

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

This matter is before the Commission upon a petition to intervene filed by CDH Preserve, LLC, Dennis Cunningham, Cathy Cunningham, Violet Monroe, and Mary Jent (collectively "Petitioners"). Dennis and Cathy Cunningham, through their limited liability company, CDH Preserve, LLC, own 150 acres of farmland in Hardin County, Kentucky. The Cunninghams state that they want to keep the farmland from being developed. Ms. Monroe and Ms. Jent are also property owners in Hardin County, Kentucky. Petitioners assert that they have a special interest in this proceeding that is not otherwise adequately represented, which justifies intervention under Commission regulation 807 KAR 5:001, Section 3(8)(b).

Petitioners note that they were previously granted intervention in three prior cases in which Kentucky Utilities Company ("KU") and its sister company, Louisville Gas and Electric Company ("LG&E"), requested authority to construct transmission facilities that would cross their respective properties and that they challenged the need for those

facilities in those cases.<sup>1</sup> They also state that they have taken separate legal action to oppose and challenge KU's efforts to obtain by condemnation a right-of-way across their properties.

This current proceeding involves KU's request for Certificates of Public Convenience and Necessity ("CPCN") to construct two temporary transmission line segments. According to KU, these temporary transmission line segments are needed to complete the previously certificated 42-mile transmission line running from LG&E's Mill Creek Generating Station to KU's Hardin County Substation in Elizabethtown ("MC-HC Transmission Line") before the Trimble County 2 Generating Unit ("TC2") goes online.

Petitioners argue that KU's request would result in a wasteful duplication of facilities. Petitioners contend that the more cost-effective option is to delay the date by which TC2 comes online because, according to Petitioners, the TC2 facility is not currently needed and does not currently have all necessary operating permits. In support of their contention, Petitioners cite to a recent decision by the United States Environmental Protection Agency ("EPA") disapproving an air permit for LG&E's operation of TC2. Petitioners also assert that LG&E and KU have not obtained other

---

<sup>1</sup> Case No. 2005-00142, Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky (Ky. PSC Sept. 8, 2005); Case No. 2005-00467, Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade and Hardin Counties, Kentucky (Ky. PSC May 26, 2006); and Case No. 2005-00472, Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Alternative Transmission Facilities in Jefferson, Bullitt, Meade and Hardin Counties, Kentucky (Ky. PSC May 26, 2006).

necessary operating permits, including a Kentucky Pollutant Discharge Elimination System (“KPDES”) permit at the Trimble County Generating Station.

Petitioners also cite to a recent study issued by the Federal Energy Regulatory Commission (“FERC”) assessing demand response, both nationally and by states, which projects that, with full participation in demand response, Kentucky could achieve a total potential peak load reduction of 17.5 percent by 2019. Petitioners argue that this study will affect when and whether the TC2 facility is needed.

Lastly, Petitioners contend that, if KU’s request to construct temporary transmission lines is approved, the temporary lines should be constructed as a permanent modification of the previously approved MC-HC Transmission Line.

KU filed a response in opposition to the Petitioners’ request for intervention, citing numerous grounds in support of a denial of the petition. KU argues that Petitioners have no standing or special interest in this proceeding because the proposed temporary transmission facilities would not reside on, cross over, or otherwise impact or impinge upon any of Petitioners’ properties. KU contends that Petitioners cannot claim that their status as KU customers endows them with a special interest that is not otherwise adequately represented in this matter, noting that the interests of Petitioners are adequately protected because the Commission represents the public interest.

KU further argues that Petitioners are not likely to present issues or develop facts that will assist the Commission in fully considering this case without unduly complicating or disrupting the proceedings because their petition to intervene: (1) includes no information to indicate that they have any particular knowledge, experience or expertise

relating to the need for the temporary transmission line segments proposed here; and (2) questions the need and timing for TC2, and the pursuit of those issues constitutes a collateral attack on the Commission's prior approval of construction of TC2.

In response to the claim that the EPA disapproved an air permit for TC2, KU states that the air permit was issued, that the permit is still valid, and that, although negotiations are ongoing to address the comments and concerns raised by EPA, KU expects to be able to operate TC2 with no changes to the emission control equipment. With respect to the KPDES permit, the response states that there is an existing permit and a renewal and modification of that permit has been requested. Finally, the response notes that the Commission has previously denied intervention when, as here, attempts are made to raise environmental issues that are beyond the scope of the Commission's jurisdiction.

