

Filed 5/13/2020 OAH

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
OFFICE OF ADMINISTRATIVE HEARINGS
FILE NO. DOW-19-1-0319
PERMIT NO. 28801P
AI NO. 120218

ENVIRONMENTAL ADMIN. HEARING OFFICER STUART W. COBB

VANESSA ALLEN, et al PETITIONERS

and

BERNHEIM ARBORETUM AND RESEARCH FOREST INTERVENOR

vs.

ENERGY AND ENVIRONMENT CABINET RESPONDENT

and

LOUISVILLE GAS & ELECTRIC INTERVENOR

AMENDED SCHEDULING ORDER

This matter came before the undersigned Hearing Officer for a telephonic Status Conference on May 8, 2020. Petitioners Vanessa Allen, Kimberly Brown, Christy Collins, Richard Parker, Paul Whitworth, David Rummage and Kimberly Rummage appeared on their own behalf. Petitioner Brenda Matheny did not appear. Hon. Joe Martz and Hon. Chris Short appeared on behalf of the Respondent, Energy and Environment Cabinet (“Cabinet”). Hon. Robin Thomerson, Hon. Adrienne Strong, Hon. Anna Claire Skinner, and Hon. Robert Ehrler appeared for Intervenor Louisville Gas & Electric (“LG&E”). Hon. Randal Strobo appeared on behalf of Intervenor Bernheim Arboretum and Research Forest (“Bernheim”). The conference was electronically recorded.

The Secretary granted the Hearing Officer's ninety (90) day extension request to November 9, 2020 to submit a Hearing Officer's Report and Recommended Secretary's Order, so the remote hearing scheduled for June 1, 2020 is being continued, and the GoToMeeting practice set for May 15, 2020 is canceled. The parties are currently briefing on motions for summary disposition, and the previously scheduled oral argument on May 29, 2020 at 2:00 pm shall proceed as scheduled. Mr. Strobo stated that the Cabinet had granted LG&E an extension to its stream construction permit, and that Bernheim may file a new petition challenging the extension, and move to consolidate with this case. Another option would be for Bernheim to amend this petition to object to the extension.

At this time, the Hearing Officer intends to hold an in person hearing. As a result of the state of emergency associated with Covid-19, the Hearing Officer will issue rules for the conduct of the hearing based on the Governor's guidelines and in consultation with Cabinet protocols in effect at that time. These rules could include measures such as requiring maintenance of social distancing at the hearing, taking temperatures at the door of the building, wearing face masks, and submitting electronic exhibits rather than paper exhibits. David Rummage, Kimberly Rummage and Christy Collins indicated that they intended to participate remotely for safety reasons, and Paul Whitworth indicated that he may have to do so. Since testing for Covid-19 is now widely available, it may be prudent for participants to get tested the week prior to the hearing.

A new prehearing compliance schedule and dates for a status conference, final prehearing conference and a formal administrative hearing were agreed to. Bernheim asked to be allowed to name additional expert witnesses if it decided to do so, and LG&E objected, however the Hearing Officer decided that since the hearing was being rescheduled to August to allow the prompt naming of additional expert witnesses.

Having consulted with counsel, and being otherwise duly advised, the Hearing Officer hereby Orders:

(1) On or before **May 22, 2020**, the parties may file an EXPERT WITNESS DESIGNATION, identifying any and all expert witnesses that may be called at the hearing to testify. The parties shall attach to the Expert Witness Designation a copy of each expert witness's resume or CV and a detailed statement or written report that sets forth the opinions that each expert is expected to express at the formal hearing. No motion for extension will be granted.

(2) On or before **June 5, 2020**, the parties shall file a REBUTTAL EXPERT WITNESS DESIGNATION. The parties shall attach to the Rebuttal Expert Witness Designation a copy of each expert witness's resume or CV and a detailed statement or written report that sets forth the opinions that each expert is expected to express in rebuttal at the formal hearing.

(3) The parties shall comply with the current briefing schedule on motions for summary disposition, and appear for a telephonic oral argument on motions for summary disposition on **May 29, 2020 at 2:00PM** prevailing Eastern Time. No party shall appear in person. The parties may participate in the conference by telephone by calling the Office of Administrative Hearings at **1-866-830-9434** at the time and on the date set for the conference. After the prompt for the conference code, enter **6571487#**. If a party experiences any problems with the conference line during the conference, please contact the Office of Administrative Hearings directly at 502-564-7312 and report the problem immediately. Argument will be limited to those parties who file briefs.

