

STOLL·KEENON·OGDEN

PLLC

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DIRECT DIAL: (502) 560-4263
DIRECT FAX: (502) 627-8754
duncan.crosby@skofirm.com

January 7, 2011

PECEIVED

VIA HAND DELIVERY

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

JAN 07 2011

PUBLIC SERVICE COMMISSION

RE: The Application of Louisville Gas and Electric Company for Approval of Land Swap With, and Lease of Land to, Louisville Metro Government Case No. 2011- 00014_

Dear Mr. DeRouen:

Enclosed please find and accept for filing the original and ten copies of a Verified Application by Louisville Gas and Electric Company in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me in the enclosed self-addressed stamped envelope.

Should you have any questions please contact me at your convenience.

Sincerely,

W. Duncan Crosby III

WDC:ec Enclosures

cc:

Dennis G. Howard II, Office of Attorney General Lawrence W. Cook, Office of Attorney General Michael L. Kurtz, Boehm Kurtz & Lowry

400001.139270/670386.1

COMMONWEALTH OF KENTUCKY

RECEIVED

BEFORE THE PUBLIC SERVICE COMMISSION

JAN 0 7 2011

In the Matter of:

PUBLIC SERVICE COMMISSION

APPLICATION OF LOUISVILLE GAS)	
AND ELECTRIC COMPANY FOR)	
APPROVAL OF LAND SWAP WITH, AND)	CASE NO. 2011-00
LEASE OF LAND TO, LOUISVILLE)	
METRO GOVERNMENT)	

VERIFIED APPLICATION

Louisville Gas and Electric Company ("LG&E") hereby respectfully petitions the Kentucky Public Service Commission ("Commission") by verified application pursuant to KRS 278.040, the Commission's Order dated June 11, 2002 in Case No. 2002-00029, 807 KAR 5:001 § 8, and any and all other applicable statutes and regulations to issue an order approving the transactions set out in Sale and Purchase Contract for a Like-Kind Exchange of Real Estate and a Long-Term Lease of Real Estate, dated December 28, 2010, ("Agreement") between LG&E and the Louisville Metro Government ("Louisville Metro"), a copy of which is attached hereto as Exhibit A. The Agreement provides that Louisville Metro and LG&E will swap approximately one-acre parcels, and that LG&E will lease three other small parcels to Louisville Metro for a term of 99 years. All of LG&E's parcels are located at LG&E's Mill Creek Generating Station ("Mill Creek"), and Louisville Metro's parcel abuts Mill Creek. The current market value of each of the parcels to be swapped is approximately \$15,000, and the total payment Louisville Metro will make to LG&E for the lease will be \$99.00. The proposed transactions will be in the public interest because the purpose of the land swap and lease is to

¹ 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. See id. at 6 ("Because of the finite nature and value of these [existing generation] sites, we find that LG&E and KU should seek Commission approval prior to entering into the sale or lease of any land located on an existing generation site.").

facilitate Louisville Metro's construction of the Ohio River Levee Trail and a parking area for users of the trail, and there will be no adverse impact on LG&E's operations at Mill Creek.

To expedite Louisville Metro's work on the trail and related facilities, LG&E respectfully asks the Commission to issue the requested order by March 1, 2011.

In support of this Application, LG&E states as follows:

- 1. <u>Addresses</u>: Applicant LG&E's full name and post office address is: Louisville Gas and Electric Company, 220 West Main Street, Post Office Box 32010, Louisville, Kentucky 40202.
- 2. <u>Articles of Incorporation</u>: A certified copy of LG&E's Articles of Incorporation is on file with the Commission in Case No. 2010-00204, *In the Matter of: The Joint Application of PPL Corporation, E.ON AG, E.ON U.S. Investments Corp., E.ON U.S. LLC, Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of an Acquisition of Ownership and Control of Utilities and is incorporated by reference herein pursuant to 807 KAR 5:001, Section 8(3).*
- 3. LG&E is a public utility, as defined in KRS 278.010(3)(a), engaged in the electric and gas business. LG&E generates and purchases electricity, and distributes and sells electricity at retail in Jefferson County and portions of Bullitt, Hardin, Henry, Meade, Oldham, Shelby, Spencer, and Trimble Counties. LG&E also purchases, stores and transports natural gas and distributes and sells natural gas at retail in Jefferson County and portions of Barren, Bullitt, Green, Hardin, Hart, Henry, Larue, Marion, Meade, Metcalfe, Nelson, Oldham, Shelby, Spencer, Trimble, and Washington Counties.
- 4. Mill Creek is a four-unit, 1,472 MW (summer capacity) coal-fired generating station that sits on approximately 572 acres in southwestern Jefferson County along the Ohio River. The book value (and original cost) of the larger parcel, approximately 30 acres, at Mill

