



an eon company

Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

August 24, 2006

Case No. 2006-00391

RE: **Application of Louisville Gas and Electric Company for Approval of Sale of Property to the Louisville Arena Authority, Inc.**

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten copies each of Louisville Gas and Electric Company's Application for Approval of Sale of Property to the Louisville Arena Authority, Inc., Addendum to Application and Petition for Confidential Protection 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 or need any additional information, please contact me at your convenience.

Sincerely,

Kent W. Blake

Enclosures

cc: Elizabeth E. Blackford, Esq. (w/ enclosure)
Mark Sommer, Esq. (w/ enclosure)
Kendrick R. Riggs, Esq. (w/ enclosure)

RECEIVED

AUG 24 2006

PUBLIC SERVICE
COMMISSION

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

AUG 24 2006

In the Matter of:

**PUBLIC SERVICE
COMMISSION**

APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY FOR APPROVAL OF)
SALE OF PROPERTY TO THE LOUISVILLE)
ARENA AUTHORITY, INC.)

CASE NO. 2006-00391

VERIFIED APPLICATION

Louisville Gas and Electric Company (“LG&E”), by counsel, for its Verified Application for approval of the sale of certain property to the Louisville Arena Authority, Inc. (“Arena Authority”) pursuant to KRS 278.040, the Commission’s Order dated June 11, 2002 in Case No. 2002-00029,¹ 807 KAR 5:001, Section 8, KRS 278.218, to the extent applicable,² and any and all other applicable statutes and regulations, respectfully states as follows:

INTRODUCTION

The Arena Authority and the Louisville/Jefferson County Metro Government (“Louisville Metro Government”), upon recommendation by the Arena Task Force appointed by the Governor in May 2005, have each determined that the public interest is

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.”).

² LG&E does not believe that KRS 278.218 applies to the proposed sale, as the original purchase price of the land to be sold was \$368,219.94. The original book value that triggers KRS 278.218 jurisdiction is \$1,000,000.00.

best served by development of an arena complex (the “Arena”) on riverfront property that is partially owned by LG&E and located in Louisville, Jefferson County, Kentucky, and that is bounded by River Road on the north, Second Street on the east, Third Street on the west and Washington Street on the south, and another smaller parcel of real property located on the south side of Washington Street at the corner of South Third Street (collectively, the “Real Property”). See Louisville Metro Government Resolution [Exhibit 1 hereto].³ The Kentucky General Assembly has approved a budget for the 2006-2008 biennium including \$75,000,000 in revenue bond capacity to be issued by the Commonwealth, and the proceeds will be made available to the Arena Authority for use in connection with the Arena Project.⁴

Accordingly, at the Arena Authority’s request and subject to this Commission’s approval, LG&E has agreed to sell the Real Property to the Arena Authority, and has entered into a Memorandum of Understanding with the Arena Authority memorializing the agreement between the parties (the “MOU”) [Exhibit 2 hereto]. Generating units presently on the Real Property consist of two 11 MW capacity combustion turbines (“CTs”) that are each forty-two years old (but that are connected to the original 1920s generators), that have been used infrequently in recent years, and that will be retired prior to the sale. Also located on the site are transmission dispatch facilities whose removal, for purposes of security and technological enhancement, has long been planned. These expanded dispatch facilities will be constructed at a more secure and suitable location to

³ *Resolution No. 81, Series 2006, A Resolution Ratifying and Approving a Memorandum of Agreement Relating to Financing a Portion of the Louisville Arena Project by and Between Louisville/Jefferson County Metro Government and the Louisville Arena Authority, Inc.*, dated July 28, 2006.

⁴ HB 380 (Ky., 2006 Sess.)

be acquired by LG&E. LG&E's remaining service facilities currently on the Real Property will be relocated on other parcels of real property currently owned by LG&E (the "Relocation Project").

The Arena Authority will pay LG&E the full market value of the Real Property including necessary adjustments in accordance with the property evaluation analysis in the *Complete Appraisal in a Self-Contained Report* prepared for Tony Wheatley, Property Analyst, Commonwealth of Kentucky and dated November 16, 2005 (the "Appraisal"), filed contemporaneously herewith under seal in accordance with state law.⁵ In addition, the Arena Authority will pay the entire cost of the Relocation Project. LG&E's ratepayers will pay no costs incurred as a result of the sale of the Real Property or the Relocation Project.

So that it may comply with the project completion schedule, LG&E asks that the Commission enter its Order approving the sale of the property within sixty (60) days or by October 22, 2006.

PARTIES TO THE TRANSACTION

1. Address: The applicant'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. Articles of Incorporation: A certified copy of LG&E's Articles of Incorporation is on file with the Commission in Case No. 2005-00471, *In the Matter of: Application of Louisville Gas and Electric Company and Kentucky Utilities Company for*

⁵ State law prohibits public disclosure of the "contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired." KRS 61.878(1)(f).

Authority to Transfer Functional Control of their Transmission System, filed on November 18, 2005, and is incorporated by reference herein pursuant to 807 KAR 5:001, Section 8(3).

3. LG&E is a public utility pursuant to KRS 278.010(3)(a), is engaged in providing electric and gas service, and is subject to Commission jurisdiction pursuant to KRS 278.040. 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. The Louisville Arena Authority, Inc. is a Kentucky non-stock, non-profit corporation which was created for the charitable purpose of overseeing the design, construction, and operation of a multi-use arena complex to be located in downtown Louisville, Kentucky. Its address is 3500 National City Tower, 101 South Fifth Street, Louisville, Kentucky, 40202.

THE PROPOSED TRANSACTION

5. LG&E's facilities on the Real Property include several large buildings that house electrical substations, transformers and circuits, transmission dispatch facilities, telecommunications facilities, information technology ("IT") equipment and facilities for IT personnel, substation operations equipment and facilities for substation personnel, two combustion turbines, underground electric transmission lines, gas regulation and distribution facilities, and other personal property.

6. As the MOU provides, LG&E will sell the Real Property to the Arena Authority and will relocate all service facilities thereon, except for the two CTs and the transmission dispatch facilities, at the expense of the Arena Authority. LG&E will retire the CTs and construct upgraded, technologically updated transmission dispatch facilities at a location that provides for needed security and that does not restrict expansion as does the limited space available on the Real Property in downtown Louisville. LG&E will not request a base rate increase solely as a result of the construction of the new transmission dispatch facilities, and does not anticipate any immediate impact on customer rates as a result of such construction.

7. Specifically, the Relocation Project will consist of the following:

(A) Reconstructing, inside a new building at an LG&E location, the functionality of the existing transformers and associated switchgear on the east side of Third Street as well as the air insulated switchyard on the west side of Third Street. Associated transmission and distribution circuit work required to support the transfer will also be completed;

(B) Serving from other existing LG&E substation locations six 4,000 Volt electric distribution circuits which serve primarily residential and small commercial customers from the existing service facilities;

(C) Relocating to other existing LG&E gas facilities two gas facilities which serve distribution customers in the immediate area;

(D) Relocating the IT operations, facilities for IT personnel, substation operations equipment and facilities for substation personnel;

(E) Testing all new and relocated equipment and facilities; and

(F) Completing all engineering and design work related to the foregoing.

8. Sargent & Lundy LLC (“S&L”) has prepared for LG&E the *Louisville Gas & Electric Waterside Site Opinion Paper* dated September 20, 2005 (the “S&L Report”), which contains an evaluation of the scope and costs of the Relocation Project, during which LG&E will maintain its existing operational capacity and continue to provide safe and reliable utility service. The Arena Authority will pay LG&E all out-of-pocket costs of the Relocation Project [MOU at 2.2]. In addition, if the Arena project is canceled for any reason, including force majeure, the Arena Authority will reimburse LG&E for any costs of the Relocation Project previously incurred and for any cancellation charges for which LG&E is liable to third parties [MOU at 2.2].

9. LG&E will present requisitions to the Arena Authority when any advance costs of the Relocation Project are required to be incurred, and the Arena Authority will promptly see that the amounts specified are remitted. The MOU provides that failure to remit amounts under the contract, and any resulting delay, will be at the expense of the Arena Authority [MOU at 2.3].

10. The conveyance of the Real Property will take place only after the Relocation Project has been completed and all related facilities have become operational. Although agents of the Arena Authority may have access to the Real Property prior to the conveyance, such access will not be permitted to have any adverse impact on LG&E’s operation of its facilities thereon, as determined by LG&E in its sole discretion [MOU at 1.3]. The Arena Authority will be solely responsible for demolition of the existing buildings and for disposal of any personal property remaining on the Real Property on the conveyance date [MOU at 1.4 and 1.5].

11. In addition to contingencies that must be met or waived by LG&E, LG&E is not obligated to undertake any commitment to spend amounts with respect to the Relocation Project until LG&E is satisfied that either (a) The Arena Authority has available to it the proceeds of the Kentucky bonds in the amount of \$75,000,000, or (b) The Arena Authority has available to it advances from the Kentucky Finance Cabinet in a total amount sufficient to pay the costs of the Relocation Project and the entire purchase price of the property [MOU at 3].

THE PUBLIC INTEREST ANALYSIS

12. LG&E agreed to sell the Real Property as a result of determinations by the Arena Task Force, the Arena Authority, and the Louisville Metro Government that the public interests of the City of Louisville and the Commonwealth at large will best be served by placement of an Arena at the subject site. LG&E has also ensured, pursuant to the MOU, that its customers will be fully protected by every safeguard against bearing any of the costs associated with the sale or the Relocation Project, as more fully described below. The retirement of the CTs located on the Real Property and the construction of new transmission dispatch facilities are related to the sale of the Real Property only as a matter of timing: planning for, and recognition of the necessity of, both projects predate the decision to enter into the transaction proposed herein.

The Retirement of the Combustion Turbines Presently Located at The Real Property

13. As the Commission is aware, retirement of the 11 MW capacity combustion turbines that are presently located on the Real Property and that were placed into service in 1964 has long been contemplated by LG&E. Their sustained operation in recent years has been infrequent, *see* Waterside CT Service Hours and Gross Generation

Summary [Exhibit 3 hereto], and spare parts for them are lacking. In the 2005 Joint Integrated Resource Plan (“IRP”) filed in *The 2005 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, PSC Case No. 2005-00162, references to the imminent retirement of these units occur repeatedly. *See, e.g.*, IRP, Vol. 1, Section 5, at 5-46 (listing the forty-two year old Waterside CTs in a list of “Aging Units”); IRP, Vol. 1, Section 5, at 5-44 (explaining that thirty years is the typical full life of a smaller-sized CT such as the Waterside units).

14. As the IRP sets forth, at Vol. I, Section 8, at 8-118, a CT that has operated past its design life carries with it a greater risk of catastrophic failure than other units. In addition, these CTs, that were placed into service in 1964, carry relatively high production costs, and the recent NOx restrictions only decrease their relative economic value.

15. LG&E has completed a *Life Assessment Study: Louisville Gas and Electric's Waterside Generating Plant* (“Life Assessment Study”) [Exhibit 4 hereto] recommending that the CTs be retired immediately because they are, among other things, less than reliable and unduly expensive to operate. In addition to those factors discussed above, the Life Assessment Study notes that new EPA regulations that will go into effect on October 31, 2007 would require expensive upgrades to bring the units into compliance with updated methods to minimize the likelihood of an oil release into a navigable watercourse (the Ohio River) [Life Assessment Study, at 11-12]. Thus, even without a significant mechanical failure, economic considerations dictate the retirement of these units. Sargent & Lundy also has so advised LG&E, including in its report to LG&E a preliminary finding that the CTs are obsolete and inefficient and should be retired, and

assuming such retirement for purposes of their report. In response to these findings, at its meeting of August 21, 2006, the LG&E/KU Joint Operations Committee voted to retire the CTs [Pertinent Portions of Minutes of Joint Operations Committee dated August 21, 2006, Exhibit 5 hereto].

16. LG&E has commissioned a study to determine what, if any, resale value remains in the CTs. The results of the study will assist LG&E in determining whether the CTs should be sold as scrap or as spare parts, or whether they should simply be abandoned onsite as the MOU permits. That study is expected to be completed by mid-September and will be filed in this docket upon its receipt by LG&E.

The Pre-Existing Need To Upgrade and Relocate the Transmission Dispatch Facilities

17. LG&E has recognized for some time that it would be wise to remove the transmission dispatch facilities from their current location on the Real Property. The chief reason to relocate the facilities is security. In addition, no room to expand is available within the crowded city area in which the facilities are now located, and better efficiency across the joint utility systems of E.ON U.S. can be achieved at another location.

18. Relocation of the transmission dispatch facilities is in the best interests of both LG&E's customers and the public at large. Safety and operational efficiency will be increased, and LG&E will not seek a base rate increase solely as a result of the construction of the new transmission dispatch facilities.

Safeguards for LG&E and its Customers

19. LG&E's, as well as its customers', interests are protected by the terms of the Proposed Transaction. LG&E will be fairly and fully compensated as it will receive

the fair market value of the land.⁶ The details of the public interest analysis demonstrating that LG&E will obtain full and fair value are more fully explained in the Addendum to Application and Appraisal, both of which are being filed contemporaneously with this Application with a Petition for Confidential Protection.

20. Commission precedent shows that the sale should be approved. *See* PSC Case No. 2004-00507, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Expansion of the Trimble County Generating Station* (Order dated Nov. 1, 2005) (finding a sale of land to be in the public interest and approving same); PSC Case No. 2005-00199, *The Application of the Union Light, Heat and Power Company Relating to Sale of 7200 Industrial Road Construction/Maintenance Center Building* (Final Order dated July 28, 2005) (same).

21. Various safeguards for LG&E and its customers obviate any concern that the Proposed Transaction will have any adverse effects upon either, including: (a) MOU provisions ensuring that LG&E will be able to maintain its existing operational capacity throughout the Relocation Project and will continue to provide safe and reliable utility service; (b) MOU provisions requiring the Arena Authority to pay LG&E all out-of-pocket costs of the Relocation Project; (c) MOU provisions protecting LG&E if the Arena project is canceled for any reason, including force majeure, in that any cancellation will trigger the obligation of the Arena Authority to reimburse LG&E for all costs of the Relocation Project previously incurred and for any cancellation charges for which LG&E is liable to third parties; (d) MOU terms and conditions providing that LG&E will present

⁶ Per LG&E's books and records, the original cost of the land was \$368,219.94.

requisitions to the Arena Authority when any advance costs of the Relocation Project are required to be incurred and that the Arena Authority will promptly see that the amounts specified are remitted; (e) MOU provisions ensuring that any failure to remit amounts under the contract, and any resulting delay, will be at the expense of the Arena Authority; (f) MOU provisions ensuring that, although Arena Authority agents will have access to the property, LG&E has sole discretion to limit such access if, in LG&E's sole discretion, it will have any adverse impact on LG&E's operation of its facilities; (g) MOU provisions stating that LG&E is not obligated to undertake any commitment to spend amounts with respect to the Relocation Project until LG&E is satisfied either (1) The Arena Authority has available to it the proceeds of the Kentucky bonds in the amount of \$75,000,000, or (2) the Arena Authority has available to it advances from the Kentucky Finance Cabinet in a total amount sufficient to pay the costs of the Relocation Project and the entire purchase price of the property.

22. The sale has already been found to be in the public interest by the Louisville Metro Government, the political entity responsible for, and responsible to, the bulk of LG&E's utility customers as well as to local citizens in general. The Louisville Metro Government has concluded that the Arena "will significantly benefit Louisville and the Commonwealth of Kentucky by increasing state and local tax revenues, creating new jobs, enhancing regional tourism, increasing property tax values and stimulating private investment."⁷ In addition, the Kentucky General Assembly has authorized, and provided \$75 million in bonds for, the construction of an Arena in downtown Louisville, specifically providing that, if the Arena is located upon Real Property owned by LG&E,

⁷ Louisville Metro Government Resolution, at 1.

LG&E's financial obligations must be clearly delineated in the documents of sale.⁸ The MOU complies with that legislative mandate.

