

COMMONWEALTH OF KENTUCKY
BULLITT CIRCUIT COURT
DIVISION I
CIVIL ACTION No. 19-CI-00762

LOUISVILLE GAS AND ELECTRIC COMPANY

PLAINTIFF

vs.

**DEFENDANT KENTUCKY HERITAGE
LAND CONSERVATION FUND BOARD'S
MOTION TO DISMISS WITH PREJUDICE**

ISAAC W. BERNHEIM FOUNDATION, *et al.*

DEFENDANTS

Electronically Filed

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NOTICE

This matter will come on for a hearing before the Bullitt County Circuit Court at 250 Frank E. Simon Avenue, Shepherdsville, Kentucky during its regularly scheduled Motion Hour on Monday, January 6, 2020, at the hour of 9:00 am.

MOTION

Comes the Defendant, Kentucky Heritage Land Conservation Fund Board (“KHLCF Board”), and for its Motion to Dismiss with Prejudice pursuant to Kentucky Rule of Civil Procedure 12.02 for lack of subject matter jurisdiction, states the following: The Plaintiff, Louisville Gas and Electric Company (“LG&E”), failed to tender an offer to the KHLCF Board, the holder of a conservation easement in the subject property, prior to seeking condemnation. The Kentucky Eminent Domain Act requires a condemnor to make a good faith effort to enter into an agreement with the owners of all interests in the subject property before taking legal action. KRS 416.550; KRS 278.502. This did not happen. For this reason, which is explained more fully in the attached Memorandum in Support of this

Motion, the KHLCF Boards respectfully requests that this Court grant its Motion and dismiss this matter with prejudice.

By filing this Motion, the KHLCF Board does not waive its right pursuant to KRS 416.600 to file an Answer at a later date (in the event this Motion is denied) objecting to the right of LG&E to condemn the subject property.

WHEREFORE, the KHLCF Board respectfully requests that the Court **GRANT** this Motion and enter the attached Tendered Order **DISMISSING** the matter **WITH PREJUDICE**.

Respectfully submitted,

KENTUCKY HERITAGE LAND
CONSERVATION FUND BOARD

/s/ Timothy J. Mayer

Timothy J. Mayer, KBA No. 96793

Energy and Environment Cabinet

Office of Legal Services

300 Sower Blvd., Third Floor

Frankfort, Kentucky 40601

Phone: (502) 782-8639

Fax: (502) 564-7484

timothy.mayer@ky.gov

Counsel for the KHLCF Board

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November, 2019, a true and accurate copy of the foregoing Motion to Dismiss with Prejudice was sent via first-class mail, postage prepaid, to:

Hon. Monica H. Braun
Hon. Mary Ellen Wimberly
STOLL KEENON OGDEN PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507

Hon. Mark T. Hurst
STOLL KEENON OGDEN PLLC
500 West Jefferson Street, Suite 2000
Louisville, Kentucky 40202

*Counsel for the Plaintiff, Louisville
Gas and Electric Company*

Hon. David T. Royse
Ransdell Roach & Royse PLLC
176 Pasadena Drive, Bldg. 1
Lexington, Kentucky 40503
*Counsel for Defendant, East Kentucky
Power Cooperative, Inc.*

Hon. Tom Fitzgerald
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, Kentucky 40602-1070

Hon. Randal A. Strobo
STROBO BARKLEY PLLC
239 South Fifth Street, Suite 917
Louisville, Kentucky 40202

*Counsel for the Defendant, Isaac W.
Bernheim Foundation*

/s/ Timothy J. Mayer
Timothy J. Mayer
Counsel for the KHLCF Board