Creek containing LG&E's parcels that are the subject of this application is \$21,602.22 (approximately \$720 per acre). Mill Creek's fourth (and final) unit went into commercial operation in 1982, and the facility has remained in its current configuration for the past 28 years. LG&E does not believe that the land swap and long-term lease contemplated in the Agreement will affect in any way its foreseeable operations at Mill Creek.

- 5. Louisville Metro is working to build an ambitious 100-mile paved walking and biking trail around Louisville called the "Louisville Loop." To date, Louisville Metro has completed 25 miles of the trail, of which the Ohio River Levee Trail is a part.²
- 6. Part of the planned path of the Ohio River Levee Trail lies on a small northwestern portion of LG&E's Mill Creek property. (An aerial photo of Mill Creek with the affected portion of the station property highlighted in yellow is attached hereto as Exhibit B.) To complete the portion of the trail that will cross LG&E's property and to provide land for a parking facility needed for trail users, Louisville Metro and LG&E have agreed to swap one-acre parcels and for LG&E to lease three additional small parcels to Louisville Metro.
- 7. More specifically, as shown on the plat attached as Exhibit C, Louisville Metro currently owns a one-acre tract (Tract A) that abuts LG&E's Mill Creek property. Per the Agreement, Louisville Metro will convey to LG&E unencumbered, fee simple title to Tract A in exchange for receiving from LG&E unencumbered, fee simple title to a different one-acre tract (Tract B). Each of these tracts has a current market value of approximately \$15,000.
- 8. In addition to the land swap, LG&E will lease to Louisville Metro for a term of 99 years Tracts C, D, and E (shown on the plat attached as Exhibit C) for a total rent of \$99, which Louisville Metro will pay to LG&E upon the consummation of the transaction. The total amount of land contained in Tracts C, D, and E is approximately 1.6 acres.

- 9. Currently, all of Tract B, portions of Tract C, and all of Tracts D and E are subject to a lien under the Indenture from Louisville Gas and Electric Company to Bank of New York Mellon, Trustee, dated October 1, 2010, as amended by supplemental indentures (the "Indenture Lien"). The acquisition by LG&E of Tract A will make it subject to the Indenture Lien. After receiving the Commission's approval to complete the transaction set out in the Agreement, LG&E will convey Tract B to Louisville Metro and will cause the Indenture Lien to be released with respect to that tract within 90 days following the conveyance.
- 10. LG&E is seeking the Commission's approval for the transactions set out in the Agreement because the land being conveyed and leased are part of a generating station's property. In its June 11, 2002 Order in Case No. 2002-00029, the Commission stated, "Because of the finite nature and value of these [existing generation] sites, we find that LG&E and KU should seek Commission approval prior to entering into the sale or lease of any land located on an existing generation site."
- 11. The Commission should approve the proposed land swap and long-term lease as being in the public interest. As stated in the Agreement, Louisville Metro is building the Ohio River Levee Trail for the recreational benefit of the public, and the same is true for the overall Louisville Loop project. The parking lot that Louisville Metro will build on the parcel LG&E is conveying (Tract B) will make it possible for more of the public to travel to the trail and use it. And as stated in Paragraph 4 above, LG&E does not foresee that the land swap and long-term lease will have any impact, negative or otherwise, on its operations at Mill Creek, so the public will not be harmed in any way by the proposed transaction.

 3 Id

² See http://www.louisvilleky.gov/metroparks/cityofparks/metro_loop_trail.htm.

- 12. LG&E is not seeking Commission approval under KRS 278.218 for the Agreement or the transactions contemplated therein because the original book value of the land LG&E will convey to Louisville Metro (Tract B) is \$668.14, significantly less than the \$1 million threshold set out in KRS 278.218(1).
- 13. In order to allow Louisville Metro timely access to the property to work on this trail, LG&E respectfully requests an order from the Commission by March 1, 2011.

