

2013-00291

RECEIVED

**COMMONWEALTH OF KENTUCY
BEFORE THE PUBLIC SERVICE COMMISSION**

NOV 21 2013

**PUBLIC SERVICE
COMMISSION**

In the Matter of:

**HAROLD BARKER;
ANN BARKER; and
BROOKS BARKER**

COMPLAINANTS

**V. RESPONSE TO COMMISSION STAFF'S INITIAL REQUEST
FOR INFORMATION TO HAROLD BARKER,
ANN BARKER, AND BROOKS BARKER**

EAST KENTUCKY POWER COOPERATIVE, INC.

DEFENDANT

Come the Complainants, Harold Barker, Ann Barker and Brooks Barker (collectively, "the Barkers"), by counsel, and for their Response to Commission Staff's Initial Request for Information, state as follows:

1. Refer to East Kentucky Power Cooperative, Inc.'s ("EKPC") Offer of Settlement filed July 29, 2013, page 2, paragraph 2. EKPC's Offer of Settlement states that "[o]n information and belief, the Barkers constructed the structures identified in the Complaint after EKPC's original transmission line was constructed."

RESPONSE: In their complaint to the Public Service Commission dated July 5, 2013, the Barkers did not mean to imply that EKPC constructed the original 69kv transmission line over their residence. In 1973, Brooks Barnes (Ann Barker's father) asked EKPC to stake its right-of-way carrying the then-existing 69kv line in anticipation of building the home where the Barkers now reside. Two EKPC employees met with Brooks Barnes, Ann Barker and Arnold Brown (the builder) in October of that year and used the floor plans to stake its easement. At the

conclusion of this process, EKPC determined there was adequate room for the house to be built without interfering with EKPC'S line.

- a. Identify all of the structures identified in the Complaint.

RESPONSE: The Barkers' residence is situated on a 50-acre tract which EKPC refers to as tract 200. (See Exhibit 1.) A seven-bent tobacco barn, silo and corn crib are located on the 148-acre adjoining tract which EKPC refers to as tract 201. (See Exhibit 2.)

- b. Identify when each of the structures identified in the Complaint was constructed.

RESPONSE: Construction of the residence on the 50-acre tract began in October 1973 with excavation of the basement. (Receipts for the bulldozer hours associated therewith are attached hereto as Exhibit 3.) The home was completed in May of 1974. The candy shop, which is half of the residence's double garage, was built in 1983. The tobacco barn, silo, corn crib and an eight-room house were built on the 150-acre tract in 1938.

- c. Provide the date(s) of the purchase of the 198-acre farm.

RESPONSE: Brooks and Elizabeth Barnes, parents of Ann Barker, purchased the 150-acre tract on March 2, 1936 from Marvin N. Gay, et al. Their deed, which is attached hereto as Exhibit 4, is recorded in Deed Book 113, page 537 of the Clark County Clerk's office. On November 12, 2010, Harold Barker and Ann Barker, husband and wife, transferred a two-acre parcel from the 150-acre tract to their daughter, thereby leaving 148 acres in tract 201. The daughter's deed is of record in Deed Book 469, page 55 in the clerk's office aforesaid.

Brooks and Elizabeth Barnes purchased an adjoining 50-acre farm (tract 200) on March

3, 1956 from the Griggs Lewis heirs. The deed to this tract is recorded in Deed Book 151, page 481 in said clerk's office and is attached hereto as Exhibit 5.

Ann Barker acquired the 50-acre tract by gift in 1974 and the 150-acre tract by inheritance in 1993.

2. Refer to the Answer and Motion to Dismiss of EKPC dated October 10, 2013, Item 13. EKPC states that it has records that demonstrate the Complainants attended an open house held by EKPC in November, 2005, which was for the purpose of discussing the details of the contemplated project. Also, EKPC states the Complainants made a specific request regarding the placement of one of the pole structures that would be located on their property and that EKPC accommodated that request by adjusting the placement of the structure.

RESPONSE: The first time the Barkers knew about EKPC's intent to expand their 69kV transmission line to a 345kV/138kV line was through a notice in The Winchester Sun newspaper on October 31, 2005. That same day, the Barkers received notice in the mail of an open house EKPC was holding on November 10, 2005 to address the upgrade.

a. Confirm or deny the Complainants' attendance at the open house held by EKPC in November, 2005.