23. The terms of the MOU ensure that the final facet of the public interest analysis – that relating to the interests of the customers served by LG&E – is fully addressed. LG&E's customers will suffer no adverse effects as a result of the proposed transaction.

WHEREFORE, Louisville Gas and Electric Company respectfully requests that the Commission enter its Order approving the transfer of the Real Property to the Arena Authority under the terms contained in the parties' Memorandum of Understanding, and further requests that such Order be issued within sixty (60) days of the date of this Application or by October 22, 2006.

Respectfully Submitted,



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Telephone: (502) 333-6000

Elizabeth L. Cocanougher
Senior Corporate Attorney
E.ON U.S. Service Inc. for
Louisville Gas and Electric Company
220 West Main Street
Louisville, Kentucky 40232
Telephone: (502) 627-4850

Counsel for
Louisville Gas and Electric Company

⁸ See House Bill 380 (Ky., 2006 Sess.).

LIST OF EXHIBITS

1. *Resolution No. 81, Series 2006, A Resolution Ratifying and Approving a Memorandum of Agreement Relating to Financing a Portion of the Louisville Arena Project by and Between Louisville/Jefferson County Metro Government and the Louisville Arena Authority, Inc.*, dated July 28, 2006
2. *Memorandum of Understanding by and between Louisville Gas and Electric Company and Louisville Arena Authority, Inc.*, dated August, 2006
3. Waterside CT Service Hours and Gross Generation Summary, 1982-2006
4. *Life Assessment Study: Louisville Gas and Electric's Waterside Generating Plant*, dated August, 2006.
5. Pertinent Portions of Minutes of LG&E/KU Joint Operating Committee dated August 21, 2006

LIST OF ADDITIONAL SUPPORTING DOCUMENTS FILED WITH PETITION FOR CONFIDENTIAL PROTECTION

1. Addendum to Application
2. *Complete Appraisal in a Self-Contained Report*, prepared for Tony Wheatley, Property Analyst, Commonwealth of Kentucky, dated November 16, 2005

RESOLUTION NO. 81 SERIES 2006

A RESOLUTION RATIFYING AND APPROVING A MEMORANDUM OF AGREEMENT RELATING TO FINANCING A PORTION OF THE LOUISVILLE ARENA PROJECT BY AND BETWEEN LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AND THE LOUISVILLE ARENA AUTHORITY, INC.

**SPONSORED BY: Councilman Kevin Kramer
Councilwoman Julie Raque Adams
Councilman Robin Engel
Councilman George Unseld
Councilwoman Tina Ward-Pugh
Councilman Leonard Watkins
Councilman David Tandy**

WHEREAS, the Louisville Arena project, under the auspices of the Louisville Arena Authority, Inc. ("Arena Authority"), a public project intended for multiple uses as a public, recreational, cultural, and sports facility ("Project"), will significantly benefit Louisville and the Commonwealth of Kentucky by increasing state and local tax revenues, creating new jobs, enhancing regional tourism, increasing property tax values and stimulating private investment in the area where the project will be located; and

WHEREAS, the Arena Authority was created in order to facilitate public improvements and publicly promoted private area improvements and complimentary amenities, to serve as an economic development stimulus in Louisville and the Commonwealth as a whole and for the purpose of creating, financing, developing and overseeing the construction, management and operation of a multi-use arena to be constructed in Louisville; and

WHEREAS, the 2006 General Assembly enacted House Bill 380 authorizing the expenditure of up to seventy-five million dollars (\$75,000,000) in

state-supported bonds to pay a portion of the cost of constructing the Project and designated the Finance and Administration Cabinet of the Commonwealth as the budget unit responsible for the administration of the state funds for the Project, funds which will be obtained through the issuance of bonds and/or notes supported by state appropriations; and

WHEREAS, the release of the state-supported bond funds to the Arena Authority on or after July 1, 2006, is contingent upon the execution of various agreements, in form and substance satisfactory to the Commonwealth of Kentucky, acting by and through its Finance and Administration Cabinet, including an agreement between Louisville/Jefferson County Metro Government ("Metro Louisville") and the Arena Authority setting forth the amount of financial support for the Project to be provided by Metro Louisville either through guarantees and/or tax-increment financing revenues; and

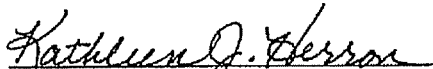
WHEREAS, the Commonwealth of Kentucky intends to invest in the Project, thereby serving as a catalyst for downtown Louisville, more particularly, the neighboring six square mile (2.45 miles by 2.45 miles) area that is calculated by going 1.225 miles from the Arena to the East and West and 2.45 miles from the Arena to the South (the "Development Area");

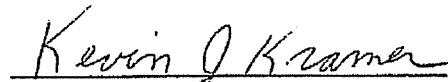
WHEREAS, the attached Memorandum of Agreement between Metro Louisville and the Arena Authority, in a form and substance satisfactory to the Commonwealth of Kentucky, has been executed by the Mayor and can therefore be submitted to the Metro Council for ratification and approval;

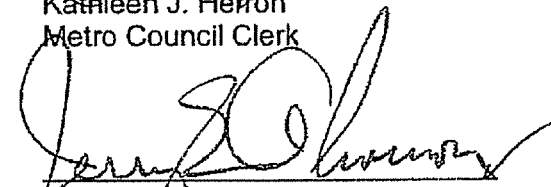
NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

Section 1. That the Memorandum of Agreement between Metro Louisville and the Arena Authority, which guarantees, to the fullest extent permitted by law, that as of November 2010 and for thirty years ending November 1, 2039, Metro Louisville shall provide certain payments to the Arena Authority, directly or through appropriate debt instruments of its own or one or more of its agencies, supported by incremental property and occupational tax revenues and/or other non-tax income, to support a portion of the development, financing and construction of the Project, be and the same is hereby ratified and approved. The Memorandum of Agreement is attached hereto and made a part hereof as if fully copied herein.

Section 2. That this Resolution shall become effective upon its passage and approval.

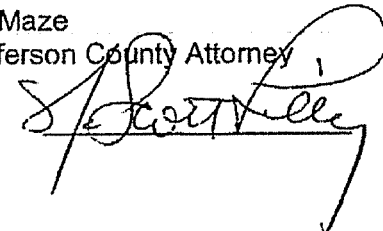

Kathleen J. Heron
Metro Council Clerk

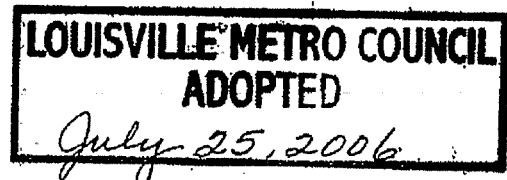

Kevin J. Kramer
President of the Council


Jerry Abramson
Mayor

Approved: 7-28-06
Date

APPROVED AS TO FORM AND LEGALITY:

Irv Maze
Jefferson County Attorney
By: 



MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT (hereinafter the "Memorandum") is made and entered into this 21st day of July, 2006, by and between LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, a municipal governmental body within the Commonwealth of Kentucky, with the address at the Metro Hall, 4th Floor, 527 West Jefferson Street, Louisville, KY 40202, (hereinafter "Metro Louisville") and the LOUISVILLE ARENA AUTHORITY, INC., a Kentucky non-stock, non-profit corporation, with an address of 3500 National City Tower, 101 S. Fifth Street, Louisville, KY 40202, (hereinafter the "Arena Authority").

WITNESSETH:

WHEREAS, the Louisville Arena project, under the auspices of the Arena Authority, a public project intended for multiple uses as a public, recreational, cultural, and sports facility ("Project"), will significantly benefit Metro Louisville and the Commonwealth of Kentucky by increasing state and local tax revenues, creating new jobs, enhancing regional tourism, increasing property tax values and stimulating private investment in the area where the Project will be located; and

WHEREAS, the Arena Authority was created in order to facilitate public improvements and publicly promoted private area improvements and complimentary amenities, to serve as an economic development stimulus in Metro Louisville and the Commonwealth as a whole and for the purpose of creating, financing, developing and overseeing the construction, management and operation of a multi-use arena to be constructed in Louisville, Jefferson County, Kentucky; and

WHEREAS, the 2006 General Assembly enacted House Bill 380 authorizing the expenditure of up to seventy-five million dollars (\$75,000,000) in state-supported bonds to pay a portion of the cost of constructing the Project and designated the Finance and Administration Cabinet of the Commonwealth as the budget unit responsible for the administration of the state funds for the Project, funds which will be obtained through the issuance of bonds and/or notes supported by state appropriations; and

WHEREAS, the release of the state-supported bond funds to the Arena Authority on or near July 1, 2006, is contingent upon the execution of various agreements, in form and substance satisfactory to the Commonwealth of Kentucky, acting by and through its Finance and Administration Cabinet, including an agreement between the Arena Authority and Metro Louisville setting forth the amount of financial support for the Project to be provided by Metro Louisville; and

WHEREAS, Metro Louisville has adopted a resolution authorizing and guaranteeing payments to the Arena Authority which will be used for the purpose of financing a portion of the Project by authorizing the Mayor to enter into this Memorandum;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt, mutuality, and sufficiency of which is hereby acknowledged by the parties hereto, Metro Louisville and the Arena Authority agree as follows:

SECTION 1. DEFINITIONS

Definitions. For the purposes hereof, the following words and phrases shall have the meanings ascribed thereto:

"Authorizing Resolution" means that Resolution adopted by Louisville Metro Council that authorizes and guarantees the payment of funds from Metro Louisville to the Arena Authority for the purpose of financing a portion of the Project, attached hereto as Exhibit A;

"Budget Act" shall mean House Bill 380 of the General Assembly of the Commonwealth of Kentucky, 2006 Regular Session, as enacted and vetoed in part;

"Code" shall mean the Internal Revenue Code of 1986, as amended, or as hereafter amended, including valid Regulations of the Department of the Treasury thereunder and Rulings of the Commissioner of the Internal Revenue Service thereunder; reference to a provision of the Code by number or letter includes reference to any law hereafter enacted as an amendment to or substitution for such provision; words which are used herein and in the Code shall have the meaning given to such words in or pursuant to the Code;

"Commonwealth" shall mean the Commonwealth of Kentucky and all governmental agencies, authorities and political subdivisions thereof, including without limitation the Finance and Administration Cabinet, a governmental agency of the Commonwealth of Kentucky;

"Laws" shall include all laws, statutes, court decisions, rules, orders and regulations of the United States of America, the States thereof and of their respective counties, municipalities and other subdivisions, and shall include without limitation the laws, statutes, court decisions, rules, orders and regulations of any other applicable jurisdiction;

"Memorandum" shall mean this Memorandum of Agreement, by and between Metro Louisville and the Arena Authority;

"Payments" shall mean the guaranteed distribution of funds, directly or through appropriate debt instruments of its own or one or more of its agencies, to support a portion of the development, financing and construction of the Louisville Arena Project paid by Metro Louisville to the Arena Authority each November 1, commencing November 1, 2010 and concluding November 1, 2039, pursuant to Section 2 of this Memorandum and reflected in the schedule attached hereto as Exhibit B;

"Person" shall include an individual, firm, trust, estate, association, unincorporated organization, corporation, partnership, joint venture, or government or agency or political subdivision thereof; and

"Project" shall refer to the development, construction and financing, including but not limited to all reasonable and/or necessary costs incurred or estimated to be incurred in connection with and any such costs incidental to the development, construction and financing, of the downtown Louisville Arena, a public project intended for multiple uses as a public, recreational, cultural, and sports facility.

SECTION 2. OBLIGATIONS OF METRO LOUISVILLE

Metro Louisville covenants and agrees to undertake the following obligations:

A. Pursuant to the Authorizing Resolution, Metro Louisville agrees to disburse to the Arena Authority the Payments conditioned upon the following:

(i) the execution of this Memorandum, in form and substance satisfactory to the Commonwealth, by the parties hereto;

(ii) the execution of an agreement between the Commonwealth and the Arena Authority governing the distribution of up to seventy-five million dollars (\$75,000,000) of bond funds that will support a portion of the Project as authorized in the Budget Act;

(iii) the execution of an agreement between the Commonwealth and the Arena Authority governing the application of state tax-increment financing or other non-tax income revenues that will support a portion of the Project;

(iv) the execution of an agreement, in form and substance satisfactory to the Commonwealth, between the University of Louisville and the Arena Authority regarding scheduling priorities for men's and women's basketball games and practices, sharing of catering and concession revenue, allocation and pricing of parking spaces, marketing and allocation of revenues from suites and premium seats, arena

advertising, signage, banners and branding, ticket prices and surcharges, arena development team membership, other events and uses of the arena, rental rates, merchandise revenue sharing and such other matters as the Arena Authority and the University of Louisville deem appropriate, as required by the Budget Act;

(v) the receipt of the items required to be submitted by the Arena Authority as set forth in Section 3 below;

B. The Parking Authority of River City ("PARC") shall bond and construct the Louisville Arena parking garage and revenues derived therefrom shall remain with PARC.

C. Metro Louisville by entering into this Memorandum confirms that it has a continuing annual obligation to make a "Possible Additional Payment Due" to the extent the Authority's revenue from all sources, including Metro Louisville's "Minimum Payment" and without deduction of the Authority's operating expenses, is not adequate to meet the Authority's debt service obligations.

D. Metro Louisville shall cooperate fully with the Arena Authority in order to facilitate the obligations set out in this Memorandum.

SECTION 3. OBLIGATIONS OF THE ARENA AUTHORITY.

The Arena Authority covenants and agrees to undertake the following obligations:

A. The Arena Authority hereby acknowledges that the Budget Act authorizes the expenditure of state-supported bond funds for this Project and that the Arena Authority will comply with all terms and conditions set forth in the agreement between the Commonwealth and the Arena Authority.

B. The Arena Authority hereby acknowledges that any debt issued by the Arena Authority or any other entity other than Metro Louisville, including any industrial revenue bonds that may be issued on a conduit basis by Metro Louisville, shall not constitute a debt, pledge of the full faith and credit, or a moral obligation of Metro Louisville beyond those amounts identified as Payments in the Authorizing Resolution and this Memorandum.

C. The Arena Authority shall provide to Metro Louisville:

(i) a summary overview of the Project, including estimated budget and timetable for completion, which can include documents previously prepared and submitted to the Commonwealth and Metro Louisville;

(ii) the projected and/or contemplated source and disposition of other funds to be used to complete the Project, including identification of any other funding sources, including but not limited to the agreements referenced in Section 2 above;

(iii) a copy of the articles, resolution, ordinance or other appropriate document(s) pursuant to which the Arena Authority was formed;

(iv) any and all other documents, instruments, or assurances relating to the Project or the parties as may be reasonably requested by Metro Louisville.

D. The Arena Authority shall provide to Metro Louisville in a timely manner copies of any semi-annual progress reports submitted to the Commonwealth, pursuant to the terms and conditions of the agreement between the Commonwealth and the Arena Authority.

E. The Arena Authority shall retain all records relating to the Project for five (5) years following the completion of the Project.

F. A copy of the Arena Authority resolution or copy of the minutes as certified by the authorized Board officer, authorizing the execution of this Memorandum will be attached hereto as Exhibit C.

G. The Arena Authority acknowledges that the signature of its counsel upon this Memorandum evidences that this Memorandum has been duly authorized, executed and delivered by the Arena Authority and is enforceable against the Arena Authority in accordance with its terms.

H. The Arena Authority shall comply with all applicable federal and state statutes, local laws and ordinances, executive orders, regulatory requirements and policies.

I. The Arena Authority shall at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that, for the purposes of federal income taxation, interest paid on all tax-exempt bonds issued in support of the Project shall be excludable from gross income under any valid provision of law.

J. The Arena Authority shall not permit at any time or times any of the proceeds of any tax-exempt obligations issued to fund the Project to be used to acquire or to replace funds which were used directly or indirectly to acquire any securities or obligations which are "higher yielding investments" (as defined in the Code), the acquisition of which would cause a debt obligation to be an "arbitrage bond" as defined in Sections 103(b)(2) and 148 of the Code as then in effect, unless, under any valid provision of law hereafter enacted (i) such action

would not cause arbitrage bond status to occur, or (ii) the interest paid by the Arena Authority on the debt obligation will be excludable from the gross income of a recipient thereof for federal income tax purposes without regard to compliance with the provisions of Section 103(a) of the Code.