WHEREFORE, Louisville Gas and Electric Company respectfully asks the Commission to issue an Order by March 1, 2011, approving the transactions set out in the Sale and Purchase Contract for a Like-Kind Exchange of Real Estate and a Long-Term Lease of Real Estate between LG&E and the Louisville Metro Government, dated December 28, 2010, because the transactions will be in the public interest.

Dated: January 7, 2011

Respectfully submitted,

Kendrick R. Riggs

W. Duncan Crosby III

Stoll Keenon Ogden PLLC

2000 PNC Plaza

500 West Jefferson Street

Louisville, Kentucky 40202

Telephone: (502) 333-6000

Allyson K. Sturgeon

Senior Corporate Attorney

LG&E and KU Energy LLC

220 West Main Street

Louisville, Kentucky 40202

Telephone: (502) 627-2088

Counsel for Louisville Gas and Electric Company

VERIFICATION

COMMONWEALTH OF KENTUCKY)	
)	SS:
COUNTY OF JEFFERSON)	

The undersigned, **Lonnie E. Bellar**, being duly sworn, deposes and says he is Vice President, State Regulation and Rates for Louisville Gas and Electric Company and an employee of LG&E and KU Services Company, and that he has personal knowledge of the matters set forth in the foregoing Verified Application, and that the content thereof is true and correct to the best of his information, knowledge, and belief.

LONNIE E. BELLAR

Subscribed and sworn to before me, a Notary Public in and before said County and State, this $\frac{6+h}{2}$ day of January, 2011.

Sammy Ely (SEAL)

My Commission Expires:

November 9, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Verified Application was served on the following persons on the 7th day of January, 2011, U.S. mail, postage prepaid:

Dennis G. Howard II Lawrence W. Cook Assistant Attorneys General Office of the Attorney General Office of Rate Intervention 1024 Capital Center Drive, Suite 200 Frankfort, KY 40601-8204 Michael L. Kurtz Boehm, Kurtz & Lowry 36 East Seventh Street, Suite 1510 Cincinnati, OH 45202

Counsel for Louisville Gas and Electric Company

SALE AND PURCHASE CONTRACT FOR A LIKE KIND EXCHANGE OF REAL ESTATE AND A LONG TERM LEASE OF REAL ESTATE

	TH	IIS COI	NTRAC	T ("C	Contrac	et") to e	xcha	nge parce	ls of rea	l estate a	and ente	r into
a	long	term	lease	of	real	estate	is	made	this _		da	y of
				;	2010	, by a	and	between	LOUIS	VILLE	GAS	AND
ΕI	LECTRI	C CON	MPANY	, a 1	Centuc	ky Cor	pora	tion, 220	W. Ma	in Stree	t, Loui	sville,
Kε	entucky	40202	("LG	&Е")	and	LOUIS	VIL	LE/JEFFE	ERSON	COUN	ΓY M	ETRO
G(OVERN	MENT	, a Ker	tuck	ons cons	olidated	loc	al govern	ment, s	uccessor	to Jef	ferson
County, Kentucky, 527 W. Jefferson Street, Louisville, Kentucky 40202 ("Metro").												

RECITALS

WHEREAS, LG&E and Metro own various tracts of real estate situated near Watson Lane and the Ohio River Levee in Jefferson County, Kentucky; and

WHEREAS, Metro is constructing the multiuse Ohio River Levee Trail ("Trail") for the recreational benefit of the general public; and

WHEREAS, Metro plans to construct a parking area near Watson Lane for the benefit of the public using the Trail for recreational purposes; and

WHEREAS, the optimum location of the parking area and the sloped path leading from the parking area to the Trail is on land now owned by LG&E by virtue of a deed dated October 28, 1969, of record in Deed Book 4313, Page 358, in the Office of the County Clerk of Jefferson County, Kentucky; and

WHEREAS, Metro owns approximately one acre of land (shown as Tract A on the plat attached hereto and incorporated herein by reference) adjacent to the LG&E land mentioned above by virtue of a deed dated December 28, 1998, of record in Deed Book 7160, Page 581, in the Office aforesaid; and

WHEREAS, in order for the parking area to be built in a convenient location, LG&E and Metro are willing to exchange approximately one acre of LG&E's land (shown as Tract B on the attached plat) for Tract A;

WHEREAS, because of the benefit to the public, LG&E is willing to lease approximately 69,955 square feet of its land (shown as Tracts C, D and E on the attached

plat) to Metro for a nominal fee to be used as locations for the Trail (Tracts C and E) and for vehicular access between Watson Lane and the parking area;

