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October 16, 2009

Mr. Jeff DeRoun
Executive Director
Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

RECEIVED
OCT 16 2009
PUBLIC SERVICE
COMMISSION

RE: In the Matter of: THE APPLICATION OF KENTUCKY UTILITIES
COMPANY CONCERNING THE NEED TO OBTAIN CERTIFICATES OF PUBLIC
CONVENIENCE AND NECESSITY FOR THE CONSTRUCTION OF TEMPORARY
TRANSMISSION FACILITIES IN HARDIN COUNTY, KENTUCKY
Public Service Commission Case No. 2009-325

Dear Mr. DeRouen

Enclosed find one original and ten copies of our Motion to Intervene in the above
styled case.

Very truly yours,


W. Henry Graddy, IV

CC: Mr. Lonnie Bellar
Mr. Rick E. Lovekamp
Hon. Allyson K. Sturgeon
CDH LLC, c/o Ms. Cathy Cunningham
Violet Monroe
Mary Jent

WHG: dtr

RECEIVED

OCT 16 2009

PUBLIC SERVICE
COMMISSION

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

In the Matter of:

THE APPLICATION OF KENTUCKY)	
UTILITIES COMPANY CONCERNING)	
THE NEED TO OBTAIN CERTIFICATES)	CASE NO.
OF PUBLIC CONVENIENCE AND)	2009-00325
NECESSITY FOR THE CONSTRUCTION)	
OF TEMPORARY TRANSMISSION)	
FACILITIES IN HARDIN COUNTY,)	
KENTUCKY)	

**CDH PRESERVE, LLC, DENNIS CUNNINGAM,
CATHY CUNNINGHAM, VIOLET MONROE,
AND MARY JENT
MOTION FOR LEAVE TO INTERVENE**

Pursuant to KRS 278.310 and 807 KAR 5:001 Section 3(8), CDH PRESERVE, LLC, DENNIS CUNNINGHAM, CATHY CUNNINGHAM, VIOLET MONROE and MARY JENT, by and through the undersigned counsel, respectfully MOVE the Commission to be granted Full Intervenor status in the above-captioned proceedings, as follows:

1. The matter of intervention in any formal proceeding before the Public Service Commission (PSC) 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, CATHY CUNNINGHAM, VIOLET MONROE and MARY JENT 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, and 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. VIOLET MONROE owns and lives on property in Hardin County, Kentucky, which is located at 1798 Bethlehem Academy Road, Cecelia, KY 42724. MARY JENT

owns and lives on property in Hardin County, Kentucky which is located at 9796 Rineyville-Big Springs Road, Rineyville, KY 40162.

3. CDH PRESERVE, LLC, DENNIS CUNNINGHAM, CATHY CUNNINGHAM, VIOLET MONROE and MARY JENT 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, VIOLET MONROE and MARY JENT are also the Defendants in litigation in Hardin County, Kentucky, brought by KU seeking to condemn a right of way across their property. 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. 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.

5. On August 3, 2009, E.On U.S. LLC wrote to the PSC to advise that LG&E and KU (the “Companies”) planned to file an application concerning the claimed need that the Companies asserted to build three temporary transmission line segments to complete the transmission line of approximately 42 miles as described in Case No. 2005-00467. The

letter stated that three landowners affected by the already-certificated 42 miles of transmission line have “created significant litigation delays that have thus far prevented the Companies from completing the transmission line...” “The proposed temporary transmission line segments work around these landowners to allow the 42 miles of transmission line to be energized in a timely manner, and will only remain in place until the permanent line is complete.”

6. On September 3, 2009, KU filed the application as above referenced, which application references litigation currently pending in the Kentucky Supreme Court where these Applicants are seeking judicial review of the legality of the CPCN issued in Case No. 2005-00467, at footnote 7, and the condemnation cases involving these Applicants now pending before the Court of Appeals, at footnote 8. The application recites that the cost that KU will incur to build a temporary transmission line around Applicant CDH will be \$3.0 million and the cost to build a temporary transmission line around Applicant Jent will be \$3.9 million. Application, paragraph 8.

7. The Applicants for Intervention seek to intervene to be heard that the application as submitted by KU will, if approved, result in a wasteful duplication of facilities, clearly contrary to controlling law governing the PSC. The wasteful duplication of facilities results from at least two perspectives:

A. The basis for seeking the temporary easements is to have the transmission line completed before the TC2 comes on line. See application, paragraph 5: “They [the transmission facilities that make up the MC-HC line] will need to be in service when TC2 comes on line in the second quarter of 2010.” However, the more cost effective response to that claim and the response that avoids wasteful duplication of facilities is to delay the

date by which TC2 comes on line. The TC2 facility is not currently needed and is not currently permitted, and under these circumstances, such delay is appropriate for the ratepayers, including these Applicants to Intervene.

B. If KU wishes to construct the transmission lines around the properties of these Applicants for Intervention, the PSC should approve such alternative routes as a permanent modification of the route the PSC approved in Case No. 2005-00467, and thereby avoid wasteful duplication of facilities.

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 temporary transmission line at a cost of \$6.9 million is not needed and the completion of the MC-HC 42 mile transmission line is able to be delayed, without any wasteful duplication of facilities.

9. There are other factors that will affect when and whether the TC2 facility is needed. There is a growing body of evidence that the PSC should examine as part of this application for certificates of public convenience and necessity. 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.

R-09-23

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

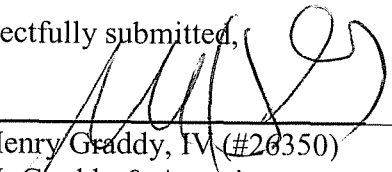
This study projected that at full participation Kentucky could accomplish a 17.5 % total potential peak load reduction from demand response by 2019.

10. In addition to the US EPA disapproval of the air quality permit for the TC2 facility, LG&E is lacking another required permit the TC2. See attached 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.” These Applicants for Intervention anticipate that the Companies will assert that LG&E already has this KPDES permit and that point is not in dispute. However, the KPDES permit that it has is for the existing Unit Number 1 and not for TC2.

11. CDH PRESERVE, LLC, DENNIS CUNNINGHAM, CATHY CUNNINGHAM, VIOLET MONROE and MARY JENT 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, CATHY CUNNINGHAM, VIOLET MONROE and MARY JENT 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.

Respectfully submitted,



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CERTIFICATE OF SERVICE

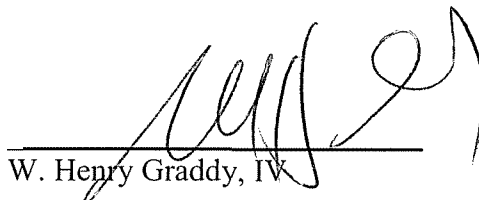
I hereby certify that the original and ten copies of the foregoing Motion to Intervene will be delivered to the office of Jeff Derouen, Executive Director of the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, KY 40601, and that copies were mailed to the following parties:

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

Rick E. Lovekamp
Manager-Regulatory Affairs
E.ON US Services, Inc.
220 West Main Street
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Honorable Allyson K. Sturgeon
Senior Corporate Counsel
E.ON US Services, Inc.
220 West Main Street
Louisville, KY 40202

This the 16 day of October, 2008



W. Henry Graddy, IV

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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.).