RESPONSE: The Barkers attended the EKPC open house on November 10, 2005.

b. Confirm or deny that the Complainants made a specific request regarding the placement of one of the pole structures that would be located on their property.

RESPONSE: At the open house, the Barkers were informed by Bruce Murray, EKPC's senior right-of-way agent, that EKPC had not yet determined the exact route for the upgraded

transmission line. In some cases, there would be fewer poles according to EKPC since they would be much larger and taller than the existing ones. The Barkers asked Mr. Murray to remove a set of poles near their home and to move the lines away from the home in light of the fact there would be eleven massive lines (after the upgrade) instead of the current five. Mr. Murray indicated EKPC would consider these requests, although he took no notes in the Barkers' presence.

c. Confirm or deny that EKPC accommodated the Complainants' request by adjusting that placement of the subject pole structure.

RESPONSE: In March of 2006, a surveyor came unannounced to the Barkers' property to stake off the expanded EKPC right-of-way for the upgrade. The new easement was to come through the middle of their front yard as well as a portion of the carport and garage; however, the poles were to be placed in the same locations as before. Ann Barker immediately called EKPC to discuss the situation. Numerous meetings were held on site over the next several months with EKPC's personnel, including Dominic Ballard, Paul Dolloff and Mary Jane Warner. Don Pasley, who raised cattle on the Barkers' farm, was also in attendance during some of these meetings. The decision to move the poles was made only after the Barkers confronted EKPC with the fact that EKPC had asserted to them that the owners of the farm across the road had already signed their easement which, in reality, had not occurred. The owners of said property, the Farris, had actually signed their easement after EKPC informed the Barkers that no changes could be made in the location of the easement (due to the previously-signed Farris easement). This incongruity appeared to the Barkers as if EKPC was seeking ways to block any

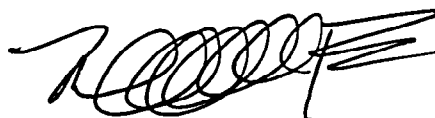
adjustments to the poles and easement. Only after this meeting did EKPC agree to move the poles. EKPC had adequate time to move the poles *and easement* since construction had not begun and, moreover, the Barkers had ample land to accommodate this request.

3. State whether any other request was submitted to EKPC regarding the placement of the line prior to its upgrade.

RESPONSE: On numerous occasions prior to the upgrade, the Barkers discussed placement of the poles and easement with EKPC personnel because EKPC had indicated that the Barkers' structures were now within its expanded easement. No mention of this infringement was made until the survey took place.

The Barkers respectfully request a meeting with the Public Service Commission to explain all aspects as outlined in case no. 2013-00291.

Respectfully submitted,



M. ALEX ROWADY, ESQ.
Blair & Rowady, P.S.C.
212 South Maple Street
Winchester, Kentucky 40391
(859) 744-3251
ATTORNEY FOR COMPLAINANTS

VERIFICATION

We have read the foregoing and the statements contained therein are true and correct to the best of our knowledge and belief.

Harold Barker
HAROLD BARKER

Ann Barker
ANN BARKER

Brooks Barker
BROOKS BARKER

STATE OF KENTUCKY)
)s.s.
COUNTY OF CLARK)

The foregoing Verification was subscribed and sworn to before me by HAROLD BARKER, ANN BARKER and BROOKS BARKER on this 20 day of November, 2013.