WHEREAS, all of Tract B, portions of Tract C, and all of Tracts D and E on the attached plat are subject to the lien under the Indenture from Louisville Gas and Electric Company to Bank of New York Mellon, Trustee, dated October 1, 2010, as amended by supplemental indentures (the "Indenture Lien") and the acquisition by LG&E of Tract A will make it subject to the Indenture Lien; and

WHEREAS, all of Tract B, portions of Tract C, and all of Tracts D and E on the attached plat are land located on an existing generation site and the order of the Kentucky Public Service Commission ("KPSC") in Case No. 2002-00029 requires LG&E to seek KPSC approval prior to entering into a sale or lease of any land located on any existing generation sites (the "KPSC Approval").

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

- 1. LG&E agrees to convey to Metro unencumbered, good and marketable fee simple title to one acre of real estate shown as Tract B on the attached plat subject only to the Indenture Lien, which Seller shall cause to be released with respect to Tract B on the attached plat within ninety (90) days following such conveyance.
- 2. Metro agrees to convey to LG&E unencumbered, good and marketable fee simple title to Tract A on the attached plat.
- 3. It is understood between the parties hereto that the mutual exchange of property is the full consideration for each conveyance. It is also understood between the parties that the tracts of land exchanged are comparable in size, location and character and that said tracts are of equal value (estimated at \$15,000.00 for each parcel). It is further understood that any and all claims and damages of any kind whatsoever which are caused by the conveyance of the LG&E tract to Metro and any use thereafter made of said LG&E Tract by Metro or the public in general and that possession of the tract is surrendered upon execution of the deeds of conveyance.

- 4. In consideration of the benefit to the public for recreational purposes, subject to the KPSC Approval, LG&E agrees to lease and Metro agrees to rent approximately 69, 955 square feet of land shown as Tracts C, D and E on the attached plat. The term of the lease shall be ninety-nine (99) years. The total rent due shall be Ninety-Nine and no/100 Dollars (\$99.00) due at the execution of the lease. Metro shall, at its sole expense, design, construct and maintain the Trail over the portions of the leased premises described on the attached plat as Tracts C and E for the sole purpose of recreational use and shall use such portions of the leased premises for no other purpose. Metro shall use the portion of the leased premises described on the attached plat as Tract D for the sole purpose of providing recreational users of the Trail with vehicular access between Watson Lane and a parking lot located on the real estate shown as Tract B on the attached plat. LG&E may, at its sole expense, use, construct, reconstruct, operate, patrol, maintain, repair, replace, relocate, add to, modify, upgrade, and remove overhead and underground electric, gas, water, sewer and telecommunications facilities over, under and within the leased premises; provided, however, that such facilities shall not obstruct the Trail or otherwise interfere with the recreational use of the Trail. Further, LG&E may, at its sole expense, use, reconstruct, operate, patrol, maintain, repair, replace, modify, upgrade, and remove any buildings or structures located within the leased premises on the date of this Agreement. Further, LG&E may use, reconstruct, operate, patrol, maintain, repair, replace, modify and upgrade the roadway crossing the portions of the leased premises described on the attached plat as Tracts C and D. It is understood and agreed that Tracts C, D and E on the attached plat shall remain subject to the Indenture Lien and that Metro's rights under the lease for such tracts shall be inferior and subject to the Indenture Lien.
- 5. LG&E and Metro agree that the KPSC Approval shall be a condition precedent to the sale or lease of any land by LG&E pursuant to this Agreement. LG&E and Metro each agree to use reasonable best efforts to apply for and obtain the KPSC Approval. Each party will pay the costs of recording its deed and pay any applicable transfer tax on the tract it acquires. All real estate taxes and other assessments relating to Tract A and Tract B due and payable in the calendar year of the closing, if any, shall be prorated by LG&E and Metro from January 1 of that year to the date of closing.

