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March 23, 2023

Honorable Khalil Batshon  
Councilman, District 25  
Louisville Metro Council  
601 W. Jefferson Street  
Louisville, KY 40202

**RE: Parks and Sustainability Committee Proposed Resolution R-014-23**

Councilman Batshon:

#### **INTRODUCTION**

I am writing in response to your request that Louisville Gas and Electric Company (“LG&E”) appear before Louisville Metro Council’s Parks and Sustainability Committee (the “Committee”) on March 23, 2023. Given existing out of town commitments, our Chief Operating Officer (who has testified extensively about the pipeline project at issue here) is unavailable to appear at the meeting of your Committee today or at the next scheduled meeting in April. Accordingly, I am submitting this written statement in lieu of our inperson participation and ask that a copy of this submission be provided to each member of the Committee.

The Committee is considering a resolution titled “A Resolution Opposing the Seizure of Conservation Land for the Purpose of Building a Natural Gas Pipeline Through Bernheim Arboretum and Research Forest” (“Resolution”). On March 9, 2023, the Committee conducted an hour-long session to consider the Resolution. LG&E was not invited to participate in the meeting, but the Committee heard presentations from Elisa Owen, the Executive Director of Kentucky Interfaith Power & Light, and Mark Wourms, the Executive Director of Bernheim Arboretum and Research Forest. Because LG&E was not included in that meeting, Ms. Owen and Mr. Wourms were allowed to offer their unchecked views and not subject to debate or questions by LG&E or our counsel. At the conclusion of those one-sided presentations, a majority of the Committee members provided comments indicating their support for the Resolution, but several members noted that LG&E had not provided comments. As a result, LG&E was offered the opportunity to comment at the March 23, 2023, meeting.

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We have since had the opportunity to review the Resolution and the recording of the March 9 Committee meeting. The presentations and comments at that meeting were largely inaccurate, and we appreciate the ability, although not in real time, to offer perspective and correction to those presentations and comments.

As an initial matter, I would like to make two points. First, LG&E understands the importance of environmental stewardship, and we appreciate the role which Bernheim plays in that regard in our community. LG&E has previously long been a financial supporter of Bernheim. Unfortunately, however, with regard to this planned pipeline project, Bernheim has consistently refused LG&E's offers to meet and has engaged in a campaign based largely on scare tactics and misinformation. Second, LG&E questions both the need for, and propriety of, this Committee and the Louisville Metro Council involving themselves on a project that does not lie within Jefferson County and which is needed to support reliability and growth, including economic development, in another community entirely.

#### RESPONSE

As to the substance of the issues raised before this Committee, LG&E offers the following information for consideration:

**The gas pipeline is needed both for reliability and capacity to serve a growing area, and it remains the least-cost option for LG&E and its ratepayers.**

A misconception that permeated the discussions at the March 9 Committee meeting is that the pipeline is not currently needed and is only being built to accommodate future growth. Nothing could be further from the truth, as established by a voluminous record related to this matter. LG&E is the sole provider of natural gas service in Bullitt County. Approximately 9,500 current LG&E gas customers depend in whole or in part on a single pipeline to receive natural gas service. Should there be a failure on the existing pipeline, thousands of current customers are at risk of losing their gas service. This planned pipeline extension will provide significant enhanced reliability for those existing customers. Moreover, LG&E has had to deny gas service to more than 600 customers in Bullitt County since 2019 because its existing infrastructure will not support additional gas service connections. Those turndowns include: a residential development, a hospital, police station, elementary school, homes, restaurants, medical clinics, car washes, and hotels, among others. Thus, the planned pipeline project will, in addition to enhancing reliability for existing customers, support the significant growing demand for gas service in Bullitt County.

The need for this project, both in terms of reliability and additional service connections, has been established by the Kentucky Public Service Commission ("KPSC") and by the Bullitt Circuit Court following extensive discovery and testimony under oath. Beginning in 2016, the

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KPSC specifically reviewed this project. LG&E presented information about the project to the KPSC and it granted a Certificate of Public Convenience and Necessity for the project. The Franklin Circuit Court and Court of Appeals have since upheld this CPCN. And, following the grant of the CPCN, the KPSC has reviewed the need for the proposed project in Bullitt County several times, including as recently as 2021. In fact, on May 18, 2021, the Bullitt Circuit Court specifically found that LG&E “has proven this route is appropriate to satisfy a public need to increase capacity and improve reliability” for customers in Bullitt County.

Despite unfounded and unsupported assertions to the contrary at the March 9 Committee meeting, the planned pipeline remains the least-cost solution to the urgent need for expanded natural gas infrastructure in Bullitt County. And once the pipeline is built, it is expected to be in service for many decades.