My Commission Expires: 10/7/15

M. Alex Rowady
NOTARY PUBLIC 452763
STATE OF KENTUCKY AT LARGE

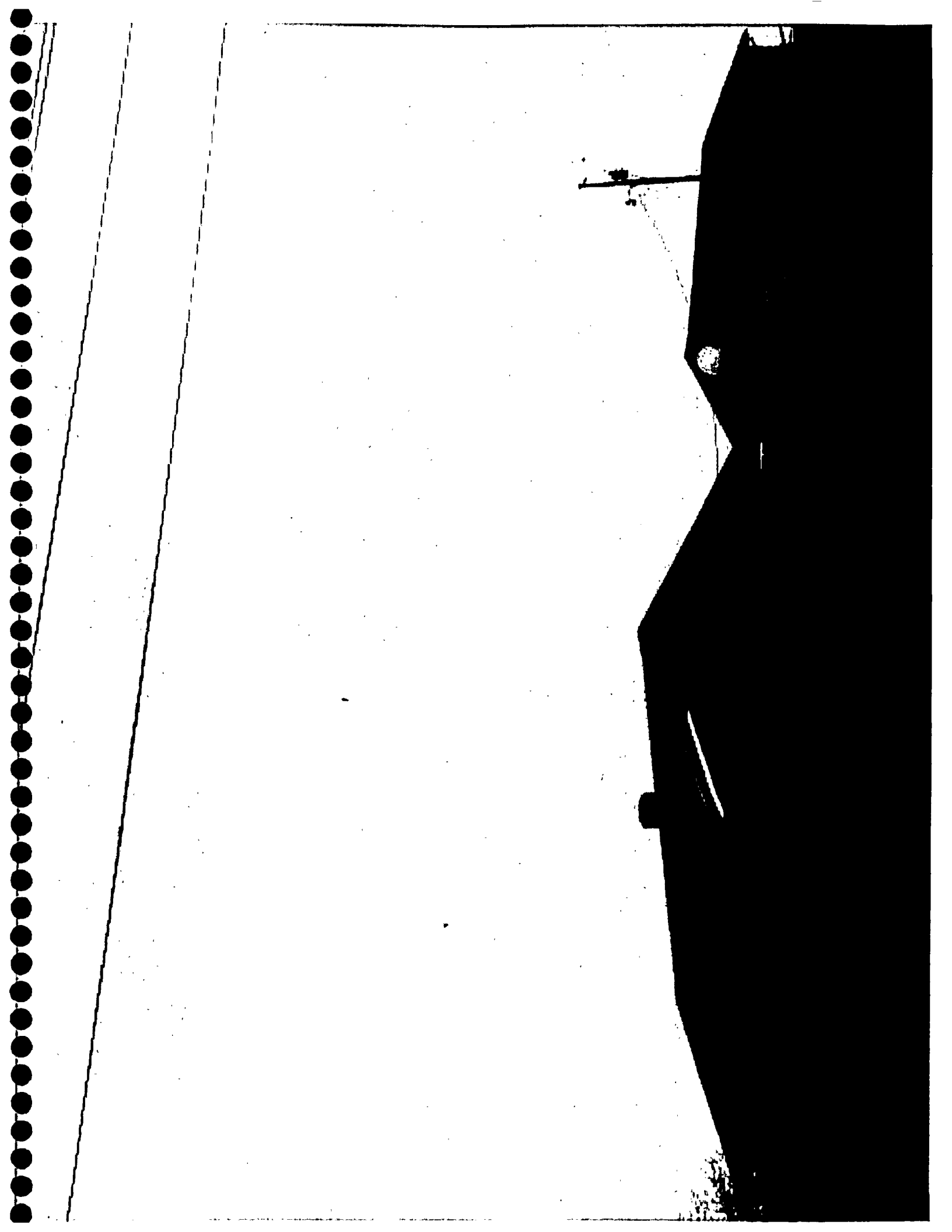
CERTIFICATE OF SERVICE

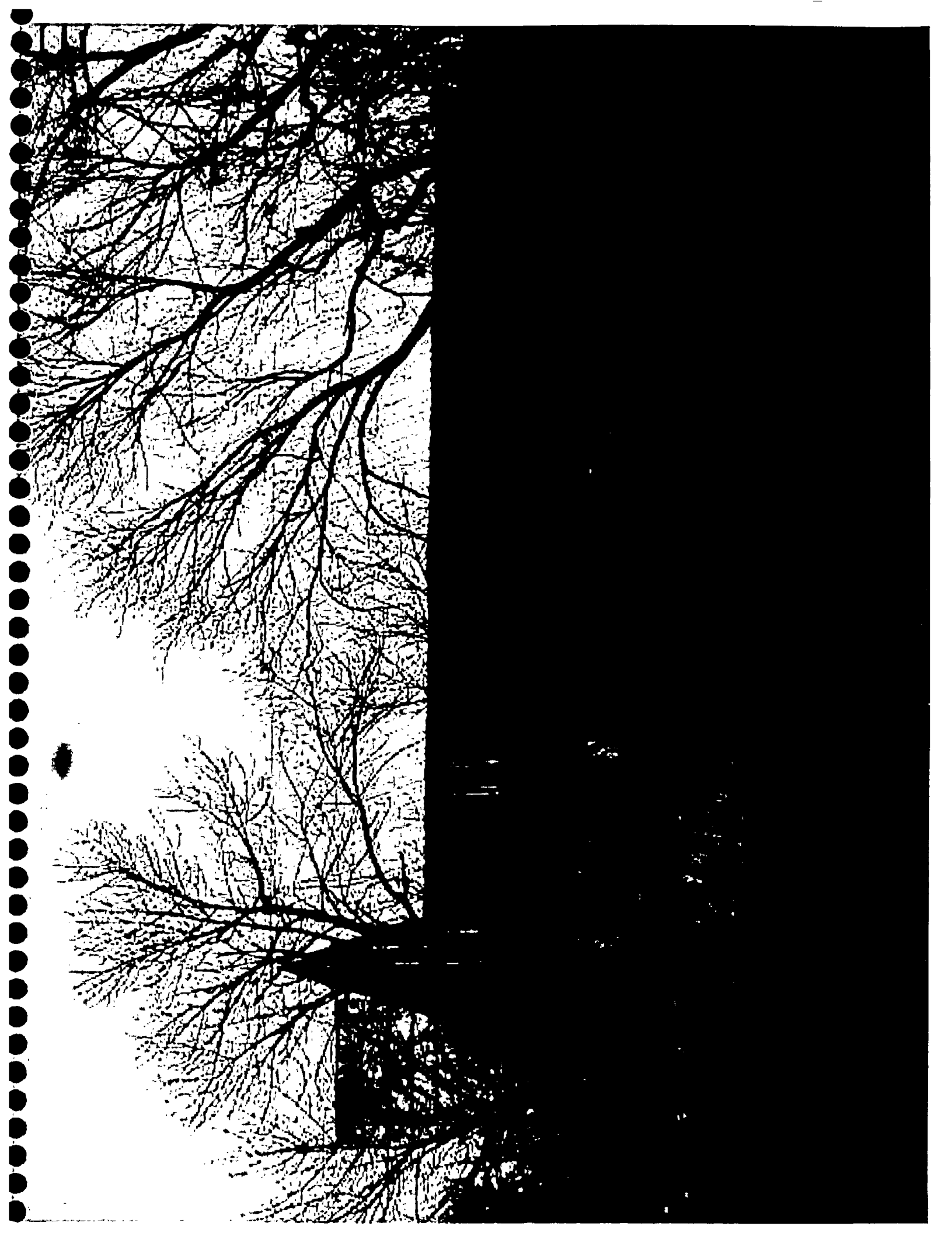
This is to certify that a true copy of the foregoing Response to Commission Staff's Initial Request for Information to Harold Barker, Ann Barker, and Brooks Barker was sent by first-class mail to Jeff Derouen, Executive Director, Kentucky Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602-0615, David S. Sanford, Esq., Goss Samford, PLLC, 2365 Harrodsburg Road, Suite B235, Lexington, Kentucky 40504 and Anthony S. Campbell, President and CEO, East Kentucky Power Cooperative, Inc., P.O. Box 707, Winchester, Kentucky 40392-0707, this 20 day of November, 2013.

M. Alex Rowady
M. ALEX ROWADY, ESQ.

TABLE OF EXHIBITS

1. Photograph of Barkers' residence
2. Photograph of tobacco barn, silo and corn crib
3. Bulldozer receipts for excavation of the Barkers' residence