K. The Arena Authority will not make any additional pledge or assignment of or create or suffer any lien or encumbrance upon the Payments, except as provided in the Authorizing Resolution and in this Memorandum.

L. The Arena Authority may include in its agreements with all contractors and subcontractors terms consistent with the applicable provisions of Louisville/Jefferson County Metro Code of Ordinance § 37.90 (D), with the exception of subparagraph (D) (3) thereof, after meeting with and seeking counsel from unions and the minority contractor committee described herein.

M. The Arena Authority will contract with an organization or organizations recommended by a committee of at least five (5) members convened by the Louisville Urban League/Justice Resource Center, including at least one union representative, to represent minority and union contractors; to assist with recruitment of Project minorities and women; to assist in training those individuals thereby recruited; to provide verification and concurrent monitoring of the level of participation of minorities and women in the Project; and to monitor the payment of prevailing wages.

N. The Arena Authority by entering into this Memorandum confirms that it will incorporate, where appropriate, the following terms and conditions:

- a. The payment of the prevailing wage for each trade on the project.
- b. A goal of at least 20% minority participation for employees and contractors, respectively, on the Project.
- c. A goal of at least 5% women participation for employees and contractors, respectively, on the Project.
- d. Opportunities for both union and non-union employees and contractors.
- e. A goal that 75% of Project jobs be reserved for Kentucky and Indiana residents and a goal that at least 60% of Project jobs be reserved for residents of the Metro Louisville Standard Metropolitan Statistical Area.

P. The Arena Authority shall amend its bylaws to add the President of the Metro Council or designee as a non-voting ex-officio member of the Board of Directors of the Arena Authority.

Q. The Arena Authority by entering into this Memorandum confirms that Metro Louisville shall have no additional payment obligations beyond its annual "Minimum Payment Due" to the extent the Authority's revenue from all

sources, including Metro Louisville's "Minimum Payment" and without deduction of the Authority's operating expenses, is adequate to meet the Authority's debt service obligations.

R. The Arena Authority shall fully cooperate with Metro Louisville and any and all other parties necessary to facilitate the obligations set out in this Memorandum.

SECTION 4. MUTUALITY OF OBLIGATIONS

A. The parties agree that the obligations imposed upon the parties are for the benefit of the parties and that the timely fulfillment of each and every obligation in accordance with this Memorandum is necessary. The failure of a party to fulfill its obligations under this Memorandum or the failure of any event to occur by the date established by this Memorandum shall constitute a breach of this Memorandum unless the fulfillment of such obligation is waived or modified by written agreement of the parties.

B. In the event of default by the Arena Authority, including the failure to meet any material time deadlines set out in documents later incorporated into this Memorandum, Metro Louisville may declare this Memorandum void *ab initio* without further obligation to the other parties to this Memorandum and may commence appropriate legal or equitable action to enforce its rights under this Memorandum, including action for recovery of funds expended hereunder.

C. Except as may otherwise be provided herein, each party to this Memorandum shall be solely responsible for any costs incurred in fulfilling its obligations under this Memorandum, and no party shall have any claim against any other party for reimbursement of such costs, whether or not any party is in default.

D. Waiver by either party of performance by the other party of any of the provisions of this Memorandum shall not be construed as a waiver of any further right to insist upon full performance of the terms of this Memorandum.

E. Once this Memorandum is executed, the parties may terminate the agreement only for just cause.

SECTION 5. TERM OF MEMORANDUM

This Memorandum shall be effective as of the date first written above and shall terminate upon completion of the schedule of Payments attached hereto and identified in Exhibit B, unless otherwise extended by the parties.

SECTION 6. MISCELLANEOUS PROVISIONS

A. This Memorandum may be signed by each party upon a separate copy, and in such case one counterpart of this Memorandum shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This Memorandum may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Memorandum or the terms and conditions hereof to produce or account for more than one of such counterparts.

B. The headings set forth in this Memorandum are for convenience or reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction or meaning of the provisions of this Memorandum.

C. The terms and conditions of this Memorandum shall be binding upon and shall inure to the benefit of the successor and assigns, respectively, of the parties. This provision shall not be construed to permit assignment by any party of any of its rights and duties under this Memorandum, which assignment shall be prohibited except with the prior written consent of the parties hereto.

D. This Memorandum shall not be amended, modified, or supplemented except by a written agreement duly executed by both parties.

E. This Memorandum sets forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements among them concerning the subject matter hereof.

F. Time is of the essence in the performance of each of the terms and conditions of this Memorandum.

G. The parties agree that before filing any suit, action or proceeding with respect to a dispute arising out of or related to the terms and conditions of this Memorandum, or any other agreement subsequently executed which arises or derives herefrom, they will attempt to resolve said dispute by participating in good faith in non-binding mediation.

H. The parties agree that any suit, action or proceeding with respect to this Memorandum may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Louisville, Jefferson County, Kentucky; or the United States District Court for the Western District of Kentucky, Louisville Division.

I. All notices, requests, demands, waivers, and other communications given as provided in this Memorandum shall be in writing, and shall be addressed as follows:

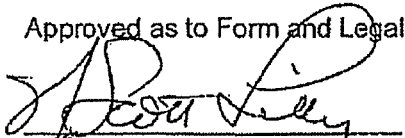
If to Metro Louisville: Mayor
Metro Hall, 4th Floor
527 West Jefferson Street
Louisville, Kentucky 40202

If to the Arena Authority: Louisville Arena Authority, Inc.
3500 National City Tower
101 S. Fifth Street
Louisville, Kentucky 40202
Attn: Chairman

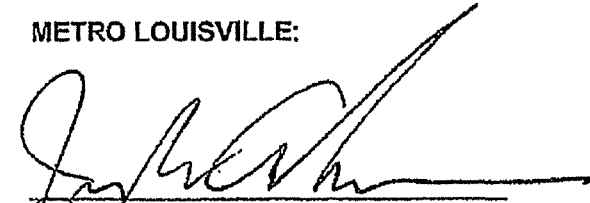
In WITNESS WHEREOF, Metro Louisville and the Arena Authority have executed this Memorandum effective as of the date first above written.

METRO LOUISVILLE:

Approved as to Form and Legality:



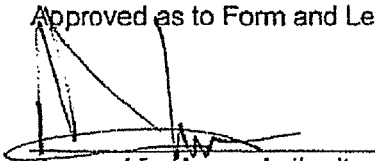
Honorable Irvin Maze
Jefferson County Attorney



Jerry E. Abramson, Mayor

ARENA AUTHORITY:

Approved as to Form and Legality:



Counsel for Arena Authority

LOUISVILLE ARENA AUTHORITY,
INC.



Chair

Exhibit B

Section 1. Metro Louisville annual Guaranteed Payments to or for the benefit of Arena Authority:

<u>Year(s)</u>	<u>Amount(s)</u>
2010 – 2019	\$9,800,000
2020 – 2029	\$10,800,000
2030 – 2039	\$10,300,000

Section 2. Metro Louisville's annual Guaranteed Payment for any year shall be reduced by the Excess Net Cash Flow, if any, generated by the Arena Authority. Excess Net Cash Flow represents the remaining balance after the accrual and/or payment of all operating costs and debt service obligations for the Arena Authority's fiscal year (net of any cumulative loss carry forward). Excess Net Cash Flow shall be determined annually and not earlier than March 31 of each year commencing in 2011 and allocated as follows:

- (a) Excess Net Cash Flow up to \$3 million shall be placed in a Renovation Fund to be maintained by the Arena Authority;
- (b) Additional Excess Net Cash Flow beyond that referred to in paragraph (a) above shall be credited against Metro Louisville's annual Guaranteed Payment until said annual Guaranteed Payment is equal to one-third (1/3) of the annual Bond Principal and Interest Payment; and
- (c) Forty-five percent (45%) of any additional Excess Net Cash Flow beyond that referred in paragraphs (a) and (b) above shall be remitted to Metro Louisville within sixty (60) days of the date of determination, with the remaining fifty-five percent (55%) being retained by the Arena Authority.

Section 3. Notwithstanding Section 1, the Metro Louisville minimum payment shall be \$6,533,333 per year for 2010-2019, \$7,200,000 for 2020-2029, and \$6,866,667 for 2030-2039, adjusted annually in accordance with Section 1 and Section 2.

Section 4. In the event that the Excess Net Cash Flow in any year shall not be sufficient to fund both the credit to Metro Louisville (e.g., the difference between the Section 1 amount and the Section 3 amount) and the \$3 million contribution to the Renovation Fund, any resulting deficiency shall be made up in the year(s) following before additional credits/contributions are made or allotted.

Section 5. If Metro Louisville's payments in Section 3 are insufficient to maintain debt service payments, then Metro Louisville will guarantee the difference between Section 3 and up to the amount(s) shown in Section 1 for that year.

Section 6. In no event shall the credits and remittances to Metro Louisville provided for herein exceed the amount of Metro Louisville's Guaranteed Payment for that calendar year.

**REQUIRED DEBT PAYMENTS
METRO LOUISVILLE**

	(A)	(B)	(C)
	<u>Minimum Payment Due</u>	<u>Possible Additional Payment Due</u>	<u>Maximum Payment Due</u>
2010-2019	\$ 6,533,333	\$ 3,288,667	\$ 9,800,000
2020-2029	7,200,000	3,600,000	10,800,000
2030-2039	6,866,667	3,433,333	10,300,000
Average Years	\$ 6,866,667 x 30	3,433,333 x 30	10,300,000 x 30
	<u>\$206,000,000</u>	<u>\$103,000,000</u>	<u>\$309,000,000</u>

1. Metro Louisville is required to make the payments each year as shown in column (A) (MINIMUM PAYMENT DUE).
2. If all sources, including the Metro payment in (1) above, are insufficient to pay the total debt service in any year, Metro Louisville guarantees to pay the shortfall up to the amount in column (B) (POSSIBLE ADDITIONAL PAYMENT DUE).
3. In any year when revenue from all sources, including the Metro payment in (1) above, exceeds the required debt service, Excess Net Cash Flow will be disbursed as follows:
 - a. Up to \$3,000,000 to a Renovation Fund to be maintained by the Louisville Arena Authority, Inc.
 - b. Additional Excess Net Cash Flow beyond that referred to in (a) shall be split (45%) to Metro Louisville with the remaining (55%) being retained by the Louisville Metro Authority, Inc.

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") is made and entered into as of August ~~22~~ 2006 by and between

LOUISVILLE GAS and ELECTRIC COMPANY
("LG&E"), A Kentucky corporation

Attention: John McCall, General Counsel
220 West Main Street
Louisville, Kentucky 40202

and

LOUISVILLE ARENA AUTHORITY, INC.
(the "Arena Authority"), A Kentucky not-for-profit corporation

Attention: W. James Host, Chair
3500 National City Tower
101 South Fifth Street
Louisville, Kentucky 40202

RECITALS

A. The Arena Authority is a Kentucky not-for-profit corporation which intends to seek tax-exempt status pursuant to Section 501(c) of the Internal Revenue Code of 1986, as amended ("Code"), which was created for the charitable purpose of overseeing the design, construction and operation of a proposed arena complex (the "Arena") to be located in downtown Louisville, Kentucky. The Louisville Arena Task Force, a public agency established by order of Kentucky Governor Ernie Fletcher issued in May, 2005 (the "Arena Task Force"), has determined that the best location for the Arena is a tract of real property situated near the Second Street bridge and facing the Ohio River. A part of this tract is comprised of a large parcel of improved real property owned by LG&E, one that is bounded by River Road on the north, Second Street on the east, Third Street on the west and Washington Street on the south, and

another smaller parcel of real property owned by LG&E and located on the south side of Washington Street at the corner of South Third Street and known as the Cable House (such parcels of real property, collectively, the "Real Property").

B. LG&E currently uses the Real Property to provide essential electrical and gas service to the Louisville Metro central business district. The Real Property includes several large buildings that house electrical substations, transformers and circuits, transmission dispatch facilities, telecommunications facilities, information technology ("IT") operations and facilities for IT personnel, substation operations equipment and facilities for substation personnel, two combustion turbines, underground electric transmission lines and gas regulation and distribution facilities (the "Service Facilities") and other tangible personal property. LG&E has no current need to either sell the Real Property or to relocate the Service Facilities, however LG&E is prepared to do so in order to serve the public good. The construction of new Transmission Dispatch Facilities (as such term is defined in Section 2.4 below) had previously been planned for a future date and will be undertaken at LG&E's cost as such replacement construction directly benefits LG&E's customers.

C. The Arena Task Force concluded that the development of the Arena at the Real Property offers maximum economic and other benefits to Metro Louisville and the Commonwealth of Kentucky (the "Commonwealth") as a whole, in comparison to all of the other potential arena sites that were considered. Because of this, the Arena Authority has requested that LG&E agree to sell the Real Property to the Arena Authority, and undertake to relocate and/or reconstruct the Service Facilities to other parcels of real property currently owned by LG&E.

D. At the request of the Arena Task Force, LG&E retained Sargent & Lundy LLC ("S&L") to assist it with a preliminary evaluation of the possible costs of relocating and/or reconstructing the Service Facilities. S&L is a leading full-service global architect/engineering firm, dedicated to the electric power industry since 1891, with active clients and projects in all areas of the country and overseas. S&L's recent substation experience includes more than 100 substation projects including generating station switchyards, transmission substations and distribution substations. S&L produced for LG&E the "Louisville Gas & Electric Waterside Site Opinion Paper" dated September 20, 2005 (the "Sargent & Lundy Report"), containing information on the scope and costs of relocating and/or reconstructing the Service Facilities.

E. In order to accommodate the direct needs and requests of the Arena Authority, Metro Louisville and the Commonwealth, and in order to benefit the greater public good, LG&E is willing to agree to the request of the Arena Authority with respect to the Real Property if the Arena Authority pays LG&E fair market value appraised for the Real Property and bears LG&E's actual out-of-pocket costs of relocating the Service Facilities (other than the Transmission Dispatch Facilities), so that there is no need to charge LG&E's customers for such relocation costs. In the best interest of Metro Louisville and the Commonwealth as a whole, the Arena Authority is willing to pay such amount and bear such costs.

F. LG&E and the Arena Authority (hereinafter the "Parties") desire to enter into this MOU to set forth their respective understandings regarding the sale of the Real Property, the Relocation Project (defined below) and all other related matters.

G. The Parties intend to negotiate and execute a subsequent definitive agreement with respect to the transfer of the Real Property and another definitive agreement with respect to the Relocation Project. This MOU fully expresses the general understandings of the parties with

respect to the matters set forth herein; the details of such understandings shall be set forth in the definitive agreements to be negotiated by the Parties. The Parties intend that the understandings set forth herein will guide them in the negotiation, execution and delivery of the definitive agreements.

UNDERSTANDING

1. **Sale of the Real Property.** The Arena Authority and LG&E shall continue to negotiate in good faith a definitive agreement providing for the sale of the Real Property to the Arena Authority or such party as the Arena Authority may itself designate with which LG&E may agree (the "Definitive Real Property Agreement"). The Definitive Real Property Agreement shall contain the following major provisions:

1.1 **Description of Real Property.** The Real Property to be transferred is described generally as that parcel of property owned by LG&E situated in Louisville, Kentucky and bounded by River Road on the north, Second Street on the east, Third Street on the west and Washington Street on the south. The Definitive Real Property Agreement shall contain a legal description of the Real Property in such manner as to satisfy applicable title insurance standards.