(4) On or before **June 15, 2020**, the parties shall submit a list of all exhibits your party intends to introduce at the hearing, and a list of all lay witnesses your party intends to call at the hearing, together with a brief summary (references to depositions not being sufficient) of the expected testimony of each witness. Exhibits shall be exchanged electronically on or before **July**

20, 2020. Any thumb drives sent to Petitioner Paul Whitworth shall be mailed by first class US mail, and to Petitioner Vanesa Allen by a means which does not require a person to be present to sign for the thumb drive when it is delivered.

(5) The parties shall appear for a telephonic status conference on **June 26, 2020 at 2:00PM** prevailing Eastern Time. No party shall appear in person. The parties may participate in the conference by telephone by calling the Office of Administrative Hearings at **1-866-830-9434** at the time and on the date set for the conference. After the prompt for the conference code, enter **6571487#**. If a party experiences any problems with the conference line during the conference, please contact the Office of Administrative Hearings directly at 502-564-7312 and report the problem immediately.

(6) The parties shall file all MOTIONS IN LIMINE on or before **June 29, 2020**. All RESPONSES shall be due on or before **July 13, 2020**. All REPLIES shall be due on or before **July 20, 2020**. All motions, responses and replies shall be filed in accordance with the requirements of 400 KAR 1:090 Section 12 and 17, as applicable.

(7) The parties shall file with the Office of Administrative Hearings and serve upon all other parties a PREHEARING MEMORANDUM on or before **June 29, 2020**, which shall contain the following:

- (a) a succinct statement of the facts;
 - (b) the questions of fact and questions of law at issue in this case, including the legal elements which your party must establish to carry its burden of proof (include references to all statutory and regulatory citations with section and paragraph numbers);
 - (c) a list of all pending motions;
 - (d) a brief statement of the status of settlement negotiations, if any, not to exceed one page in length.
- (8) The parties shall submit a list of stipulations, if any, on or before **July 20, 2020**.

(9) The parties shall appear telephonically for a FINAL PREHEARING CONFERENCE on **July 27, 2020 at 2:00PM**, prevailing Eastern Time. No party shall appear in person. The parties may participate in the final prehearing conference by telephone by calling the Office of Administrative Hearings at **1-866-830-9434** at the time and on the date set for the conference. After the prompt for the conference code, enter **6571487#**. If a party experiences any problems with the conference line during the conference, please contact the Office of Administrative Hearings directly at 502-564-7312 and report the problem immediately.

(10) The parties shall appear for a FORMAL ADMINISTRATIVE HEARING commencing on **August 10, 2020 at 10:00AM**, prevailing Eastern Time, at 211 Sower Bld, Frankfort, Kentucky. **Five days** have been set aside for the Formal Administrative Hearing, on August 10, 11, 12, 14 and 17. All represented parties shall have no more than one (1) attorney and one (1) party representative present in the hearing room at any given time. The Hearing Officer has reserved a second room for additional attorneys to be available for consultation, which shall be liberally granted. Parties who choose to do so may participate in the hearing remotely.

(11) THE PARTIES SHALL NOTE: THE OFFICE OF ADMINISTRATIVE HEARINGS WILL NOT RETAIN A COURT REPORTER FOR THIS HEARING. The parties are responsible for complying with any statutory or regulatory requirement to file a transcript on appeal. If any party wishes to have the hearing recorded by a court reporter for future transcription, it is the responsibility of that party to retain a court reporter and to pay for any court reporter fees.

The Office of Administrative Hearings shall make one or more audio recording of all proceedings on and off the record in the hearing room. One such recording shall be designated the official hearing record for the purposes of briefing, a Recommended Order, and exceptions. Any

additional video or audio recordings of the proceedings made shall be backup copies to be used as needed.

(12) The Energy and Environment Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services and provides, 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. Any individual who requires special accommodations in connection with any proceeding before the Office of Administrative Hearings should contact Lisa M. Booth at LisaM.Booth@ky.gov or by mail at 211 Sower Boulevard, Frankfort, Kentucky 40601; telephone (502) 564-7312 and/or telefax (502) 564-4973 at least one week prior to the date the accommodations will be needed.

(13) If the parties file with the Office of Administrative Hearings a signed document(s) completely resolving this matter before the date scheduled for the administrative hearing, then the administrative hearing shall be automatically cancelled and the Hearing Officer will take appropriate action on the document(s) filed.

So ORDERED on May 13, 2020.



Hon. Stuart W. Cobb
Environmental Administrative Hearing Officer
Office of Administrative Hearings
Energy and Environment Cabinet
211 Sower Boulevard
Frankfort, Kentucky 40601
Telephone: 502-564-7312
Facsimile: 502-564-4973

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Order, was served on

May 13, 2020 by electronic mail, upon the following:

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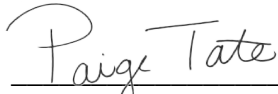
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