4. Deed for 150-acre tract (tract 201)
5. Deed for 50-acre tract (tract 200)





J. C. RIGGS CONSTRUCTION CO.

Excavating & Grading

Residence 1285 LISLE ROAD Office 252-2909
278-3679
Area Code 606 Lexington, Ky. 40505 Area Code 606

Date

No. 787

Oct 29 1973

Work Done For Arnold Brown

Address Barnes - Mt Sterling Rd

Equipment Used # 26

IN	OUT	IN	OUT	TOTAL TIME
				#
1 1/2 Hours @ 18.00 Per Hour				27.00

Remarks: Dig Basement

SIGNED: Carl Foreman
Operator

J. C. RIGGS CONSTRUCTION CO.

Excavating & Grading

Residence 1285 LISLE ROAD Office 252-2909
278-3679
Area Code 606 Lexington, Ky. 40505 Area Code 606

Date

No. 911

Oct 31 1973

Work Done For Arnold Brown

Address Barnes - Mt Sterling Rd

Equipment Used # 26

IN	OUT	IN	OUT	TOTAL TIME
				#
2 1/4 Hours @ 18.00 Per Hour				58.50

Remarks: Dig Basement

SIGNED: Carl Foreman
Operator

J. C. RIGGS CONSTRUCTION CO.

Excavating & Grading

Residence 1285 LISLE ROAD Office 252-2909
278-3679
Area Code 606 Lexington, Ky. 40505 Area Code 606