1.2 **Purchase Price.** The purchase price for the Real Property (the "Purchase Price") shall be an amount equal to \$10,000,000, less deduction of the amounts set forth in (a), (b) and (c) below:

(a) The cost (the "Remediation Cost") of necessary environmental remediation required to be performed in order to meet applicable federal, state and local environmental standards in place as of the date of the conveyance and as agreed to by LG&E and the Arena Authority. The scope and extent of the remediation shall be as jointly determined and agreed to by LG&E and the Arena

Authority, and such Parties shall jointly choose the environmental contractors to perform the remediation work. Each of the Parties has received and reviewed a Preliminary Environmental Report prepared by a consultant engaged by the Finance and Administration Cabinet of the Commonwealth which estimated the Remediation Cost at \$347,000. Based on the information available to them, the Parties believe that the Report is accurate in all material respects. The Remediation Cost shall be taken solely as a deduction from the Purchase Price and LG&E shall have no other obligation(s) now or in the future with respect to the environmental condition or the remediation of the Real Property or the cost thereof.

(b) The cost of the following four studies of the Real Property, which have been paid for by the Arena Authority: (i) QK4, environmental study, \$25,239; (ii) Fuller Mossbarger Scott and May, geotechnical drilling in connection with environmental study, \$15,998; (iii) Linebauch & Funkhauser, environmental evaluation, \$7,744, and (iv) Microbac Laboratories, testing of soil and material samples, \$6,207; and

(c) An adjustment (the "Demolition Cost Adjustment") that shall be taken to the extent the actual out-of-pocket cost to the Arena Authority of demolition of the existing buildings on the Real Property as reduced by the net proceeds of sale of Abandoned Personal Property (as such term is defined in Section 1.5 below) (the "Net Cost of Demolition"), exceeds the estimated net cost of demolition of \$1,200,000. The Purchase Price of \$10,000,000 reflects the estimated fair market value for the Real Property of \$11,200,000 as agreed to by

the Parties less the Net Cost of Demolition. The Parties have estimated that the Net Cost of Demolition will be approximately \$1,200,000, based upon independent estimates obtained by each of the Parties. The Parties have agreed that there should be a Demolition Cost Adjustment if the actual Net Cost of Demolition exceeds \$1,200,000. The Demolition Cost Adjustment (if any) shall be determined as follows:

Actual Net Cost of Demolition	Demolition Cost Adjustment to be Deducted from Purchase Price
If Actual Net Cost of Demolition is \$1,200,000 or less	\$0
If Actual Net Cost of Demolition is between \$1,200,001 and \$1,400,000	Difference between Actual Net Cost of Demolition and \$1,200,000
If Actual Net Cost of Demolition is \$1,400,001 or greater	\$200,000 plus 50% of the difference between Actual Net Cost of Demolition and \$1,400,000

The Demolition Cost Adjustment shall be taken solely as a deduction from the Purchase Price and LG&E shall have no other obligation(s) with respect thereto in the event that the actual Net Cost of Demolition exceeds the estimate of \$1,200,000.

1.3 Date of Transfer of Real Property. Possession and ownership of the Real Property shall be conveyed to the Arena Authority only after the Relocation Project has been completed and all related facilities have become operational; provided that LG&E shall cooperate with the Arena Authority and provide it and its agents access to the Real Property prior to such time so long as such action does not adversely impact, as determined by LG&E in its sole discretion, the reliability, use and safe operation of LG&E facilities on the Real Property. The date on which the Real Property is conveyed to the Arena Authority is hereinafter referred to as

the "Conveyance Date." The Purchase Price, less appropriate reserves for the amounts set forth in Section 1.2 (a), (b) and (c), shall be paid to LG&E on the Conveyance Date.

1.4 Real Property to be Transferred Includes Existing Buildings. The Real Property to be transferred to the Arena Authority on the Conveyance Date shall include all then existing buildings located on the Real Property as well as those in existence as of the date hereof. On the Conveyance Date, the Real Property shall be turned over to the Arena Authority in "as is" and "where is" condition and prior to any necessary environmental remediation or demolition having been performed. The Arena Authority shall be solely responsible for, and shall pay the cost of, demolition of the existing buildings and LG&E shall have no further responsibility for such demolition.

1.5 Real Property to be Transferred Does Not Include LG&E Personal Property Other than Abandoned Personal Property. The Real Property to be transferred to the Arena Authority does not include any personal property of LG&E, except for personal property that currently is situated thereon and which LG&E has elected to leave in place on the Real Property as of the Conveyance Date (the "Abandoned Personal Property"). The Abandoned Personal Property shall become the property of the Arena Authority as of the Conveyance Date, and thereafter the Arena Authority shall receive all proceeds from sale thereof and shall be solely responsible for any costs of removal or disposal of the same.

1.6 Option of Section 1031 Treatment. If LG&E so elects, the Definitive Real Property Agreement may provide that the sale of the Real Property shall be structured so as to be treated as an exchange of like-kind property under Section 1031 of the Internal Revenue Code (the "Code"), provided that such election shall not cause the Purchase Price to increase. If LG&E so elects, the Arena Authority agrees to reasonably cooperate with LG&E in structuring

the closing of the conveyance of the Real Property so as to comply with Section 1031 of the Code with any additional costs associated therewith to be borne by LG&E.

2. **Relocation and/or Reconstruction of the Service Facilities.** The Arena Authority and LG&E shall negotiate in good faith a definitive agreement providing for the relocation and/or reconstruction of the Service Facilities from the Real Property to other real property, now owned or subsequently acquired by, LG&E (the "Definitive Relocation Agreement"). The Definitive Relocation Agreement shall contain the following major provisions:

2.1 **Scope of Relocation Project.** The relocation project (the "Relocation Project") is summarized as follows: (i) the functionality of the existing transformers and associated switchgear on the east side of Third Street as well as the air insulated switchyard on the west side of Third Street will be reconstructed with new, gas insulated equipment inside a new building at an as yet to be determined LG&E location and associated transmission and distribution circuit work required to support the transfer of functionality will also be completed; (ii) six 4,000 Volt electric distribution circuits which serve primarily residential and small commercial customers from the existing Service Facilities will be served from other existing LG&E substation locations; (iii) two gas facilities which serve distribution customers in the immediate area will be relocated to other existing LG&E gas facilities; (iv) the information technology ("IT") operations, facilities for IT personnel, substation operations equipment and facilities for substation personnel will be relocated; (v) testing and switching on all new and relocated equipment and facilities; and (vi) engineering and design work related to the foregoing. The scope and components of the Relocation Project are more fully set forth in the Sargent & Lundy Report. To the extent LG&E reasonably determines that it is necessary or desirable to

change the scope or components of the Relocation Project from that described in the Sargent & Lundy Report, LG&E may do so; provided, however, that any material change in scope or components of the Relocation Project from that described in the Sargent & Lundy Report that would also result in a material increase in the cost of the Relocation Project for which the Arena Authority is responsible hereunder, shall also require the consent of the Arena Authority. The Parties acknowledge that the Sargent & Lundy Report contains confidential information regarding public utility critical systems and is exempt from public disclosure/inspection under KRS 61.878(1)(m). However, LG&E recognizes that the Arena Authority will require access to information regarding the costs of the Relocation Project and the Real Property and agrees to provide the Arena Authority with all information from the Sargent & Lundy report relevant to such costs. LG&E also agrees to provide the Arena Authority's Executive Committee with access to the Sargent & Lundy Report (for review), subject to execution of a confidentiality agreement and any limitations of applicable federal and state law on disclosure of the information contained therein.

2.2 Cost of Relocation Project. The Arena Authority shall pay for the costs of the Relocation Project. LG&E has estimated the costs of the Relocation Project to be approximately \$63,100,000, based upon, *inter alia*, the Sargent & Lundy Report, which was produced on September 20, 2005. The cost estimate assumes that increases in the cost of labor and materials on the Relocation Project will not exceed 3% per year from September 20, 2005, the date of the estimate. LG&E will request only payment of the out-of-pocket costs of the Relocation Project and will not seek payment of any profit by LG&E in connection therewith. LG&E shall use reasonable commercial efforts to aggressively manage the costs of the Relocation Project and shall work with S&L, to seek the lowest costs for the Relocation Project,

consistent with the scope and components of the Relocation Project as described in the Sargent & Lundy Report and with LG&E's customary practices. Prior to commencement of the Relocation Project, LG&E agrees to meet with the Authority's Executive Committee and/or with the Authority's program management (or owner's representative) firm (if such firm has then been selected), to communicate the Relocation Project plan, scope and schedule and to look for any synergies that might result in cost savings. In connection with the foregoing, however, the Authority acknowledges and agrees that the costs of the Relocation Project shall be incurred based upon the scope and components of the Relocation Project as set forth in the Sargent & Lundy Report (subject to amendment as set forth in Section 2.1 hereof) and that the final determination regarding such costs shall be made solely by LG&E, in good faith, consistent with the scope and components of the Relocation Project as described in the Sargent & Lundy Report and with LG&E's customary practices. In the event that the Arena Authority cancels the Arena project for any reason (including force majeure), LG&E shall be reimbursed for contractual costs of the Relocation Project previously incurred for which LG&E is liable and which have not been paid or reimbursed and for any cancellation charges for which LG&E is liable to third parties. The Parties agree that LG&E will be paid whatever the actual costs of the Relocation Project are, which actual costs could be higher or lower than the current estimate.

2.3 Procedure for Payment/Reimbursement of Cost of Relocation Project.

The Parties acknowledge that LG&E will incur substantial financial obligations solely as a result of undertaking the Relocation Project. LG&E will need to order machinery and equipment in advance for the Relocation Project and incur other costs in advance in connection with the Relocation Project. In such circumstances, LG&E may present requisitions ("Requisitions") to the Arena Authority at the time such machinery and equipment is required to be ordered or when

such other costs will be incurred, and the Arena Authority shall promptly remit (or cause third parties to remit) to LG&E the amounts specified in the Requisitions; the Requisitions shall be made in a form and manner more particularly set forth in the Definitive Relocation Agreement. The Arena Authority understands that failure to promptly remit amounts requested under the Requisitions could delay machinery and equipment being delivered or work being performed, with the result that work on the relocation could be delayed or stopped and contractors and subcontractors may assess additional charges related to delay or stoppage of the Relocation Project. The foregoing could result in delay or extension of the estimated 24 month schedule for completion of the Relocation Project, and thus increase the total and overall cost of the Relocation Project. LG&E and the Arena Authority agree that (i) where LG&E is ordering machinery and equipment for the Relocation Project, it will be entitled to submit Requisitions to the Arena Authority for the entire purchase price of such machinery and equipment at the time of order because LG&E incurs liability for the purchase price of such machinery and equipment at the time of order; (ii) in instances where LG&E has requested payment on a Requisition for machinery and equipment to be ordered or other costs in advance, the Arena Authority will ensure payments to LG&E on such Requisition within thirty-five (35) days of receipt of the Requisition and (iii) in other cases where LG&E has caused work to be performed before presenting a Requisition, the Arena Authority will ensure payments on such Requisition within thirty-five (35) days of receipt of such Requisition. In cases where LG&E has received payments of Requisitions for machinery and equipment under (i) and (ii) of the preceding sentence, LG&E shall use reasonable commercial efforts to negotiate for price and/or delivery time concessions from sellers of such machinery and equipment in return for advance cash deposits paid to such sellers and LG&E shall invest any unexpended amounts in regard to such

Requisitions in interest-bearing deposits. Interest earned on such deposits shall be accounted for to the Arena Authority and applied to the cost of the Relocation Project (including notice to the Arena Authority of such deposits and any information that the Arena Authority may need in connection with any reporting requirements). LG&E shall respond promptly to requests from the Arena Authority for backup detail or further information regarding the Requisitions and the deposits, but such requests shall not delay the Arena Authority's timely payment of Requisitions absent extraordinary circumstances. LG&E may charge market-based interest on any Requisition that is not paid within terms. For purposes of this MOU, the term "market-based interest" shall mean one month LIBOR + 0.4%, with LIBOR being determined on the date which is two "London business days" prior to the date the Requisition should have been paid. The term "London business day" shall mean a calendar day upon which dealings in dollar deposits are carried on in the London, England inter-bank market.

2.4 Construction of New Transmission Dispatch Facilities Not Part of Relocation Project Payable by the Arena Authority. LG&E plans to construct new transmission dispatch facilities ("Transmission Dispatch Facilities") at an undetermined location to replace the one currently existing at the Real Property. The construction of such Transmission Dispatch Facilities is warranted as it will optimize system reliability, and is for the benefit of existing and future LG&E customers. Thus, LG&E acknowledges and agrees that the construction of the new Transmission Dispatch Facilities should not and will not be part of the Relocation Project and that the Arena Authority will not be responsible for such cost. The Arena Authority shall have no audit responsibility or other responsibility with respect to the new Transmission Dispatch Facilities. LG&E will not file a request with the Kentucky Public Service Commission ("KPSC") for a base rate increase solely as a result of the construction of the new Transmission

Dispatch Facilities and LG&E does not anticipate any immediate rate increase or any immediate impact on customer rates as a result of such project.

3. **Issuance of Bonds for the Benefit of the Arena Authority.** The General Assembly of the Commonwealth of Kentucky has approved a budget for the 2006-2008 biennium including \$75,000,000 in revenue bonds to be issued by the Commonwealth (the "Kentucky Bonds"), the proceeds of which are to be available to the Arena Authority for use in connection with the Arena project. The Parties agree that it is unreasonable to expect LG&E to undertake any commitments to expend amounts with respect to the Relocation Project until it has been assured that either (i) the Kentucky Bonds have been issued and that \$75,000,000 has been committed to the Arena Authority and is available to pay the cost of the Relocation Project and the Purchase Price or (ii) the Arena Authority has entered into a Memorandum of Understanding with the Finance Cabinet (the "Finance Cabinet") of the Commonwealth of Kentucky (the "Commonwealth MOU"), providing in pertinent part that, prior to the issuance of the Kentucky Bonds, the Arena Authority may make requests for advances of moneys by the Cabinet in anticipation of the issuance of the Kentucky Bonds in the aggregate amount of not exceeding \$75,000,000 and the Finance Cabinet shall, upon receipt of such requests, make advances of moneys to the Arena Authority up to, but not exceeding, \$75,000,000. The Arena Authority understands LG&E's position, and agrees that LG&E shall not be expected to incur obligations with respect to the Relocation Project *until* LG&E has been satisfied that the Arena Authority has available from the Finance Cabinet either (i) the proceeds of the Kentucky Bonds or (ii) advances from the Finance Cabinet in a total amount sufficient to pay the costs of the Relocation Project and the Purchase Price, without qualification. The Arena Authority further understands

that delay in accomplishing the foregoing will delay the start of the Relocation Project and set back the anticipated schedule of the Relocation Project.

4. **Contingencies and Conditions Precedent.**

4.1 Approvals needed for action by LG&E. The Arena Authority acknowledges that there are a number of contingencies that will have to be met or otherwise waived by LG&E before the Definitive Real Property Agreement or the Definitive Relocation Agreement can become effective and before the transactions contemplated by this MOU – the Definitive Real Property Agreement and the Definitive Relocation Agreement – can take effect; the Parties understand that the Definitive Real Property Agreement or the Definitive Relocation Agreement will so provide. These contingencies, all relating to the Real Property, to be met or otherwise waived by LG&E include, but are not limited to, the following:

- (a) Any and all KPSC approval(s) as necessary;
- (b) Approval by the Kentucky Department of Transportation ("DOT") regarding relocation of the gas line;
- (c) Necessary approvals by Louisville Metro Government, including:
 - Demolition permits,
 - Street permits,
 - Construction permits, and
 - Zoning approval;
- (d) Approval or consent by Louisville Waterfront Development District;
- (e) Approval by Army Corps of Engineers regarding the flood plan and flood wall;
- (f) Approval by the Metropolitan Sewer District ("MSD") regarding coordination with the flood wall and redesign of the flood wall;

- (g) Assurance that at least \$75,000,000 is available to the Arena Authority from the Commonwealth to pay the costs of the Relocation Project and the Purchase Price, without qualification; and
- (h) Approval of the release from any applicable indenture lien of the Real Property by BNY Midwest Trust Company (formerly Harris Trust and Savings Bank).