Based on the motions and being otherwise sufficiently advised, the Commission finds that the Attorney General of the Commonwealth of Kentucky is the only person who has a statutory right to intervene in a Commission case. KRS 367.150(8). All other persons may request permissive intervention. In a recent, unreported case, EnviroPower, LLC v. Public Service Commission of Kentucky, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007), the Court of Appeals ruled that "the PSC retains the power in its discretion to grant or deny a motion for intervention," but that this discretion is not unlimited. The Court then enumerated the limits on the Commission's discretion in ruling on motions for intervention: one arising under statute; the other arising under regulation. The statutory limitation, KRS 278.040(2), requires that "the

person seeking intervention must have an interest in the 'rates' or 'service' of a utility, since those are the only two subjects under the jurisdiction of the PSC."<sup>2</sup>

The regulatory limitation is set forth in 807 KAR 5:001, Section 3(8), which requires a person to demonstrate either (1) a special interest in the proceeding which is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

We note at the outset that the issues set forth in KU's application are whether or not it is entitled to receive CPCNs for the construction of temporary transmission line facilities. By statute, the factors to be considered in reviewing an application for a CPCN under KRS 278.020(1) are whether there is a need for the proposed facilities and an absence of wasteful duplication.

In analyzing the petition to intervene, the Commission finds that Petitioners have not established a special interest in this matter. Although Dennis Cunningham, Cathy Cunningham, and CDH Preserve, LLC expressed a desire to keep their farmland from being developed, KU's proposed temporary transmission line segments were specifically designed to avoid any contact with their property and those of the other Petitioners. Unlike the three prior cases cited by Petitioners in which they were granted intervention, the proposed transmission line project would have no direct impact on Petitioners' properties. Thus, Petitioners' interests in this case do not arise from their status as property owners who would be directly affected by the proposed construction. Rather, their interests in this case arise only as ratepayers of KU, and that interest is the

---

<sup>2</sup> 2007 WL 289328, at 3.

same general interest that is held by every one of KU's 536,000 customers. Absent a showing by Petitioners that they will be impacted differently than will all other KU customers, they do not have a special interest to justify intervention under 807 KAR 5:001, Section 3(8).

The Commission further finds that, even under the alternative basis for intervention set forth in 807 KAR 5:001, Section 3(8), intervention is not justified. The petition to intervene is devoid of any description of the background, knowledge, experience, or training of Petitioners on the central issues relating to the need for, and absence of wasteful duplication from, temporary transmission line facilities. Thus, Petitioners have presented no basis to support a finding that they will likely present issues or develop facts that will assist us in fully considering the issues in this KU proceeding without unduly complicating or disrupting the proceedings.

With respect to the issues raised by Petitioners relating to the need and timing of TC2, the Commission finds that those issues are beyond the scope of the issues raised by KU's application in this proceeding. In addition, the need and timing of TC2 are issues that were previously adjudicated in Case No. 2004-00507,<sup>3</sup> which resulted in KU and LG&E being granted CPCNs to construct TC2. The need and timing for TC2 cannot now be collaterally attacked in this case, irrespective of whether that attack is by presenting a recent FERC study on the potential to reduce peak electric load 10 years from now or by questioning the status of operating permits issued by other agencies.

---

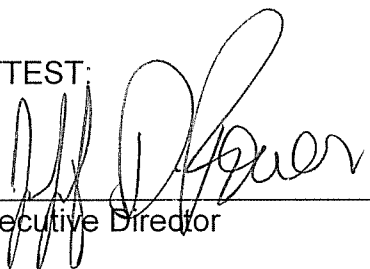
<sup>3</sup> Case No. 2004-00507, Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Expansion of the Trimble County Generating Station (Ky. PSC Nov. 1, 2005).

IT IS HEREBY ORDERED that the petition to intervene is denied.

By the Commission

ENTERED *gw*  
NOV 13 2009  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
\_\_\_\_\_  
Executive Director

Lonnie E Bellar  
E.ON U.S. LLC  
220 West Main Street  
Louisville, KY 40202

Rick E Lovekamp  
Manager - Regulatory Affairs  
E.ON U.S. LLC  
220 West Main Street  
Louisville, KY 40202

Honorable Allyson K Sturgeon  
Senior Corporate Attorney  
E.ON U.S. LLC  
220 West Main Street  
Louisville, KY 40202