Date

No. 912

Nov 1 1973

Work Done For Arnold Brown

Address Barnes - Mt Sterling Rd

Equipment Used # 26

IN	OUT	IN	OUT	TOTAL TIME
				#
9 Hours @ 18.00 Per Hour				162.00

Remarks: Dig Basement

SIGNED: Carl Foreman
Operator

J. C. RIGGS CONSTRUCTION CO.

Excavating & Grading

Residence 1285 LISLE ROAD Office 252-2909
278-3679
Area Code 606 Lexington, Ky. 40505 Area Code 606

Date

No. 923

Nov 2 1973

Work Done For Arnold Brown

Address Barnes - Mt Sterling Rd

Equipment Used # 29

IN	OUT	IN	OUT	TOTAL TIME
				#
8 1/2 Hours @ 18.00 Per Hour				153.00

Remarks: Dig Basement

SIGNED: Carl Foreman
Operator

J. C. RIGGS CONSTRUCTION CO.

Residence 278-8679 Excavating & Grading 1285 LISLE ROAD Office 252-2909 Area Code 606 Lexington, Ky. 40505 Area Code 606

No 924 Date Nov 3 1973

Work Done For Arnold Brown
Address Barnes - Mt Sterling
Equipment Used #29

IN	OUT	IN	OUT	TOTAL TIME
3				\$ 54.00
Hours @ 18.00 Per Hour				

Remarks: Dig Basement

SIGNED: Carl Foreman Operator

J. C. RIGGS CONSTRUCTION CO.

Residence 278-8679 Excavating & Grading 1285 LISLE ROAD Office 252-2909 Area Code 606 Lexington, Ky. 40505 Area Code 606

No 925 Date Nov 3 1973

Work Done For Arnold Brown
Address Barnes - Mt Sterling
Equipment Used #29

IN	OUT	IN	OUT	TOTAL TIME
1				\$ 18.00
Hours @ 18.00 Per Hour				

Remarks: Dig Basement

SIGNED: Carl Foreman Operator

*Gift to Hll. Brooks Barnes
3/25/46*

MARCH

MARVIN N. GAY, ETC.

(\$8000.00)

2nd

TO: DEED

150 A.

1936

BROOKS BARNES

This deed of conveyance made and entered into this the 2nd day of March 1936 by and between Marvin N. Gay and Mary Ragan Gay his wife, Henry J. Gay and Minnie Gay his wife, Richard Stofer and Rebecca Stofer his wife, Kathryn Chenault and D. W. Chenault her husband parties of the first part and Brooks Barnes party of the second part.

Witnesseth that for and in consideration of the sum of Eight Thousand (\$8000.00) Dollars cash in hand paid, the receipt of which is hereby acknowledged, the parties of the first part have bargained and sold and by these presents bargain, alien, sell and convey unto the party of the second part, his heirs and assigns, the following real property to-wit:

A certain tract of land located on the North side of the Winchester & Mt. Sterling Turnpike, in Clark County, Kentucky, bounded and described as follows:

Beginning at figure 11 on the map, a point in the middle of said turnpike a corner to the land sold by John Judy's heirs to Geo. O. Graves,

(Williams land); thence with the middle of the pike S 88 49 E 56 poles to 12, a point in the middle of the road corner to lot #3 in the line of Etta Clark's heirs, a stone on the north side of the road, a pointer; thence with the line of lot #3 N 10 52 E 161.7 poles to 13 corner to lot #3 and W. O. Brock; thence with the Brock line N 3 E 79.84 poles to 14 a stone corner on the South side of the stone fence; thence N 55 52 W 98.14 poles to the beginning of the 85 1/2 acre tract of land conveyed by John D. Gay and wife to H. F. Judy on the east side of Cabin Creek and corner to W. O. Brock and Henry Besuden; thence with the Besuden line S 43 3 W 73.92 poles to 16 a stone corner to Mrs. Laura Williams; thence with her line S 1 E 54.32 poles to 17; thence N 73 5 E 46.44 poles to 18 a corner to Williams land; thence S 3 37 E 149.1 poles to the beginning, containing 150 acres of land.