Without limiting the foregoing, LG&E's obligations hereunder and with respect to the Definitive Real Property Agreement and the Definitive Relocation Agreement are conditioned, without limitation, upon the following (unless waived by LG&E in writing): (a) the satisfactory completion by LG&E, in its discretion, of operational, economic, legal and other due diligence investigations regarding the transaction; and (b) the receipt by LG&E, or its affiliates, of all necessary corporate, internal, governmental or third party approvals. LG&E agrees to act in good faith to attempt to obtain the necessary corporate, internal, governmental or third party approvals. Upon the request of the Arena Authority, LG&E shall provide the Arena Authority a copy of any such lien release approved by BNY Midwest Trust Company and received by LG&E.

5. **Schedule.** The Arena Authority and LG&E estimate, based upon all information known to date, that it shall take approximately 24 months from the date that (i) the Parties have executed a Definitive Real Property Agreement and a Definitive Relocation Agreement to complete the Relocation Project and (ii) LG&E has received the necessary KPSC approvals, subject to all assumptions, terms and conditions set forth herein. As referenced hereinabove, LG&E shall not be expected to execute the Definitive Real Property Agreement or the Definitive Relocation Agreement or incur any obligations with respect to the Relocation Project until

LG&E has been satisfied that at least \$75,000,000 is available to the Arena Authority to pay the costs of the Relocation Project and the Purchase Price, without qualification. Delay in the foregoing will delay the schedule for the Relocation Project, all else being equal. The Definitive Real Property Agreement and the Definitive Relocation Agreement shall provide that each party waives its right to claim consequential or other damages based upon delay in the schedule, provided that, as set forth in Section 2.2 above, LG&E may incur increased Relocation Project costs as a result of delay by the Arena Authority in paying Requisitions, and if so the Arena Authority shall pay such increased Relocation Project costs. The Parties agree that the public interest is served by moving the Relocation Project forward as rapidly as is reasonably consistent with the terms of this MOU and the Parties agree to cooperate with each other to achieve that end.

6. **Assumptions.** The following assumptions, understandings and clarifications are incorporated herein and shall be incorporated in the Definitive Real Property Agreement and the Definitive Relocation Agreement:

6.1 All assumptions and clarifications contained in the Sargent & Lundy Report.

6.2 All contingencies and conditions precedent set forth herein are timely met.

6.3 All necessary permits, approvals, investigations and easements will be obtained in a timely manner in order to support the project schedule.

6.4 Modifications to the existing flood wall will be designed and constructed in such a way as to not interrupt or delay the project.

6.5 LG&E shall follow its customary procedures in contracting with its engineers, general contractors, subcontractors, equipment vendors and others in the Relocation

Project, though using its best efforts to reduce all expenditures without jeopardizing quality or timeliness.

6.6 The Arena Authority is acquiring the building owned by Humana Inc. situated to the south of the Real Property on the other side of Washington Street (the "Humana Property") for use in connection with the development of the site for the Arena project. LG&E holds rights-of-way across the Humana Property for certain electrical and gas lines. The Arena Authority shall cooperate with LG&E in minimizing any interference with the Relocation Project or any impact to reliability of service to LG&E's customers that might otherwise result from demolition of the referenced building and shall cooperate with LG&E in assuring continued use of the existing rights-of-way on the Humana Property for electrical and gas lines or in relocation of such rights-of-way to other locations on the Humana Property so that service to LG&E's customers can be maintained.

6.7 LG&E shall not experience any material impediment in the acquisition or development of the other locations to which the Relocation Project is being installed or transferred or any significant increases in related costs beyond those costs currently contemplated.

7. **Indemnification.** The Definitive Real Property Agreement and the Definitive Relocation Agreement shall provide that, effective upon the transfer of the Real Property to the Arena Authority, the Arena Authority shall, commensurate therewith, indemnify, defend and hold LG&E harmless from all claims of loss, cost, liability, damage and expense in connection with (1) noncompliance of the Real Property with applicable environmental laws and all past, current, or future environmental conditions on, under, or about the Real Property, including, without limitation, all past, current or future presence, if any, of hazardous substances on, under

or about the Real Property (including, without limitation, any and all liability under CERCLA, 42 USC 9601, et seq.), subject to the adjustment of purchase price provided in paragraph 1.2 for necessary environmental remediation required to be performed in order to meet applicable federal, state, and local requirements; and (2) acts or omissions occurring on the Real Property after the fee transfer of the Real Property to the Arena Authority. LG&E agrees to work with the Arena Authority to avoid unnecessary or duplicative insurance coverage with respect to the Relocation Project.

8. **Term and Termination.** The term of this MOU shall commence on the date hereof and shall expire the earlier of (1) the date on which the Definitive Real Property Agreement and the Definitive Relocation Agreement become effective or (2) ninety (90) days after the date hereof. The Parties may extend the term of the MOU by mutual written agreement signed by the Parties, though without material amendment to any other terms of the MOU.

9. **Miscellaneous.**

9.1 **Notice.** Any notice or consent authorized or required by this MOU shall be in writing and either delivered personally or sent postage prepaid by certified mail or registered mail, return receipt requested, directed to the other party at the address set forth in this Section 9.1 or such other parties or addressees as may be designated by either LG&E or the Arena Authority by notice given from time to time in accordance with this section:

Louisville Arena Authority, Inc.

Attention: W. James Host, Chair
3500 National City Tower
101 South Fifth Street
Louisville, Kentucky 40202

Louisville Gas and Electric Company

Attention: John McCall, General Counsel
220 West Main Street
Louisville, Kentucky 40202

Any notice or consent given in accordance with this Section 9.1 shall be deemed received upon delivery in person or three days after depositing it in an office of the United States Postal Service or any successor governmental agency.

9.2 Assignment. The Parties shall not transfer or assign all or any part of their rights or obligations hereunder without the express written consent of the other party. No assignment shall relieve, release or discharge the assigning party of its obligations, except as provided therein.

9.3 No Legal Entity Created. The Parties acknowledge that this MOU does not create a legal entity, partnership, joint venture or any association taxable as a corporation. The Parties shall not have the authority to legally bind one another.

9.4 Compliance with Laws. The Parties shall comply with all applicable laws in the performance of their activities under this MOU. In addition, all rights and obligations of the Parties under this MOU shall be subject to all applicable laws, rules, regulations, applicable orders and decrees of any court having jurisdiction over the party in question, and nothing in this MOU shall be construed to require either party to take any action which would cause such party to violate such laws, rules, regulations, applicable orders or decrees or to violate any contract or agreement to which such party is party. Neither of the Parties, nor their employees, agents or other representatives shall take any action, tortious or otherwise, that would subject the other party (or its employees, agents or other representatives) to liability or penalty under any laws, rules, regulations, orders or decrees of any government entity. Either party breaching this Section 9.4 shall indemnify the other party and its respective employees, agents and other representatives

from and against all claims, losses, damages, liabilities, expenses (including reasonable attorneys' fees and disbursements), penalties, fines or costs of whatever nature arising out of or in connection with such noncompliance. Each party will give the other party prompt notice of any allegation or suggestion (whatever the source) of which it becomes aware of a violation of the terms of this MOU or of any laws, rules, regulations, ethical requirements, orders or decrees of any governmental agency, which relate to the transactions contemplated by this MOU.

9.5 Benefit. This MOU shall inure to the benefit of the Parties hereto, their respective legal representatives, successors and assigns.

9.6 Governing Law. This MOU shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

9.7 Amendment. This MOU may be amended only by written agreement signed by both the Arena Authority and LG&E.

9.8 Tax Exempt Status. The Parties will work to assure, using best efforts, that no restriction, covenant, provision or term in their contractual relationship(s) or any action undertaken by LG&E shall knowingly jeopardize the Arena Authority's anticipated tax exempt status.

9.9 Headings. The section headings used herein are for convenience purposes only and do not constitute matters to be construed in interpreting this MOU.

9.10 Time of Essence. Time is of the essence for this MOU.

9.11 Intent to Begin Negotiating Definitive Agreements. LG&E and the Arena Authority intend promptly to begin negotiating the Definitive Real Property Agreement and the Definitive Relocation Agreement. However, neither party shall have any liability to the other

until the Definitive Real Property Agreement and the Definitive Relocation Agreement have been negotiated, executed and delivered by the Parties.

9.12 Arena Authority to Pay LG&E for Other Out of Pocket Costs. In addition to the direct cost of the Relocation Project which the Arena Authority is obligated to pay under Section 2 above, the Arena Authority shall pay all other reasonable out-of-pocket costs of LG&E in connection with the sale of the Real Property and the Relocation Project, up to a cap of \$150,000.

9.13 Dispute Resolution. The Parties agree that before filing any suit, action or proceeding with respect to dispute arising out of or related to the terms and conditions of this MOU, or any other agreement subsequently executed which arises or derives herefrom, they will attempt to resolve said dispute by participating in good faith in non-binding mediation.

9.14 Venue/Jurisdiction. The Parties agree that any suit, action or proceeding with respect to this MOU may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Louisville, Jefferson County, Kentucky, or the United States District Court for the Western District of Kentucky, Louisville Division.

9.15 Invalid, Illegal or Unenforceable Provision. If any term, covenant or condition contained in this MOU is deemed to be invalid, illegal or unenforceable, then the rights and obligations of the Parties hereto shall be construed as if this MOU did not contain that particular term, covenant or condition.

IN WITNESS WHEREOF, LG&E and the Louisville Arena Authority, Inc. have executed this MOU as of the date first set forth above but actually on the date(s) set forth below.

LOUISVILLE GAS AND ELECTRIC COMPANY
a Kentucky corporation

By: 

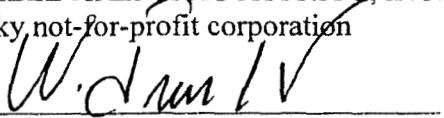
Print Name: Chris Hermann

Title: SVP – Energy Delivery

Date: August 22, 2006 *and*

(“LG&E”)

LOUISVILLE ARENA AUTHORITY, INC.,
a Kentucky not-for-profit corporation

By: 

Print Name: W. James Host

Title: Chairman

Date: August 22, 2006

(“Arena Authority”)

Waterside CT Service Hours And Gross Generation Summary

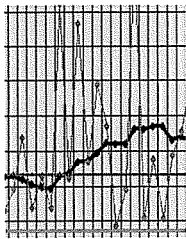
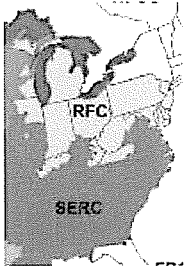
SERVICE HOURS

UnitName	WS7	WS8
1982	34	36
1983	6	12
1984	6	8
1985	3	5
1986	4	3
1987	4	12
1988	33	44
1989	6	9
1990	32	9
1991	12	12
1992	7	10
1993	27	27
1994	31	31
1995	75	0
1996	8	6
1997	133	42
1998	245	15
1999	138	19
2000	57	41
2001	5.78	5.22
2002	1.91	2.07
2003	0	0
2004	0	0
2005	0	0
2006	0	0

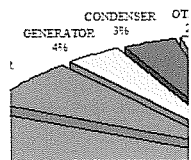
Gross Generation

UnitName	WS7	WS8
1982	433	468
1983	69	138
1984	72	105
1985	33	77
1986	44	43
1987	42	97
1988	417	541
1989	87	126
1990	413	114
1991	156	153
1992	94	115
1993	344	348
1994	437	415
1995	1005	0
1996	123	90
1997	1780	524
1998	3045	174
1999	1750	224
2000	691	474
2001	68	62
2002	19	24
2003	0	0
2004	0	0
2005	0	0
2006	0	0

e-on | U.S. *Engineering Laboratory*
Generation Services *Planning*

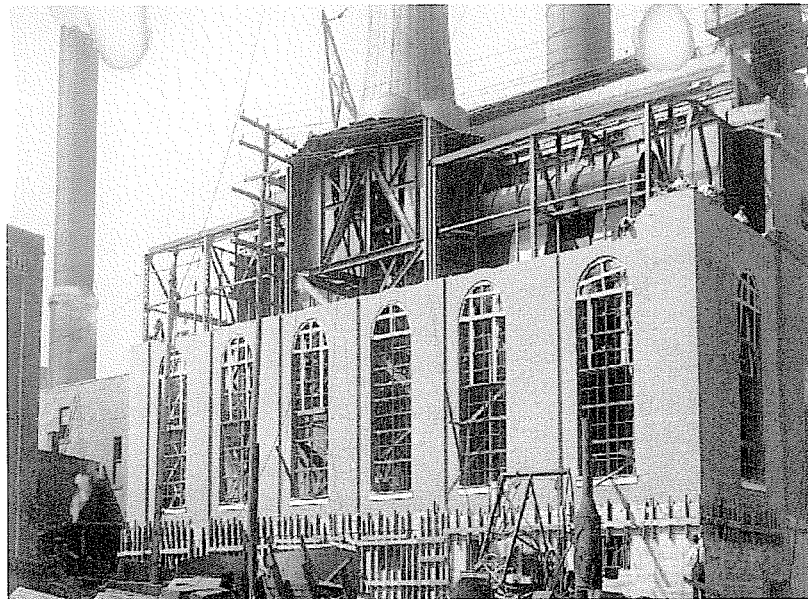


3/1/04				
	OMU	KU	LGE	G&E
MAINT WEEK	LOAD	LOAD	LOAD	460
1/15	HS	3,858	1,118	
1/16	HS	3,723	1,143	
1/17	HS	3,768	1,760	
1/24	HS	3,642	1,605	
1/31	HS	3,815	1,792	
2/7	HS	3,506	1,353	460
2/14	HS	3,561	1,741	460
2/21	HS	3,526	1,720	460



	2002	EFOR
		2002
1e Run (steam)	3.7%	19.7%
1 Creek	5.6%	10.2%
1/1a Co. (stream)	3.3%	5.4%
1.2 (stream)	4.5%	11.2%
1/3 (steam)	3.7%	12.1%
1/4	2.6%	6.4%
1/5 River	25.6%	17.0%
1/6	5.2%	12.2%
1/7 (steam)	2.4%	9.6%

Life Assessment Study
for
e-on | U.S.
Subsidiary
Louisville Gas and Electric's
Waterside Generating Plant



Submitted by
Generation Services
August 2006

Life Assessment Study: Phase II-Waterside 7-8

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Executive Summary

The turbines in use at Waterside Units 7-8 are 1960's vintage while the generators are from the early 1920's. Procurement of the necessary parts required to allow the units to reliably operate in a peaking role is getting more and more difficult as replacement parts become more costly to acquire and harder to locate. The low efficiency of the units, the forecasted high price of natural gas, the units' small capability and their age as well as increasing environmental obligations contribute to the small amount (440MWh) of forecasted energy expected to be generated by the Waterside Station through 2036.

The starting reliability of the Waterside Units has begun to decrease. In the last year in which Unit 7 or Unit 8 had attempted starts, the annual starting reliability was 43% and 67% respectively. Furthermore, since the year 2000, neither Unit 7 nor Unit 8 has achieved an annual FOR better (lower) than 33% or generated over 700MWh.

Detailed hourly computer models forecasting generation for the next thirty years (2007-2036) project essentially no energy production for the Companies' native load from the Waterside Units. The relatively high cost of Waterside generation is forecast to be economical for native load for only 8 hours of operation on Unit 7 and 32 hours of operation on Unit 8 over the entire 2007-2036 period. All of Unit 7's and 88% of Unit 8's projected service hours occur after 2018 when the generators associated with the units would be almost 100 years old and well beyond the estimated 10 year remaining life of the Group 3 units as indicated in the March 2003 evaluation of Group 3 Units¹. Over the 30 year period, Waterside 7 and 8 are forecasted to generate only 88MWh and 352MWh for native load, respectively.

Therefore, based on the above, it is the recommendation to the Operating Committee that Waterside Units 7 and 8 be retired immediately.