- 6. With the exception of actions by LG&E necessary to maintain the Indenture Lien, the Parties shall not further encumber any of Tracts A, B, C, D and E ("the Described Tracts") or any interest therein. If any such further encumbrance occurs, the Parties shall fully discharge the same prior to closing, and clear the record title to the Described Tracts with respect thereto.
- 7. In addition to any other express agreements of the Parties contained herein, the matters set forth in this paragraph constitute representations and warranties by each Party as Grantor of its tract(s) which shall be true and correct as of the date of this Contract. In the event that either Party as Grantor learns, or has reason to believe, that any of the following representations and warranties may cease to be true, that Party hereby covenants to give notice thereof to the other Party immediately.
 - A. <u>Authority of Grantor</u>. With the exception of the KPSC Approval, Grantor has full power and authority to enter into and perform this Contract. This Contract does not conflict with any other contract, agreement or commitment to which Grantor is a party.
 - B. Binding on Grantor. This Contract constitutes the legally valid and binding obligation of Grantor enforceable in accordance with its terms. Subject to the need to obtain the KPSC Approval, neither the entering into of this Agreement, nor the consummation of the transactions contemplated hereby, will constitute a violation or breach by Grantor of any contract or other instrument to which Grantor is a party or to which Grantor is subject, or any judgment, order, writ, injunction or decree issued against or imposed upon Grantor, or will result in any violation of applicable law, order or regulation of any governmental authority.
 - C. No Suits. Grantor has not received any notice from any governmental unit or agency indicating that the Described Tract(s) or any portion thereof, or any operation conducted therein, is in violation of any statute, code, ordinance or regulation, and, to the best of Grantor's knowledge no such violation exists. There is no action, suit, litigation or proceeding of any nature pending or threatened affecting the Described Tract(s), or any portion thereof, or which could result in the obtaining of a lien or other interests in the Described Tract(s) by any third party, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, agency or other governmental instrumentality, domestic or foreign.
 - D. <u>No Liabilities</u>. With the exception of the Indenture Lien, there are no leases or contracts affecting the Described Tract(s) which cannot

and will not be canceled by Grantor without liability on and as of the conveyance of the Described Tract(s) by Deed. There are no unpaid claims of contractors, materialmen or laborers which could give rise to a lien against the Described Tract(s). There are no commitments or agreements with any governmental agency or public or private utility affecting the Described Tract(s) which have not been disclosed in writing by Grantor to Grantee. Grantor is not in default with respect to any of the obligations or liabilities affecting the Described Tract(s). Until the conveyance by deed of the Described Tract(s), Grantor shall maintain same in its present condition, ordinary wear and tear excepted.

- 8. It is further agreed between the parties that any and all trees, crops, personalty, buildings, etc., within Tract B which are not removed by LG&E prior to the beginning of construction of the parking area and connecting path shall be considered abandoned and Metro may remove and dispose of them. In all respects the Described Tract(s) are accepted in their present conditions and as they exist at the execution hereof.
- 9. LG&E and Metro acknowledge receipt of a full and complete copy of this Contract and declare that it embodies the entire agreement between them with respect to said Described Tract(s), and that no promises, terms, conditions, representations, warranties, or other agreements other than those herein contained have been made or were relied upon.
- 10. Until the time of delivery of the deeds, risk of loss with respect to each Described Tract shall continue to be borne by its owner.
- 11. Any notice to be given hereunder by either party to the other shall be given in writing by personal delivery or first class mail, to the persons and addresses below, until notification of change of such address.

If to Metro: Louisville/Jefferson County Metro Government

Department of Public Works 444 S. 5th St., Fourth Floor Louisville, Kentucky 40202

and

Jefferson County Attorney

Department of Public Works Attorney

444 S. 5th St., Ste. 500 Louisville, Kentucky 40202

If to Grantor: Real Estate and Right of Way Department

Louisville Gas and Electric Company

820 West Broadway P.O. Box 32020 Louisville, Kentucky 40232

and

Jim Dimas, Senior Corporate Attorney Louisville Gas and Electric Company 220 West Main Street Louisville, Kentucky 40202

- 12. This Contract may not be assigned by either Party.
- 13. This Contract and the obligations of the parties hereunder shall be governed in all respects by the laws of the Commonwealth of Kentucky.
- 14. All warranties, covenants and other obligations set forth herein shall survive closing of any exchange and delivery of the deeds to the Described Tracts.
- 15. This Agreement shall be dated and effective as of the first date written above.