And being the same property conveyed to Annie Ratliff for life with remainder to her children, if any survive her in fee simple and if she should die leaving no children surviving her, then her said share shall revert to the heirs at law of Henry F. Judy, said deed bearing date October 19, 1902 from H. F. Judy's Heirs by J. M. Benton Master Commissioner Clark Circuit Court and recorded in Deed Book 69 page 500, Clark County Clerks office.

The said Annie Ratliff having died May 18, 1935 without leaving any children and the said grantors, Marvin N. Gay, Henry J. Gay, Richard Stofer and Kathryn Chenault being all the heirs-at-law of said Henry F. Judy deceased.

to have and to hold said real property together with the improvements thereon and appurtenances thereunto belonging unto the party of the second part, his heirs and assigns forever, in fee simple and with Covenant of General Warranty.

In testimony whereof witness the signatures of first parties, this the day and year first above written.

Marvin N. Gay
Mary Ragan Gay
Henry J. Gay
Minnie Gay
Richard Stofer
Rebecca Stofer
Kathryn Chenault
D. W. Chenault

STATE OF KENTUCKY)
COUNTY OF MONTGOMERY)

I, T. H. Wilson a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing deed of conveyance from Marvin N. Gay et al., to Brooks Barnes was this day produced to me in my said County and was acknowledged by Henry J. Gay and Minnie Gay, his wife, Marvin N. Gay and Mary Ragan Gay his wife, Kathryn Chenault and D. W. Chenault her husband to be their act and deed for the purposes therein contained.

Given under my hand and seal of office this the 4, day of March, 1936.

My Commission expires 25, day of Apr, 1936.

(SEAL)

T. H. Wilson
Notary Public Montgomery
County, Kentucky.

STATE OF KENTUCKY)
COUNTY OF FAYETTE)

I, L. D. Bassett, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing deed from Marvin N. Gay et al., to Brooks Barnes was this day produced to me in my said County by Richard Stofer and Rebecca Stofer his wife and acknowledged by them to be their act and deed for the purposes therein contained.

Given under my hand and seal this the 5th day of March, 1936.
My Commission expires the 1st day of August, 1936.

(SEAL)

L. D. Bassett
Notary Public Fayette County, Ky.

STATE OF KENTUCKY)
) SS.
COUNTY OF CLARK)

I, Linville Jackson, Clerk of the Clark County Court, do certify that the foregoing deed to Brooks Barnes, was on the 7th day of March, 1936, produced to me in said County, certified as above, and was lodged for record March 7th, 1936, whereupon the same and this & the preceding certificates have been recorded in my office, together with the stamps thereon, amounting to \$8.00.

Given under my hand this the 11th day of March, 1936.

LINVILLE JACKSON, Clerk.

By Sumner J. Ramsey D.C.

Delivered to Brooks Barnes

MARCH RAYMOND H. SNOWDEN, Master Commissioner R...E
Frances B. Lewis & others
3rd. TO:::::::::::DEED
1956 BROOKS BARNES & ELIZABETH BARNES

KNOW ALL MEN BY THESE PRESENTS:

That whereas in an action now pending in the Clark Circuit Court, styled Frances B. Lewis et al, Plaintiffs, vs. The Mutual Benefit Life Insurance Company, Defendant, No. 8557, a judgment was entered on the 11th. day of February, 1956, authorizing and directing Raymond H. Snowden, Master Commissioner of the Clark Circuit Court, to expose for public sale to the highest and best bidder on the premises in Clark County, Kentucky, on Wednesday, February 29, 1956, the hereinafter described real estate, and

WHEREAS, pursuant to said judgment and order of sale, Brooks Barnes and Elizabeth Barnes became the purchasers thereof, being the highest and best bidder, at the total purchase price of Sixteen Thousand Twenty-five (\$16,025.00) Dollars, which purchase price was paid in cash to the Master Commissioner in lieu of executing bond, and

WHEREAS, said Master Commissioner thereafter on the 1st. day of March, 1956, duly filed in said action his written report of sale, and there were no objections or exceptions filed thereto, and on March 3, 1956, said report of sale was approved and confirmed, and an order was entered in said action directing the Master Commissioner to convey the property sold in said action to the purchasers, Brooks Barnes and Elizabeth Barnes, for their joint lives, with remainder in fee simple to the survivor of them, his or her heirs and assigns, for and on behalf of all parties to said action,