¹ *Evaluation of Economic Viability of Group 3 Generating Units (Phase I)*, March 26, 2003

Background

This analysis is a part of the Companies' continual supply-side resource assessment. In March of 2003 the Companies completed the first phase of a multiple phase life assessment evaluation of the Kentucky Utilities Company's (KU) and Louisville Gas and Electric Company's (LG&E) generating systems. In that assessment titled "*Evaluation of Economic Viability of Group 3 Units*" the Companies' generating units were categorized into three separate groups (Group 1, Group 2 and Group 3): Group 1 includes thirty-one units comprised of the lowest cost base-load units, the larger CTs and the hydro units; Group 2 includes eight units each currently operating well, but with generally higher operating costs; and Group 3 includes thirteen of the older, less efficient, more costly units that were expected to face significant economic challenges within the next 10 years. The March 2003 report recommended that all thirteen of the Group 3 generating units (totaling approximately 220MW) be evaluated in a subsequent life assessment evaluation to insure that the future challenges associated with operating these units are met in the most economic manner possible.

Generators Recommended for Phase II of Economic Unit Viability Study

- Green River 1 and 2 (*Units Retired in 2004*)
- Tyrone 1 and 2
- Haefling 1, 2 and 3
- Waterside 7 and 8
- Paddy's Run 11 and 12
- Cane Run 11
- Zorn 1

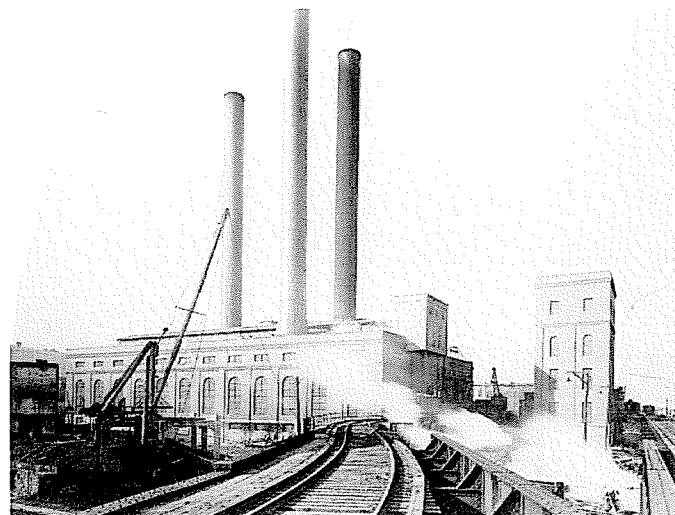
This analysis focuses on the Waterside Station (Units 7 and 8) identified in the March 2003 study as Group 3 units due to their age, high production cost and high heat rates. In addition, increasingly stringent environmental restrictions have negatively impacted the economics of the continued operation of Waterside Units 7 and 8. Furthermore, part procurement in order to reliably maintain the older, smaller, infrequently used units is becoming more difficult.

Reasons for Life Assessment Evaluation of Generating Units

1.	Unit Age
2.	Relatively High Production Cost
3.	Decline in Wholesale Market Prices
4.	Increasingly Stringent Environmental
5.	Increasing cost/frequency of maintenance related work combined with difficulty obtaining spare/replacement maintenance equipment

Waterside Units 7-8

The Waterside plant site is located in a former coal-fired power station in downtown Louisville, Kentucky and is LG&E’s oldest generating facility still in operation. The plant’s beginning dates back to a time before the 1913 consolidation, when one of LG&E’s predecessor electric firms (Kentucky Electric Company), built a two-unit facility on the Ohio riverfront between Second and Third Streets. Waterside’s capacity was expanded from time to time during the early 1900s. Coal Units 1, 2, 3 and 4 ranged from 2MW to 6.5MW. Unit 4 was relocated to the Waterside station from the generating station built at 14th and Magazine Streets in 1891. Units 5 and 6 were both 15MW generators that were placed in commercial operation in 1918 and 1920, respectively. Unit 7’s 20MW generator (see **Appendix 1**) went commercial in 1923 and in 1925 LG&E installed the 25MW generator of Unit 8 (see **Appendix 1**). In 1964 the steam turbines of both Unit 7 and Unit 8 were replaced with natural gas consuming jet engines. All of Waterside’s coal-fired units were eventually retired leaving the two gas-fired units of Waterside 7 and 8.



General View of Waterside Station from the North East (circa 1916)

The Waterside Units are the smallest at 11MW (net summer rating) and have the oldest generators still in-service of the Group 3 units in the LG&E generation system.

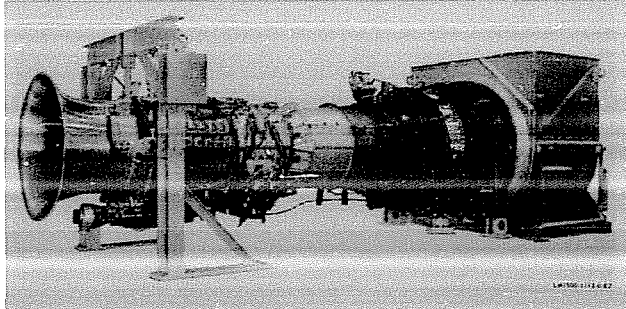
LG&E Group 3 Units

Age and Capability

Unit Type	Plant Name	Unit	Turbine/Generator		
			Summer Rating (Net MW)	Set In-Service Year	Age (2006)
CT	Waterside	7	11	1964/1923*	42/83
CT	Waterside	8	11	1964/1925*	42/81
CT	Cane Run	11	14	1968	38
CT	Paddy's Run	11	12	1968	38
CT	Paddy's Run	12	23	1968	38
CT	Zorn	1	14	1969	37

* The original steam turbines have been replaced with 1960s vintage jet engines
The jet engines are connected to the original 1920's vintage electrical generators

Each generating unit consists of two GE 7LM1500-PD101 industrial aero-derivative gas turbines without dual fuel capability (*see Pictures A and B*), which operate



G. E. Model No. 7LM1500PD101

at 5523 rpm. Each pair of aero-derivative gas turbines drive through a common load gear (*see Pictures C and D*) to the original 1920's generators (*see Pictures E and F*), which run at 1800 rpm. A fuel gas compressor is located outside the main building in a dedicated enclosure. The gas turbines

do not provide black-start capability. The units are started locally and the generation site is manned only during operation, typically during peak load periods. Unit 8 had both gas turbines replaced in 1999 following the failure of a turbine blade that damaged the gas turbine. The original gas turbines (CJ805) were obsolete and were replaced with a refurbished model J79, which was introduced by GE in 1955².

The difficulties associated with maintaining these 1960 vintage machines is evidenced by the May 2, 1999 letter from Maximum Turbine Support of California who

² See <http://www.geae.com/engines/military/j79/index.html>

was investigating the increased vibration of the one of the two turbines at Unit 8 during operation. Maximum Turbine Support attempted to disassemble the engine and remove the lock bolt that holds the turbine and the compressor rotors together. The following is an excerpt quoted from that letter (see **Appendix 2** for complete letter).

“Since the engine was produced in the 1960’s and has to our knowledge never been dismantled, it was very difficult to disassemble. This engine is very rusty which caused us to break the turbine/compressor rotor wrench. This wrench is about 5-6 feet long and made of steel...After breaking the shops tool...we did finally move it, but only about two turns, and then it seized. We are not sure if it rolled a thread but it will not move.”

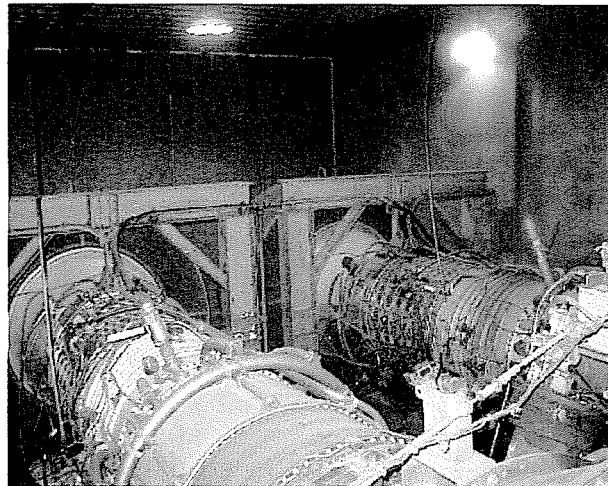
Maximum Turbine Support, California (May 2, 1999)

Other than to replace Unit 8’s gas turbines there have been no other major overhauls, inspections or repairs to either turbine generating set.



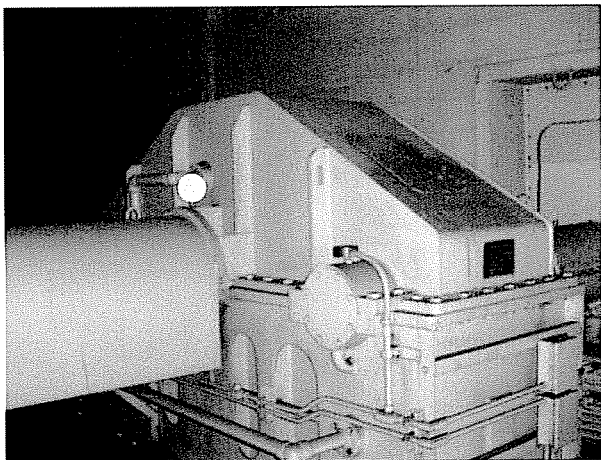
(Picture A)

Waterside Unit 7: Aero-Derivative Gas Turbines
Under Easily Removable Moisture Protection Barrier

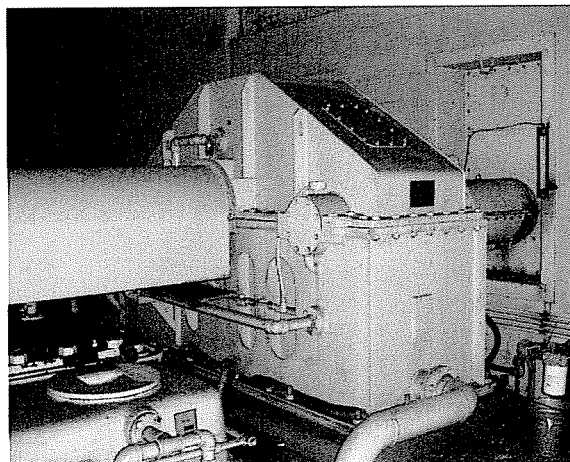


(Picture B)

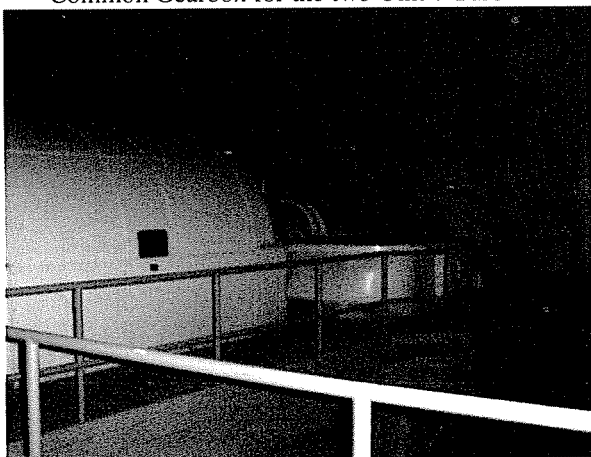
Waterside Unit 8: Aero-Derivative Gas Turbines
Moisture Protection Barrier Removed



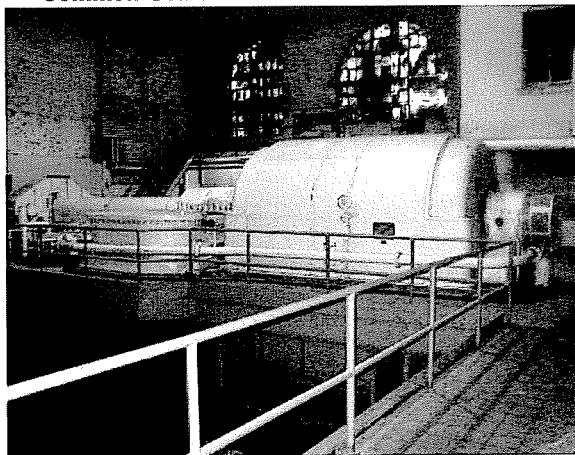
(Picture C)
Common Gearbox for the two Unit 7 Turbines



(Picture D)
Common Gearbox for the two Unit 8 Turbines

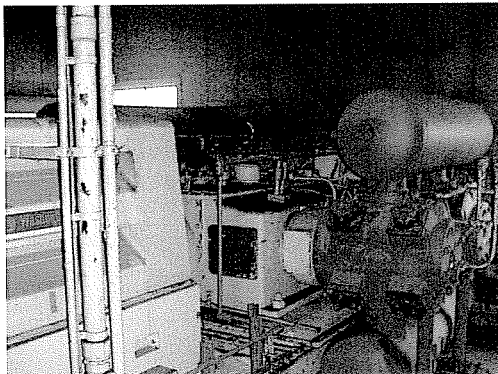


(Picture E)
Waterside 7-Original 1920's Vintage Generator



(Picture F)
Waterside 8-Original 1920's Vintage Generator

The gas compressor (*see Picture G*) was overhauled in 1996 and is working reliably; however it is now obsolete and replacement parts for it, like the turbines, are difficult to obtain.



(Picture G)
Waterside Units 7-8 Gas Compressor

There are a number of issues and concerns with the continued operation of both units, which would require significant investment to rectify and as a result it is difficult to justify capacity from these units as continuing to be available. As an example, the switchgear, DC rectifiers, relays and instrumentation is obsolete and repair parts are no longer available without first being reverse-engineered and then manufactured. The majority of the wiring insulation is asbestos, adding a significant cost to removal and replacement in kind. In original construction the insulation and gasket material contained high levels of asbestos and most of the painted surfaces contain high levels of lead, adding significant dollars to maintenance for the abatement of these components.

Historical Usage/Reliability

The greatest single year level of generation since 1982 on either of the Waterside Units obtained was just over 3,000MWh on Waterside Unit 7 in 1998. In 1999 Waterside 7 had a 5% forced outage rate (FOR) and yet still managed to generate only 1,800MWh. However, since the year 2000, neither Unit 7 nor Unit 8 has achieved an FOR better (lower) than 33% or generated over 700MWh.

Waterside Station Historical Data

Year	Historical Service Hours		Year	Historical Generation (MWh)	
	Unit 7	Unit 8		Unit 7	Unit 8
1982	34	36	1982	433	468
1983	6	12	1983	69	138
1984	6	8	1984	72	105
1985	3	5	1985	33	77
1986	4	3	1986	44	43
1987	4	12	1987	42	97
1988	33	44	1988	417	541
1989	6	9	1989	87	126
1990	32	9	1990	413	114
1991	12	12	1991	156	153
1992	7	10	1992	94	115
1993	27	27	1993	344	348
1994	31	31	1994	437	415
1995	75	0	1995	1,001	0
1996	8	6	1996	120	88
1997	133	42	1997	1,774	521
1998	245	15	1998	3,045	174
1999	138	19	1999	1,750	224
2000	57	41	2000	691	474
2001	6	5	2001	68	62
2002	2	2	2002	13	19
2003	0	0	2003	0	0
2004	0	0	2004	0	0
2005	0	0	2005	0	0
Total	869	348	Total	11,103	4,302

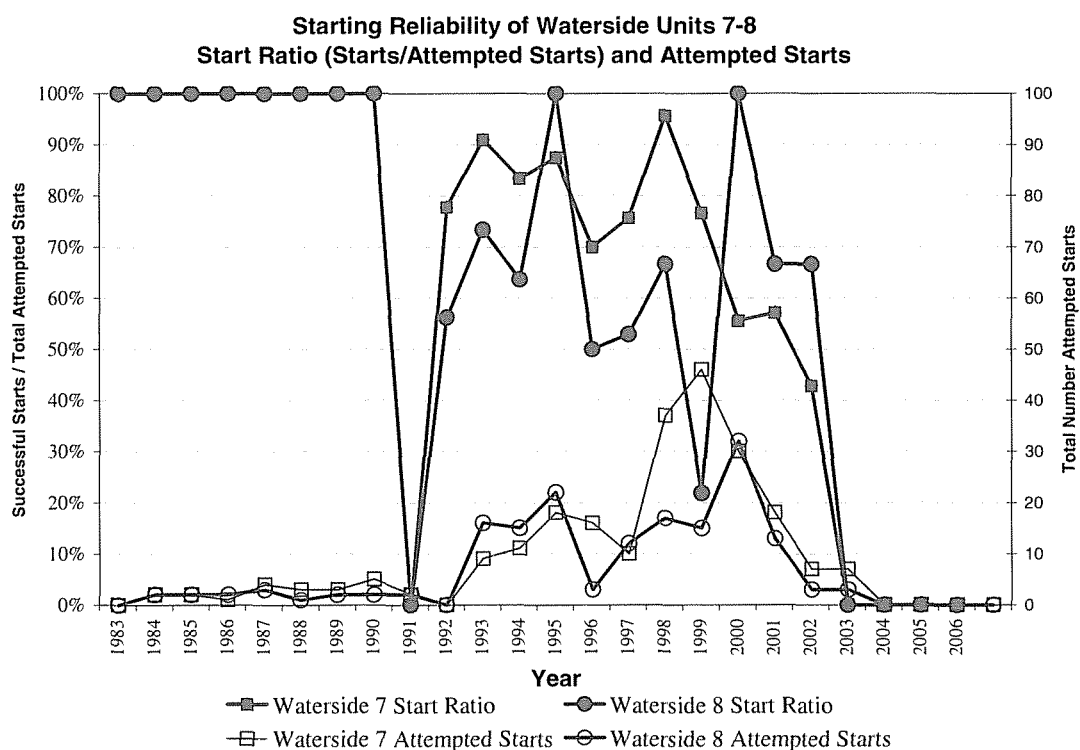
Waterside Station

Forced Outage Rate

Year	Unit 7	Unit 8
1999	5%	100%
2000	80%	94%
2001	93%	82%
2002	98%	33%
2003	N/A	N/A
2004	N/A	N/A
2005	100%	100%

N/A- Implies service hours and forced outage hours are 0.

