with a combined capacity of 697 megawatts (MW), and the Tyrone Station in Woodford County, which has a 71-MW coal-burning power plant built in 1953. KU/LG&E also operate large, coal-burning power plants in Carroll County, Muhlenberg County, Jefferson County, as well as Trimble County. (*Kentucky’s Electric Infrastructure: Present and Future*, PSC, 2005, pp 15-16).

The age of these plants was questioned by the PSC Staff in Question No. 1 of the Staff Second Data Request to KU dated September 11, 2009.

7. Last year, the Brookings Institute released the *Blueprint for American Prosperity*, subtitled *Shrinking the Carbon Footprint of Metropolitan America*, which ranked the per capita carbon emission for the 100 metropolitan areas within the United States of America. Lexington Kentucky had the nation’s highest per capita carbon emissions, with each resident responsible for emitting 3.455 metric tons per year. Following Indianapolis, the Cincinnati/Northern Kentucky area was third in the nation, with 3.281 metric tons per year. Following Toledo, the Louisville/S. Indiana area was fifth in the nation, with 3.233 metric tons per year. See attached to the petition filed by these parties to intervene in the IRP proceeding, PSC Case No. 2008-00148.

8. Within the past year, the United States Environmental Protection Agency has disapproved the air quality permit sought by LG&E for the TC2 facility, most recently

by order of Administrator Lisa Jackson on August 12, 2009, and earlier, on June 5, 2009 by letter of objection from US EPA Region IV to the Director of the Kentucky Division of Air Quality. These disapprovals provide the PSC with a basis to re-examine the scheduled start-up and operation of the TC2 facility. If that facility is not permitted or if it is not needed by June 2010, the imposition of these surcharges are likewise able to be delayed.

9. There is a growing body of evidence that the PSC should examine as part of this application for certificates of public convenience and necessity and the application for an environmental surcharge. See FERC Press June 18, 2009 Release:

New FERC study assesses state-by-state potential for demand response

The Federal Energy Regulatory Commission (FERC) today released a national assessment of demand response that estimates the potential for demand response, both nationally and for each state, through 2019.

The assessment, *A National Assessment of Demand Response Potential*, finds the potential for peak electricity demand reductions across the country is between 38 gigawatts (GW) and 188 GW, up to 20 percent of national peak demand, depending on how extensively demand response is applied. This can reduce the need to operate hundreds of power plants during peak times.

The study also makes recommendations for overcoming barriers to more use of demand response. By reducing electricity consumption at peak times like hot summer afternoons, when the most expensive generators are called into service, demand response can lower the cost of producing electricity. The assessment will be sent to Capitol Hill Friday to fulfill FERC's first Energy Independent and Security Act of 2007 reporting requirement on demand response. Congress also directed FERC to develop a National Action Plan on Demand Response, which is due to Congress in June 2010.

"This study takes a flexible, real-world approach to gathering information on the potential for demand response," FERC Chairman Jon Wellinghoff said. "It also makes available to the public an easy-to-use spreadsheet model, complete with data inputs and assumptions, so that states, utilities and other interested parties can make updates or modifications based on their own data and policy priorities."

To estimate the potential for demand response under several types of programs, the assessment follows four scenarios in five- and 10-year horizons: Business as Usual,

Expanded Business as Usual, Achievable Participation, and Full Participation. In comparing the Full Participation scenario with the Business as Usual scenario, the report estimates that demand response programs could reduce the projected 2019 peak load by as much as 150 GW. The results under the four scenarios illustrate how the demand response potential increases under various assumptions, such as the number of customers participating and the use of "smart" electric appliances with "dynamic" electric rates that change with system conditions.

The assessment also provides, for the first time, estimates of demand response potential for each of the 50 states and the District of Columbia. It estimates the demand response potential for residential and other types of electric customers in each state and analyzes the effect of using technologies, such as programmable thermostats, to assist consumers achieve the estimated potential.

The study and spreadsheet model are available on the FERC website: www.ferc.gov.

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The full study: <http://www.ferc.gov/industries/electric/indus-act/demand-response/dr-potential.asp>

This study projected that at full participation Kentucky could accomplish a 17.5 % total potential peak load reduction from demand response by 2019.