NOW, THEREFORE, in consideration of the premises and in consideration of the full payment of the purchase price, receipt of which is hereby acknowledged, and in obedience to the orders of the court, I Raymond H. Snowden, Master Commissioner of the Clark Circuit Court, on behalf Frances B. Lewis, Bessie Lewis Quisenberry, Thomas M. Quisenberry, Thomas M. Quisenberry, administrator of the estate of Millard Griggs Lewis, James Rucker Lewis, an infant over 14 years of age, Thomas Bruce Lewis, an infant over 14 years of age, Richard Griggs Lewis, an infant 13 years of age, and Frances B. Lewis, as guardian for James Rucker Lewis, Thomas Bruce Lewis and Richard Griggs Lewis, and The Mutual Benefit Life Insurance Company do now sell, transfer, alien and convey unto the said Brooks Barnes and Elizabeth Barnes for their joint lives, with remainder in fee simple to the survivor of them, his or her heirs and assigns, the following described real estate:

corner to Ratliff; thence South 07° 11' East 18.5 feet to a fence post; thence North 72° 45' East 766.26 feet to corner to Ratliff; thence South 03° East 2455 feet to center of Mt. Sterling Pike, corner to Ratliff; thence along the center of said Pike North 84° 30' West 400 feet; thence North 87° 30' West 230 feet; thence North 84° 35' West 451.5 feet to the place of beginning, containing 50 acres, more or less.

Subject to any and all easements now of record including the existing Winchester-Mt. Sterling Road, U.S. Route 60.

Being a part of the same property owned by George W. Lewis at the time of his death and which under the terms of his will, which is of record in Will Book No. 3, page 279, and a deed of division pursuant thereto between Rucker Lewis and wife, George M. Lewis and wife and Madge Lewis dated August 15, 1935, of record in Deed Book No. 113, page 90, passed to Madge Lewis and Rucker H. Lewis for life, with remainder absolutely in fee to Griggs Lewis and Bessie Lewis Quisenberry, the only children of Rucker H. Lewis (Madge Lewis and Rucker H. Lewis both being deceased), as appears by an affidavit of descent, of record in Deed Book No. 144, page 494; the said Griggs Lewis having died intestate on October 12, 1955, and his interest therein having passed to his three sons and sole heirs at law, James Rucker Lewis, Thomas Bruce Lewis and Richard Griggs Lewis, subject to the dower of his widow, Frances B. Lewis, as appears by affidavit of descent dated March 1, 1956, and of record in Deed Book 151, page 480., all records of the Clark County Court Clerk's office.

The purchasers shall assume payment of the taxes on said real estate for the year 1956.

TO HAVE AND TO HOLD the said real estate, together with all the appurtenances thereunto belonging, unto the said Brooks Barnes and Elizabeth Barnes for their joint lives, with remainder in fee simple to the survivor of them, his or her heirs and assigns, forever, and the Commissioner warrants the title to the property, insofar as he is ordered and directed by the court but no further and in no event individually.

IN TESTIMONY WHEREOF, witness the signature of Raymond H. Snowden, Master Commissioner of the Clark Circuit Court, this 3rd. day of March, 1956.

Raymond H. Snowden
Master Commissioner Clark
Circuit Court.

Examined and approved in
open Court this March 3, 1956.

H. O. Porter
Judge Clark Circuit Court.

STATE OF KENTUCKY)
COUNTY OF CLARK) SCT.

I, L. C. Aldridge, Clerk of the Clark Circuit Court, certify that the foregoing deed from Frances B. Lewis et al by Raymond H. Snowden, Master Commissioner, to Brooks Barnes and Elizabeth Barnes was this day produced in open court and acknowledged by said Commissioner to be his act and deed as such Commissioner and was thereupon examined and approved by the Judge of the court in open Court, and the same was ordered to be and is hereby certified to the office of the Clark County Court for record.

Witness my hand as Clerk of the court aforesaid,
this the 3rd. day of March, 1956.

L. C. Aldridge, Clerk
By: Eleanor L. Mace, D.C.

STATE OF KENTUCKY)
COUNTY OF CLARK) SS.

I, Clyde Gravett, Clerk of the Clark County Court, do certify that the foregoing Deed to Brooks Barnes & wife, was on the 6th. day of March, 1956, produced to me in said County, certified as above, and was lodged for record March 6, 1956. Whereupon the same and this and the preceding certificate have been recorded in my office, together with the stamps thereon amounting to \$18.15.

1956.

Given under my hand this, the 6th. day of March,

CLYDE GRAVETT, CLERK

By: Mildred R. Sunday, D.C.