With high production costs, the units are most likely to operate in times of high demand. A reasonably high confidence level associated with the starting ability of peaking units is necessary in order to avoid unexpected purchases of high-priced market power. Since the early 1990's, the starting reliability of the Waterside Units has begun to decrease. In the last year that Unit 7 or Unit 8 had attempted starts, the annual starting reliability was 43% and 67% respectively.



Forecasted Production Value

Waterside 7 and 8 (~18,000 Btu/kWh) are among the least efficient of the LG&E units (~18,000 Btu/kWh). The Units' high heat rate, high fuel price (August 2006 natural gas price of approaching \$8/MCF) result in a total generation cost of \$150/MWh, also among the highest on the LG&E system. Detailed hourly generation forecast for the next thirty years (2007-2036) projects essentially no energy production for the Companies' native load as the high cost Waterside generation is forecast to be economical for only 8 hours of operation on Unit 7 and 32 hours of operation on Unit 8 over the entire 2007-2036 period. All of Unit 7 and 88% of Unit 8's projected service hours occur after 2018 when the generators associated with the units would be almost 100 years old and well

beyond the estimated 10 year life of the Group 3 units. Service hours on Unit 8 slightly exceed those of Unit 7 due to Unit 8's slightly better heat rate. Over the 30 year period, Waterside 7 and 8 are forecasted to generate only 88MWh and 352MWh, respectively.

Waterside Station Forecast Data

Service Hours			Generation (MWh)		
Year	Unit 7	Unit 8	Year	Unit 7	Unit 8
2007	0	0	2007	0	0
2008	0	0	2008	0	0
2009	0	0	2009	0	0
2010	0	0	2010	0	0
2011	0	0	2011	0	0
2012	0	4	2012	0	44
2013	0	0	2013	0	0
2014	0	0	2014	0	0
2015	0	0	2015	0	0
2016	0	0	2016	0	0
2017	0	0	2017	0	0
2018	0	0	2018	0	0
2019	4	4	2019	44	44
2020	0	12	2020	0	132
2021	0	0	2021	0	0
2022	0	0	2022	0	0
2023	0	0	2023	0	0
2024	0	0	2024	0	0
2025	0	0	2025	0	0
2026	4	4	2026	44	44
2027	0	0	2027	0	0
2028	0	0	2028	0	0
2029	0	4	2029	0	44
2030	0	0	2030	0	0
2031	0	0	2031	0	0
2032	0	0	2032	0	0
2033	0	4	2033	0	44
2034	0	0	2034	0	0
2035	0	0	2035	0	0
2036	0	0	2036	0	0
Total	8	32	Total	88	352

100% of Unit 7 and 88% of Unit 8's future utilization is projected to occur after 2018.

Environmental Challenges

Compliance with environmental laws and regulations continues to drive costs upward. As an example, Waterside Units 7-8 must conform to the USEPA's Spill Prevention, Controls and Countermeasures (SPCC) regulations approved on November 28, 2005 and effective October 31, 2007. The regulations require preventive measures to reduce the likelihood of an oil release from bulk storage containers, oil filled equipment and/or oil filled manufacturing equipment from reaching a navigable watercourse. In the case of the Waterside station, the navigable watercourse would be the Ohio River, via

direct discharge or conveyed by the facilities storm water management system. However, in conjunction with the SPCC requirements, the Jefferson County Hazardous Materials Prevention Control (HMPC) plan would also require a mechanism to prevent a release to the sanitary sewer system.

On December 9, 2005 representatives from Fuller, Mossbarger, Scott and May, Engineers (FMSM) made a SPCC assessment of the Waterside Station. On January 24, 2006 FMSM provided cost estimates for compliance with SPCC at Waterside (see **Appendix 3** for the complete FMSM letter). The recommendations FMSM made and their associated cost could exceed \$204,000 and are enumerated below:

<u>Action</u>	<u>Cost Estimate (\$)</u>
1. Replace 500 gallon fuel oil tank	(\$26,250-\$45,000)
2. Modify Transformer on North Side of Building	(\$6,000-\$13,000)
3. Generation lubrication containment	(\$22,000-\$45,000)
4. Unit Reservoir Lubricating System Containment	(\$26,000-\$63,000)
5. CT Containment Area floor and floor drain	(\$1,500-\$3,000)
6. 55- Gallon Drums and Portable Spill-Pallets	(\$3,150-\$5,500)
7. Install an oil/water separator prior to discharge	(\$15,000-\$30,000)

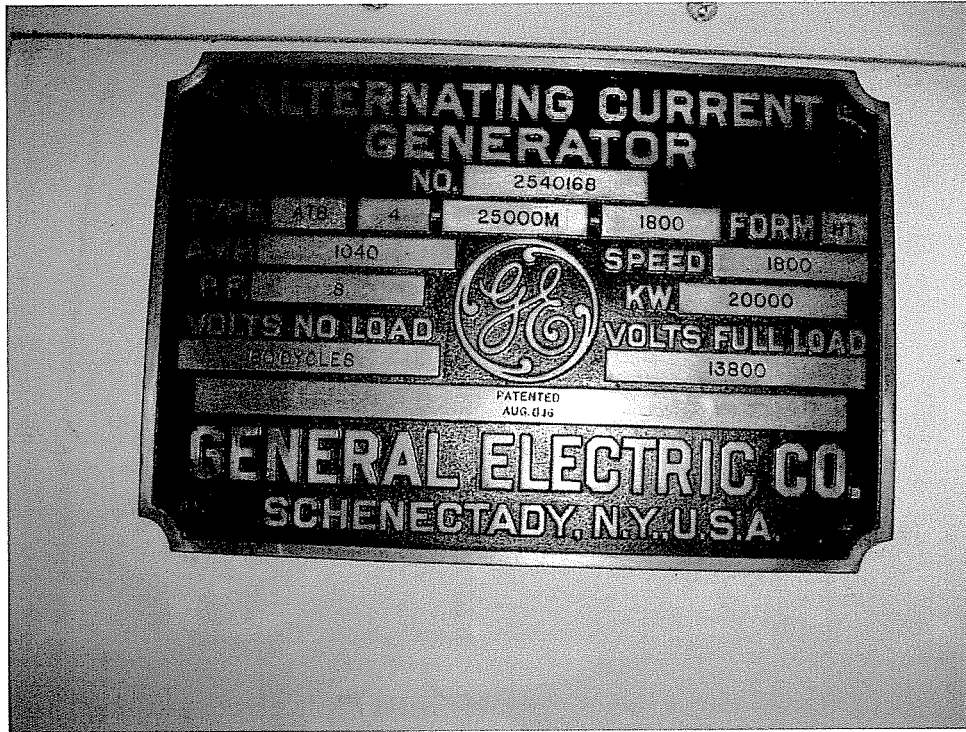
Presently, plans are to drain the lube oil from the associated equipment and store in a compliant offsite location.

Conclusion and Recommendation

The generators associated with Waterside Units 7-8 have been in-service since the 1920's and the turbines are 1960s vintage technology. Procurement of the necessary parts required to allow the units to reliably operate in a peaking role is getting more difficult as replacement parts for the turbine, generator and gas compressor become more costly to acquire and harder to locate. The high heat rates of the Units, the high price of natural gas fuel, their small capacity as well as their age and environmental regulations make it economically prudent to retire Waterside Units 7 and 8. Therefore, it is recommended that Waterside Units 7 and 8 be retired from operation effective immediately.

Appendix 1

Waterside Unit 7 Generator Nameplate



Waterside Unit 8 Generator Nameplate



Appendix 2

115 R. La Bata St.

Redlands, CA 92374
Phone (909) 794-8403

Fax (909) 794-8238

May 2, 1999

L G & E

Fax: 502-627-2857

Gordon,

I am writing this letter to explain what we feel is the problem with your engine, which we currently have at our shop. Since this engine was produced in the 1960's and has to our knowledge never been dismantled, it was very difficult to disassemble. This engine is very rusty which caused us to break the turbine / compressor rotor wrench. This wrench is about 5-6 feet long and made of steel. We had a 1" impact along with a cheater bar and could not move the nut. After breaking the shops tool we sent them ours and it was with this one we did finally move it, but only about two turns, and then it seized. We are not sure if it rolled a thread but it will not move.

We did a visual inspection of the turbine rotor to determine if the baffles had come apart, which was one of our theories as to what was causing the vibration in this engine. They appeared to be in good shape. We then did a sump pressure check on the number two bearing area. This sump should hold pressure for two to five minutes, yours held for only 9 seconds. So we are now at a cross roads, do we cut the engine apart to confirm what we feel we already know, that oil has gotten into your compressor rotor from the # 2 sump, and is causing the vibration? If we do take this course of action it is just to confirm our theory as it will destroy the compressor and turbine rotors. I should also point out that every time we move this engine we get more oil running out of it. It is very hard to get the oil out of your rotor and very time consuming, we would not think of disassembling and repairing your rotor as this in itself would run the cost past the quoted 125,000.00.

As stated earlier, the engine because of the type of climate it "lives" in, which is very moist, the outside components are also very rusty and the following ones do not meet the requirements for return to service. The combustion case, compressor rear frame, rear compressor stator case. Some other items will need repair, the first stage nozzle needs overhaul, the leading edge is too thin and does not meet the requirements for return to service. The number two carbon seals, as well as the air seals would all need to be overhauled. One problem that comes into play when we are replacing these items is that because of the vintage of your engine identical replacement parts are not available. We do have replacement spares, but they are a more current configuration. This creates a new

FAXED
5/2/99

problem which is they are not compatible with some of your older items. So this brings us to the list of other items we would have to replace, 17th stage air seals both rotating and stationary. We also need to replace the compressor rotor, but this again creates the configuration problem with parts. Your rotor is different because it has two # one carbon seals on the front stub shaft, others only have one. Therefore, we would have to change your front frame to conform to the new rotor.

With the above information and the following quote on parts you can see that a replacement engine is the only way to go, since parts put you over the 125,000.00 we quoted. There are also some very distinct advantages to having a replacement engine. One is replacement parts are now readily available, well into the year 2010. Your engine will be much more reliable and durable.

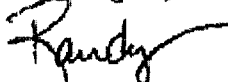
I do feel it is my responsibility to advise you that your best course of action would be to replace both engines in this one skid and make one unit "rock solid." The parts from your old engines could be used to support the other unit you are running. We can offer a performance guarantee of 18-20 MW's depending on the losses we experience from the other rotating equipment. We also offer a two year warranty on these engines.

Here is the quote on the parts to repair your engine, this does not include the parts damaged as a result of further disassembly of your engine.

Combustion cases.....	\$ 9,500.00
Compressor rear frame.....	\$ 19,500.00
Compressor rear stator cases.....	\$ 37,500.00
First stage nozzle overhaul.....	\$ 12,500.00
17 th stage air seals.....	\$ 6,500.00
No. 2 carbon seal.....	\$ 5,000.00
Overhauled compressor rotor.....	\$ 80,000.00

I hope this answers your questions and gives you some additional information to make a decision. Look forward to hearing from you in the coming days.

Best Regards,



Randy Lincoln

Appendix 3



1901
Nelson Miller Parkway
Louisville, Kentucky
40223-2177
502-212-5000
502-212-5955 FAX
www.fmsm.com

January 24, 2006

LV2005159L01

Roger Medina
Senior Chemical Engineer
E.ON US
220 West Main Street
Louisville, KY 40202

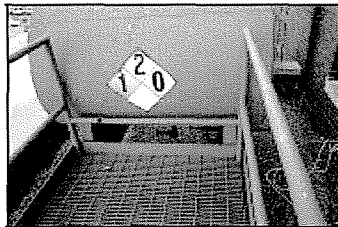
Re: Cost Estimate
Waterside Generating Station
SPCC Compliance

Dear Mr. Medina:

Fuller, Mossbarger, Scott and May, Engineers Inc. (FMSM) has been requested to provide a cost estimate for updating the Waterside Generating Station's oil storage units to conform with the new Spill Prevention, Controls and Countermeasures (SPCC) regulations, as amended on November 28, 2005. The regulations require preventive measures to reduce the likelihood of an oil release from bulk storage containers, oil filled equipment and/or oil filled manufacturing equipment from reaching a navigable watercourse. In the case of the Waterfront Generating Station, the navigable watercourse would be the Ohio River, via direct discharge or conveyed by the facilities storm water management system. However, in conjunction with the SPCC requirements, the Jefferson County Hazardous Materials Prevention Control (HMPC) plan would also require a mechanism to prevent a release to the sanitary sewer system.

On December 9, 2005, FMSM accompanied representatives' of E.ON U.S. during a SPCC assessment of the facility. During that site visit, the following observations were made:

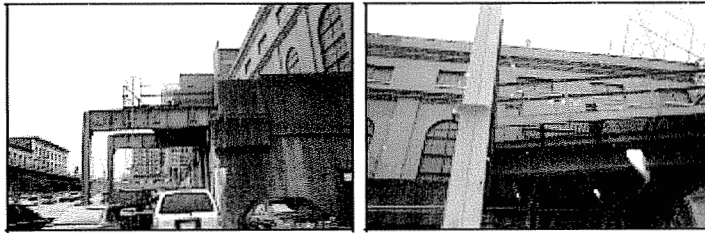
500-gallon Bulk Storage Tank



The bulk storage tank located on the roof of the generating station does not meet the SPCC requirements for the following reasons:

- The bulk storage tank does not have containment as required by 112.8(c),
- The tank does not have fail safe engineering,
- The tank and piping has not been integrity tested,
- The transfer area does not meet the general containment discharge provisions of 112.7(c). Discharges from the current barrier around the tank either infiltrate directly into the soil or are captured by the storm water drainage system and discharged off the site.
- The tank system probably needs a fusible link valve to isolate the gravity discharge from the tank during a fire.