10. In addition to the US EPA disapproval of the air quality permit for the TC2 facility, the applicants are lacking other required permits for the facilities for which they are seeking to recover a KRS 278.183 surcharge. See notice of public hearing on November 5, 2009 for the LG&E application for a new KPDES Permit discharge permit into the Ohio River. This draft permit is for the coal combustion waste from the existing Trimble County Unit No. 1 facility (566 MW) and for the Unit 2, (750 MW) with the note "under construction and scheduled for operation in 2010" The Public Service Commission consideration of the merits of the 2009 environmental compliance plan and the request for cost recovery by a surcharge would benefit from the legal and engineering comments that will be submitted to the Division of Water in opposition to the draft permit. For this reason, these Applicants for intervention request that the date for submittal of directed

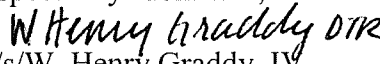
testimony set forth in the August 6, 2009 order now set for October 6, 2009, be extended to November 5, 2009. Note that studies requested by the PSC in the PSC Data Request relating to ATC Associates appear to have not been completed and may not be completed until November 15, 2009. See Voyles Response to PSC Staff Question 2. This lack of relevant data provides another basis for granting additional time for Intervenors to file their Direct Testimony

11. CDH PRESERVE, LLC, DENNIS CUNNINGHAM, CATHY and CUNNINGHAM intend to play a constructive role in the Commission's decision-making process and their participation will not prejudice any party.

WHEREFORE, CDH PRESERVE, LLC, DENNIS CUNNINGHAM, and CATHY CUNNINGHAM respectfully MOVE 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.

Further these parties MOVE the PSC to amend the Appendix to the August 6, 2009 scheduling orders which currently requires Intervenor testimony, if any, in verified prepared form to be filed no later than October 6, 2009, and request that such date be amended to November 5, 2009, with the public hearing to be held 30 days thereafter.

Respectfully submitted,



/s/W. Henry Graddy, IV

W. Henry Graddy, IV (#26350)

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion was emailed on October 6, 2009, and that the original and twenty copies of the foregoing Motion to Intervene and Motion to Amend Scheduling Order will be delivered to the office of Jeff Derouen, Executive Director of the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, KY 40601, on October 6, 2009 and that copies were mailed to the following parties on that date.

Lonnie Bellar, Vice President
Manager, Regulatory Affairs
E.ON US Services, Inc.
220 West Main Street
Louisville, KY 40202

Robert M. Conroy
Director, Rates
Louisville Gas and Electric Co.
P.O. Box 32010
Louisville, KY 40202

Hon. Kendrick Riggs
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 W. Jefferson Street,
Louisville, KY 40202-2828

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

This the 6 day of October, 2008

W Henry Graddy, IV
/s/W. Henry Graddy, IV
W. Henry Graddy, IV

NOTICE OF KPDES PUBLIC HEARING

KPDES No. KY0041971

Date of Public Hearing: November 5, 2009
Time of Public Hearing: 6.30 p.m. e.s.t.
Comments Due By: November 5, 2009

The Director of the Kentucky Division of Water, Department for Environmental Protection, has scheduled a Public Hearing for the purpose of soliciting input and comments from concerned individuals on this draft permit.

TRIMBLE COUNTY GENERATING STATION (Louisville Gas & Electric), 487 Corn Creek Road, Bedford, KY. KPDES No. KY0041971, AI No. 4054. This permit action involves the reissuance of a major KPDES permit for a new source coal-fired steam electric generation facility.

This hearing will be held on **November 5, 2009 at the Morgan Community Center, 147 Victory Avenue, Bedford, Kentucky**. So that all comments receive full consideration, they are not responded to at the hearing. However, all comments will be considered by the Division prior to any final action and a response to comments prepared in accordance with 401 KAR 5:075, Section 11 and 12. Persons wishing to comment upon, support or object to this proposed action are invited to submit comments to the Division of Water, Surface Water Permits Branch, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. **All comments must be received by November 5, 2009.** The permittee's name and KPDES number should be included in the first page of the comments.

Additional information or copies of the draft permit may be obtained by contacting Morgan Elliston or Larry Sowder, Division of Water, Surface Water Permits Branch at (502) 564-3410. Three (3) days advance notice may be required for inspection of files.

The meeting facility is accessible to people with disabilities. The cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. If an interpreter or other auxiliary aid or service is needed, contact Ann Workman in the Energy and Environment Cabinet, Division of Water, Surface Water Permits Branch before October 18, 2009 (502) 564-3410 between 8:00 a.m. and 4:30 p.m. (e.s.t.).