

Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet



Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Linda Breathitt
Commissioner

August 10, 2012

Mr. Lonnie E. Bellar
Vice President
State Regulation and Rates
Louisville Gas and Electric Company
220 West Main Street
P.O. Box 32010
Louisville, Kentucky 40232

Re: Mill Creek Station Beneficial Reuse
Louisville Gas and Electric Company

PSC STAFF OPINION 2012-015

Dear Mr. Bellar:

Commission Staff acknowledges receipt of your letter dated July 25, 2012 requesting a staff advisory opinion that a proposed license to use generation station property for a beneficial reuse project would not require Commission approval. You have further requested issuance of the opinion by August 17, 2012.

This letter responds to your request. It represents Commission Staff's interpretation of the law as applied to the facts presented. This Opinion is advisory in nature and not binding upon the Commission should the issues presented herein be formally presented for Commission resolution.

Commission Staff understands the facts as follows:

Louisville Gas and Electric Company ("LG&E") has received a beneficial reuse proposal for its Mill Creek Generating Station ("Mill Creek") from Charah, the vendor that provides ash and byproducts handling services to LG&E at Mill Creek. Charah proposes to use a portion of the gypsum produced by Mill Creek's environmental controls as feedstock for an innovative process to convert gypsum into a potentially marketable agricultural product. If a sufficient market for the

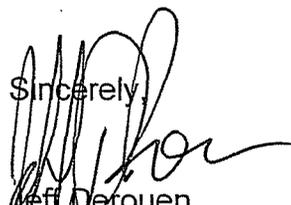
product develops within five years, Charah will compensate LG&E for each ton of the product Charah sells beginning in the sixth year.

Charah will construct and own facilities on the Mill Creek property. LG&E will neither sell nor lease the land under the proposed facilities, but rather will enter into a license agreement permitting Charah to access and use its facilities for the duration of the beneficial reuse contract. Upon termination of the beneficial reuse contract, Charah will remove its equipment and transfer ownership of the remaining facilities to LG&E.

In Case No. 2002-00029,¹ the Commission required LG&E and Kentucky Utilities Company ("KU") to seek Commission approval "prior to entering into a sale or lease of any land located on any existing generation sites."²

Based on the facts set forth in your letter of July 25, 2012, LG&E proposes to grant Charah the right to occupy, use, and construct facilities on, a portion of LG&E's Mill Creek Generating Station for a period of five or more years. Although LG&E proposes to only grant Charah a license for the use of the land, the proposed agreement, as explained, has all of the indicia of a lease, i.e. the use and possession of property for a period of time. Considering the requirement established in Case No. 2002-00029 that prior Commission approval be obtained prior to the sale or lease of land at a generating site, Commission Staff is unable to issue an opinion that the proposed arrangement with Charah does not need prior Commission approval.

Staff recommends that LG&E file an application with the Commission either requesting approval of its proposed agreement with Charah; or requesting a declaratory Order that its proposed agreement with Charah is not a lease and does not require Commission approval.

Sincerely,

Jeff Derouen
Executive Director

¹ Case No. 2002-00029, Application of Louisville Gas And Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Acquisition of Two Combustion Turbines, (Ky. PSC June 11, 2002).

² *Id.*, paragraph 3, p. 8.