#### **The gas pipeline will NOT interfere with the Bernheim Arboretum and Research Forest**

Mr. Wourms carefully chose his words in his March 9 presentation, leaving the Committee with an incorrect understanding of the location and impact of the planned natural gas pipeline. The pipeline will not run through the Bernheim Arboretum and Research Forest itself, but rather will be located on property north of, and not physically connected to, the Arboretum and Research Forest. That property, purchased by Bernheim in 2018 after plans for construction of the gas pipeline were already well established, is not planned to be open to the public and is meant to serve as a wildlife corridor.

LG&E selected the site for the gas pipeline to maximize the use of existing utility corridors where feasible. Indeed, ALL 4.461 acres of the planned route across Bernheim’s property will be co-located alongside an existing overhead high-voltage transmission line owned by another utility, East Kentucky Power Cooperative (“EKPC”), thus significantly reducing the amount of disturbed vegetation and any resulting environmental impact. (See photo attached as Exhibit A hereto.) As shown in the photo, this newly acquired tract of land is not pristine, virgin land as Bernheim would have the Committee believe.

Finally, it is important to understand that, once constructed, the existence of the pipeline will not hinder the planned use of the property for a natural wildlife corridor. The pipeline will be located underground, allowing all manner of wildlife to cross over the land above the pipeline.

#### **EKPC has worked with LG&E and EKPC has no objection to the pipeline.**

At the Committee’s March 9 meeting, Councilmember Ruhe claimed that EKPC will not allow LG&E to use their easement because EKPC believes the land is “not suitable” for a pipeline. This is flatly incorrect. LG&E has worked with EKPC throughout the planning process and they

have not opposed the project. By law, EKPC was required to be named as a defendant in eminent domain lawsuits over which it has an easement but has voiced no objection to the project. The existing utility corridor is suitable for the pipeline project.

**The conservation easement on the Bernheim property is subject to the power of eminent domain by operation of statute. This is a settled legal issue.**

The speakers at the Committee's March 9 meeting all suggested that conservation easements are sacrosanct, deeply embedded property rights. To the contrary, conservation easements were not authorized by the General Assembly until 1988, and when enacted, conservation easements were deemed expressly subject to eminent domain. The Bullitt Circuit Court and Kentucky Court of Appeals have specifically held as much in this very case, and the Kentucky Supreme Court denied Bernheim's motion for a further review of that issue.

**LG&E has complied with all eminent domain laws in obtaining property rights.**

LG&E has complied with all eminent domain laws and has been challenged in several tribunals regarding its compliance. The Bullitt Circuit Court has held multiple evidentiary hearings in which landowners have had a fulsome opportunity to present evidence and cross examine LG&E's witnesses, and that Court has held that LG&E's actions complied with applicable laws.

**The impact of the proposed pipeline on hydrologic and biological resources has been studied, in conjunction with applicable federal environmental agencies.**

LG&E has worked extensively with the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service, the federal agencies who have authority over the environmental impact of the proposed project, to study the impact of hydrologic and environmental features along the pipeline route, including the impact to federally protected wildlife. Additionally, LG&E has worked with the Kentucky Energy and Environment Cabinet on matters relating to environmental impact within the state Cabinet's authority, and the Cabinet has already rejected Bernheim's arguments against the project. It is simply inaccurate to claim that the environmental impact of the project has not been adequately studied.

**Attempts to compare the cost to install solar vs. natural gas are nothing more than red herrings.**

Finally, several points were made at the March 9 Committee hearing to suggest that LG&E should simply focus on solar energy to the exclusion of natural gas, while arguing that solar energy is cheaper than natural gas. LG&E continuously evaluates technologies to provide least-cost reliable service to its customers. While solar energy certainly has a place in an overall supply portfolio, the fact remains that LG&E, as a local natural gas distribution company, is required to

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“furnish adequate, efficient and reasonable service” and has thousands of *current* natural gas customers in Bullitt County that deserve and expect reliable service. That said, it is important for this Committee to understand that LG&E is not ignoring renewable sources of energy, and the Company has proposed a substantial expansion of utility-scale solar projects, as well as a battery storage project, in a case that is presently pending before the KPSC. If approved, these renewable projects would propel LG&E and KU’s renewable generation portfolio from about 1% in 2021 to approximately 9% by 2030. This compares very favorably to the 6% utility scale solar generation in Arizona in 2021, despite the vastly superior solar irradiance in that state.

### CONCLUSION

In closing, let me again thank you for the opportunity to set the record straight here. I respectfully urge the Committee to decline to inject itself into a project in a neighboring county which has already been subjected to extensive regulatory and legal review. If, however, the Committee chooses to further evaluate this issue, I trust that it will fully account for the facts I have laid out here.



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