External Transformers on Northside of Building

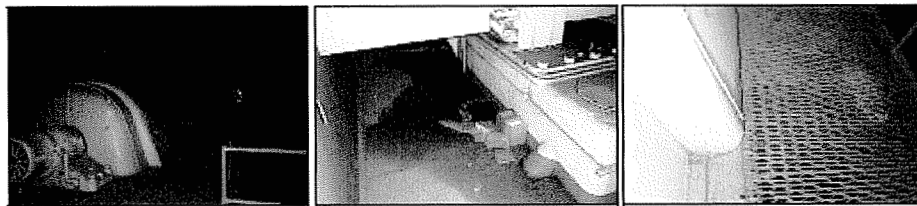


The electrical transformers on the steel floor grating do not meet general containment requirements of the SPCC rules for the following reasons:

- The oil filled electrical equipment does not have containment per 112.7(c),

Any release of oil from the system from the elevated structure onto the asphalt parking lot below. The asphalt parking lot is sloped in order to transport stormwater to the northeast stormwater catch basin, which discharges into the Ohio River.

Unit Generating Lubrication System

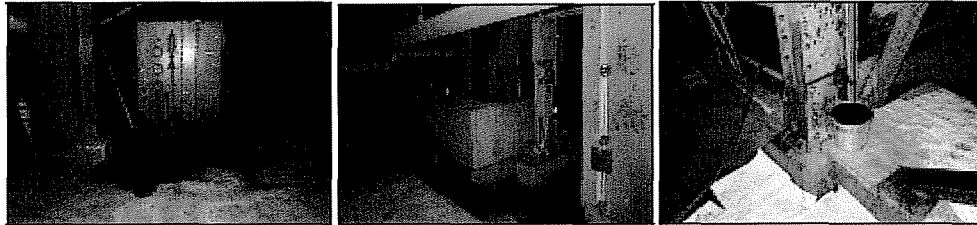


The Unit Generating Lubrication System does not meet the SPCC requirements for the following reasons:

- The oil filled equipment does not have containment per 112.7(c).

The oil filled equipment does not meet the general containment requirements of the SPCC rules. A large release from the equipment would result in the flow of oil from the ground floor of the building into other portions of the structures. Due to the unpredictable flow path of the oil, the material could enter floor drains, concrete cracks, and or the basement sump discharge system and enter the environment.

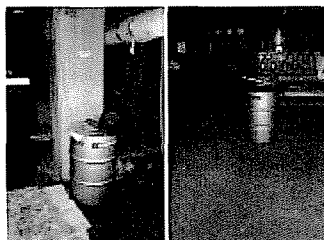
Unit Reservoir Lubricating System



The Unit Reservoir Lubrication System does not meet the SPCC requirements for the following reasons:

- The oil filled equipment does not have containment per 112.7(c).
- Currently, these reservoirs are single walled tanks that do not have passive secondary containment in their immediate vicinity. It appears, based on the site visit and review of previous plans, that secondary containment was sought through the position that the building acts as a large containment vault.

55-gallon Totes and Portable Tanks

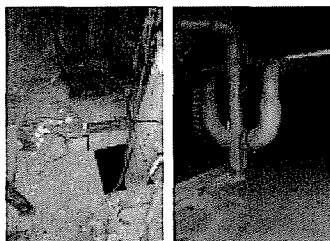


The Portable and Mobile Tanks do not meet the SPCC requirements for the following reasons:

- The ASTs do not have containment per 112.8(c).

55-gallon drums and portable totes were observed in numerous locations throughout the facility. During our visit, these tanks were not located within the immediate confines of a secondary containment system. The argument could be made that the building provides a level of containment, and that approach will be further discussed in the following paragraph.

Facility Sump Operation



Whether by original design or not, the basement floor of the building periodically accumulates water from unknown sources, presumably storm water diverted by drains into the basement, stormwater infiltration through cracks in the structure, or possibly infiltration of river water during high water events. Temporary sump pumps, operated by level floats, were installed in the basement and periodically discharge accumulated water either to a storm or sanitary discharge point. The current system does not use a method to monitor for the potential discharge of oil from the sump system.

- Lastly, sump pumps are installed in the basement of the building. The basement is located approximately 10+ feet below the normal river stage. Water, either storm water that has infiltrated into the building after storm events or river water that has percolated through the floor of the building accumulates in the basement of the structure. This water is currently pumped out of the basement of the building by temporary sump pumps. These pumps are automatically operated by a float sensor built into the pump and convey, through a large diameter hose, the collected water to a discharge point (trident). In the event of a release of oil inside the structure, there is a very good chance that the oil could eventually flow to the water collection system and be discharged without inspection.

Recommendations

In order to achieve the minimum compliance level required, the following recommendations are proposed, along with a estimated cost to implement.

500-gallon Fuel Oil AST

The 500-gallon diesel fuel oil tank should be replaced with a new double walled AST. The tank design should include fail safe engineering, such as a visual gage for tank gauging and

an intersituational indicator for direct observation. If the tank continues to receive fuel from a filling gas types dispenser, overspill protection should be provided to mitigate small spills that may occur during the fueling process. In addition, the new tank should include a fusible link valve to isolate the gravity discharge of the tank in the event of a fire at the facility. The ballpark cost range for these activities is \$26,250 to \$45,500 and includes the following:

- Old AST tank cleaning and removal from building rooftop.
- Structural evaluation structural and minimal repair of existing roof top to accept new tank.
- Purchase of new 500-gallon double walled AST with fuel gauge and intersituational indicator.
- Placement and secure AST on existing structure.
- Construct roll-over berm in loading to meet the provisions of 112.7(c) to protect stormwater discharge system from releases during tank loading.
- Install a fusible link valve on the fuel piping immediately after it enters the building.
- Pressure test the new system as part of the initial system installation.

Transformer on Northside of Building

Due to the ability for wind to blow an oil release outside of any containment installed directly beneath the transformers, a form of vertical shielding needs to be installed to direct a release directly beneath the transformers and a form of containment constructed beneath the units. The ballpark cost range for these activities is \$6,000 to \$13,000 and includes the following:

- Installation of a exterior shield to minimize the air entrainment and transport of oil during a transformer release,
- Construction of an asphalt berm beneath the transformer structure, and
- The use of CI Agent on the lowermost containment point, in order to create a stormwater discharge threshold that will allow for the discharge of oil free water but create a chemical barrier in the event of an oil release.

Unit Generating Lubrication System

In order to create a more controlled environment in the immediate vicinity of the generating turbines, it is recommended that the existing steel floor grating be filled with a low permeable material (i.e., concrete) and that the turbines be surrounded by a concrete dike capable of holding 1/3 of the oil within the equipment. The ballpark cost range for these activities for two units is \$22,000 to \$45,000 and includes the following:

- Equipment clean up and repair of existing gaskets or equipment causing weeps/seeps/leaks,
- Filling of steel floor gating with low permeable material, and
- And construction of passive containment dike.

Unit Reservoir Lubricating System

In order to create a more controlled environment in the immediate vicinity of the generating turbines, it is recommended that the existing steel floor grating be filled with a low permeable material (i.e., concrete) and that the turbines be surrounding by a concrete dike capable of holding 1/3 of the oil within the equipment. The ball park cost range for these activities for two units is \$26,000 to \$63,000 and includes the following:

- Equipment clean up and repair of existing gaskets or equipment causing weeps/seeps/leaks,
- Repair piping,
- Filling of steel floor gating with low permeable material, and
- And construction of passive containment dike.

CT Containment Area

In order to create a more controlled environment in the immediate vicinity of the CT turbines, it is recommended that the existing floor and floor drain be sealed. In order to accommodate the periodic draining of accumulated precipitation, the floor drain will be equipped with an easily removed plug or stopper. The ball park cost range for these activities for two units is \$1,500 to \$3,000 and includes the following:

- Caulking cracks in existing floor, and
- Rubber stopper for floor drain.

This cost estimate does not include the increase in maintenance required to ensure the proper management of precipitation accumulation.

55-gallon Drums and Portable Totes

Based on current inventory documents, it is estimated that between 10 and 15 55-gallon drums are located throughout the facility. Some drums may be located in areas that provides competent secondary containment, but due to the portability of the containers, and the observations during the site visit, it is recommended that all 55-gallon drums be lpaced no spill-pallets. The ball park cost range for these activities for two units is \$3,150 to \$5,500 and includes the following

- 8 spill pallets capable of storing 2 drums each.

Facility Sump Operations

Permanent and portable sump pumps operated in the basement of the building and underlying structure present a challenge in controlling the unplanned discharge of oil into the storm or sanitary sewers. In order to mitigate the unplanned conveyance and/or discharge of an oil release by these pumps, a fail safe engineering device needs to be included either in front (oil sensors) or behind the pump operation (oil/water separator). Given that the containment, storage and pump operation of the existing system is not well understood (e.g., location of pump inlets, whether oil would uniformly disperse in sump for detection, etc.) the conservative alternative would be to install a pre-discharge oil/water separator that could be used during normal flow conditions. This normal flow stream would be supplemented and the fail safe by-passed during river flooding events. The ball park cost range for these activities for the pretreatment system is **\$15,000 to \$30,000** and includes the following

- Portable oil/water separator capable of a nominal flow of 100/gallons per minute with a 100-gallon oil reservoir.
- Lift pump to transfer contents from water side of separator to discharge point at 100 gpm and 100 total dynamic head.

While there are many uncertainties in the development of the current cost estimate, we believe that the estimate represents the level of accuracy communicated to FMSM for cost development purposes. The recommendations included in this cost estimate are based on discussion between FMSM and E.ON U.S. representatives and does not represent the universe of options that may be available to achieve SPCC compliance. The total cost range for these recommendations is **\$99,900 and 205,000**.

FMSM is looking forward to working with you to further define the scope of services that may be required for SPCC compliance at the Waterfront Generating Station. Please review this cost estimate and contact me with any questions or comments at (614) 844-4007.

Sincerely,

FULLER, MOSSBARGER, SCOTT AND MAY
ENGINEERS, INC.



Bradley S. Rodgers, EI, CHMM
Project Manager

/jfk

**Minutes of Operating Committee Meeting
August 21, 2006**

Attendees: Members – Paul Thompson (Chairperson), Brad Rives (LG&E), John Voyles (LG&E), John Malloy (KU), and Keith Yocum (KU).
Others – Chris Balmer, Jason Knoy

...

Meeting Summary:

Mr. Thompson opened the meeting at 9:00 A.M.

...

Waterside Life Assessment Study

The life assessment study for Waterside 7 and 8 was the other item on the agenda. The life assessment study document and associated presentation were previously provided to the Operating Committee for review. The results of the analysis were discussed. It is not economic to invest in the units to keep them operable. Total plant energy projections through 2036 are less than 500 MWh. Plant reliability is very poor and the units do not have black start capability. The recommendation was to immediately retire Waterside 7 and 8. All Operating Committee members were in agreement with the recommendation.

The meeting was adjourned at 9:50 A.M.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY FOR APPROVAL OF)
SALE OF PROPERTY TO THE LOUISVILLE)
ARENA AUTHORITY, INC.)

CASE NO. 2006-00391

RECEIVED

AUG 24 2006

PUBLIC SERVICE
COMMISSION

ADDENDUM TO APPLICATION

Louisville Gas and Electric Company (“LG&E”), by counsel, for its Addendum to the Verified Application filed on this date pursuant to KRS 278.040, the Commission’s Order dated June 11, 2002 in Case No. 2002-00029, 807 KAR 5:001, Section 8, KRS 278.218, to the extent applicable, and any and all other applicable statutes and regulations, respectfully states as follows:

1. On this date, LG&E has filed its Application in this case seeking approval of the sale of certain property to the Louisville Arena Authority, Inc. (“Arena Authority”). As LG&E explains in its Application and in its Petition for Confidential Protection, also filed on this date, the “Complete Appraisal in a Self-Contained Report” prepared for Tony Wheatley, Property Analyst, Commonwealth of Kentucky and dated November 16, 2005 (the “Appraisal”) is required to be withheld from public disclosure. The Appraisal contains the market value appraisal of LG&E Property at 119 North 3rd Street and 234 Washington Street, Louisville, Jefferson County, Kentucky 40202. The Appraisal is dated November 16, 2005, and was prepared by Integra Realty Resources, Kentucky-Southern Indiana, 3703 Taylorsville Road, Suite 205, Louisville, Kentucky, 40220-1359.

2. Because discussion of the contents of the Appraisal in a public document is prohibited by KRS 61.878(1)(f), LG&E files this Addendum to Application to explain the effect of certain aspects of the Appraisal upon the adjustments to the purchase price as specified in the MOU.

3. The terms of the MOU, at 1.2, require the Arena Authority to pay \$10 million for the property, minus environmental remediation costs and minus any adjustment for demolition costs exceeding \$1.2 million pursuant to the formula as stated in the MOU. This price, and the adjustments to it, are fully justified by the Appraisal.

4. "CONFIDENTIAL INFORMATION - REDACTED"

5. "CONFIDENTIAL INFORMATION - REDACTED"

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "K. R. Riggs", written over a horizontal line.

Kendrick R. Riggs

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
AUG 24 2006
PUBLIC SERVICE
COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY FOR APPROVAL OF)
SALE OF PROPERTY TO THE LOUISVILLE)
ARENA AUTHORITY, INC.)

CASE NO. 2006-00391

PETITION OF LOUISVILLE GAS AND ELECTRIC COMPANY
FOR CONFIDENTIAL PROTECTION

Louisville Gas and Electric Company (“LG&E”), by counsel, hereby petitions the Kentucky Public Service Commission (“Commission”), pursuant to 807 KAR 5:001, Section 7, and KRS 61.878(1)(f), to grant confidential protection to the “Complete Appraisal in a Self-Contained Report” prepared for Tony Wheatley, Property Analyst, Commonwealth of Kentucky, and dated November 16, 2005 (the “Appraisal”); and to portions of the Addendum to Application attached hereto. In support of this Petition, LG&E states as follows:

* * *

1. Contemporaneously with this filing, LG&E has filed its Verified Application (the “Application”) for approval of the sale of certain property to the Louisville Arena Authority, Inc. (“Arena Authority”). The Application seeks approval for a transaction pursuant to which the Arena Authority will pay the appraised market value of certain real property located in Louisville, Kentucky, and will pay the cost of relocating LG&E’s service facilities currently on the property (the “Relocation Project”). The Application also describes the ultimate disposition of facilities that are not included in the Relocation Project: [1] two combustion turbines (“CTs”) that will be retired prior

to the sale due to obsolescence, and [2] transmission dispatch facilities that will be replaced by more secure, technologically updated facilities to be located elsewhere. The Appraisal and the Addendum to Application contain information and analysis with regard to the Application that will be helpful to the Commission in rendering its decision in this case.

The Appraisal

2. KRS 61.878(1)(f) excludes from the Open Records Act the following:

The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired.

3. The Appraisal was prepared for the Arena Authority, which has explicitly been found, pursuant to 61.870(1)(i), to be a “public agency” for purposes of the Open Records Act. In 06-ORD-086 (OAG, April 19, 2006), the Attorney General determined that, although the Arena Authority was created as a non-stock, non-profit corporation, it is an entity the majority of whose governing body is appointed by “public agencies” (the Governor and the Mayor of Louisville). In addition, the Appraisal contains estimates and evaluations of property which has not yet been acquired. Thus, the entire contents of the Appraisal are at this time required to be kept confidential, and a single copy of the Appraisal is hereby filed under seal.

Addendum to Application

4. The Addendum to Application contains an analysis of the safeguards for LG&E and its customers related to the price, evaluation, and condition of the property as contained in the confidential Appraisal. Because of the confidentiality of the contents of the Appraisal, the analysis appearing in the Addendum to Application cannot be filed in a

public document. Nevertheless, the importance of the analysis to the public interest inquiry mandates its filing in this case. It will establish, as a public document cannot, the reasons that the transaction proposed in this case is in the best interests of LG&E and its customers.

5. Pursuant to 807 KAR 5:001, Section 7, the portions of the Addendum to the Application containing confidential information as described herein have been highlighted in one copy, filed under seal herewith, and redacted from ten (10) additional copies, filed publicly herewith.

WHEREFORE, Louisville Gas and Electric Company respectfully requests that the Commission grant confidential protection, pursuant to 807 KAR 5:001, Section 7 and and KRS 61.878(1)(f), to the redacted and highlighted portions of the Addendum to Application and to the entire contents of the Appraisal.

Respectfully Submitted,



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