IN TESTIMONY WHEREOF, witness the signature of the parties hereto:

GRANTEE:
LOUISVILLE/JEFFERSON
CØÜNTY METRO
By: JERRY E. ABRAMSON, MAYOR Solution 12/28/10
=S Date: 12/28/10
METRO DEPARTMENT OF
PUBLIC WORKS
By: Tal A full TED PULLEN, DIRECTOR
Date: 12/28/10

APPROVED AS TO FORM

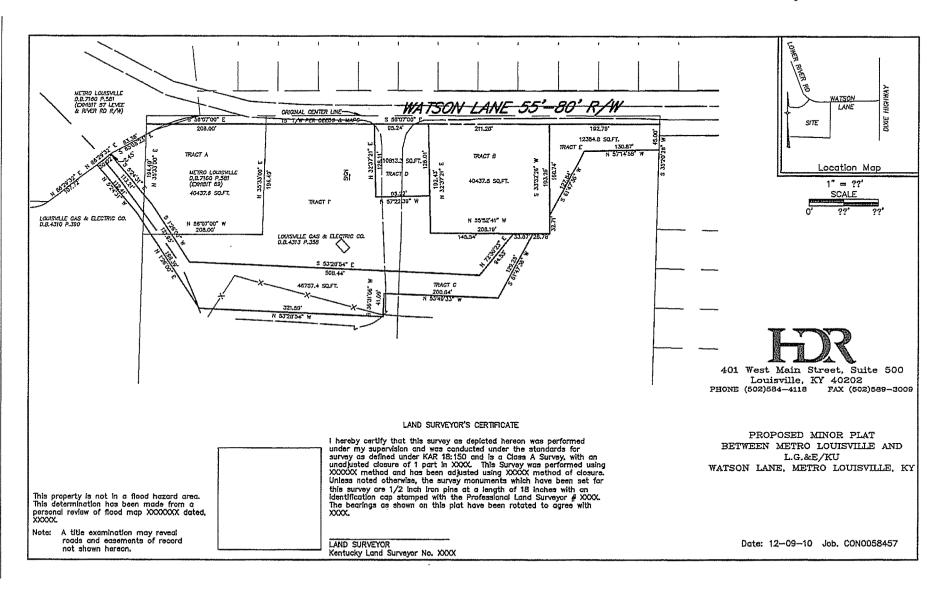
MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

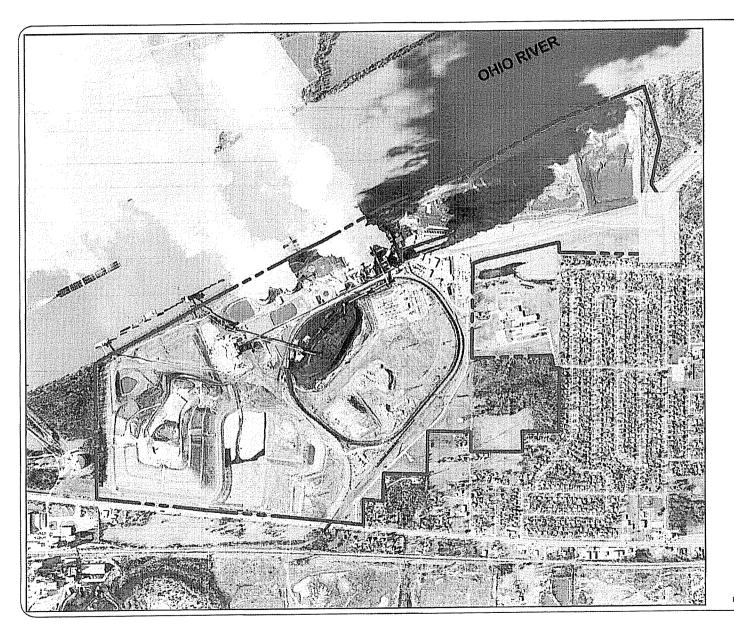
ar o. /: X - or

Assistant County Attorney 531 Court Place, Suite 900 Louisville, Kentucky 40202 (502) 574-2678

Date:	December 28, 2010	Date:
Date:	Necember 28, 2010	Date:

F:/pmcnulty/JAB/LGE Metro-Like Kind Exc real estate



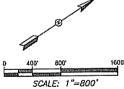


MAP-1

PLANT I.D. 1364 MILL CREEK POWER STATION DATE DRAWN: 8/27/2010

LEGEND

PLANT PROPERTY BOUNDARY



DIGITAL ORTHOPHOTO PROVIDED BY: KIMBALL ENGINEERING, DATED DECEMBER, 2009

TO BE MERED BY HOL

