

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING

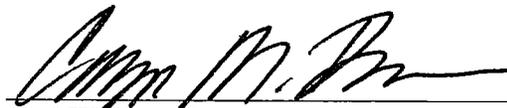
In the Matter of:

THE APPLICATION OF THOROUGHbred)	
GENERATING COMPANY, LLC FOR A MERCHANT)	CASE NO.
POWER PLANT CONSTRUCTION CERTIFICATE)	2002-00150
IN MUHLENBERG, COUNTY, KY)	

**THOROUGHbred'S RESPONSE TO
BOARD'S SECOND DATA REQUEST TO APPLICANT**

Applicant, Thoroughbred Generating Company, LLC ("Thoroughbred"), submits
the attached separately listed responses to the Board's October 7, 2003 Data Request.

Respectfully submitted,



Carl W. Breeding
Holland N. McTyeire, V
Carolyn M. Brown

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COUNSEL FOR THOROUGHbred
GENERATING COMPANY, LLC

Data Request No. 1: Refer to Thoroughbred's application, Section 8.2.2, which describes the proposed site as "currently owned by Peabody Energy, Thoroughbred's parent, or its subsidiaries." Are there any existing documents that evidence Thoroughbred's right to construct and own a merchant generating plant on property owned by Peabody Energy or its subsidiaries? Is yes, provide copies. If no, explain in detail the basis for Thoroughbred's designation of the boundaries of a proposed site that it has no legal right to use.

Response: Yes. The site of the proposed Thoroughbred facility ("the Property"), is currently owned or controlled by Peabody Development Company and Peabody Coal Company, which are wholly owned subsidiaries of Thoroughbred's parent company, Peabody Energy Corporation. Thoroughbred and Peabody Development Company and Peabody Coal Company have executed an Access and Use Agreement (the "Agreement") regarding Thoroughbred's use of the site to begin construction activities. An appropriately indexed original and one copy of the Access and Use Agreement is attached in response to the Board's Data Request. The Agreement memorializes the oral agreement reached prior to February 26, 2001 between the parties regarding access to and use of the Property. Upon receipt of all necessary permits, financing and approvals, the Property will be conveyed to Thoroughbred and the Agreement will terminate.

Witness: Dianna Tickner.

Data Request No. 2: Refer to Thoroughbred's response filed on September 8, 2003 to Item No. 1 of the Board's First Data Request. Since Peabody Energy owns the property on the northwest border of the site designated by Thoroughbred, and since under Kentucky law Peabody Energy's property extends to the "thread of the stream," explain in detail why Thoroughbred's right to use that property does not also extend to the "thread of the stream."

Response: The legal description of the property to which Thoroughbred has been granted access and which will later be conveyed to Thoroughbred does not extend to the "thread of the stream." Peabody Energy and its affiliates wanted to retain ownership of a buffer zone at the edge of the site.

Witness: Dianna Tickner.

Data Request No. 3: Provide copies of all documents that show that Thoroughbred's right to use its designated site extends only to the river bank on the northwest border and does not extend to the "thread of the stream."

Response: See the Access and Use Agreement provided in response to Data Request No. 1 at Exhibit A.

Witness: Dianna Tickner.

ITEM 1

PROVIDED IN RESPONSE TO BOARD
OCTOBER 7, 2003 DATA REQUEST NO. 1

ACCESS AND USE AGREEMENT

THIS ACCESS AND USE AGREEMENT (the "Agreement"), made and entered into the 9th day of October, 2003, by and between **PEABODY DEVELOPMENT COMPANY** and **PEABODY COAL COMPANY** both wholly owned subsidiaries of Peabody Energy Corporation, a Delaware corporation (collectively referred to herein as "Peabody"), and **THOROUGHbred GENERATING COMPANY, LLC**, a Delaware limited liability company ("Thoroughbred").

WHEREAS, Peabody the owner of certain real estate, which is adjacent to the Green River in Muhlenberg County Kentucky, and more particularly depicted on Exhibit A and fully described in Exhibit B hereto (the "Property"); and

WHEREAS, the Property is designated for future use for the development by Thoroughbred of a 1,500W power plant (the "Plant") the construction of which is subject of a Kentucky State Board on Electric Generating and Transmission Siting approval;

WHEREAS, it is the understanding of the parties that upon the approval of all necessary permits construction of the Plant will commence and Peabody will convey the Property to Thoroughbred, or its affiliates, and the parties hereto wish to reduce their agreement to writing all as more specifically set forth herein.

NOW, THEREFORE, for One Dollar (\$1.00) and other good and valuable consideration, receipt and sufficiency of all of which are hereby acknowledged, and effective as of the date of this Agreement, Peabody and Thoroughbred hereby agree as follows:

1. Thoroughbred is hereby authorized to access the Property for the purpose of performing all necessary and convenient actions relative to the permitting, construction and operation of the Plant.

2. During the term of this Agreement, authorized representatives of Thoroughbred shall have the right of access to the Property to perform the actions identified in paragraph 1 hereof.

3. Upon receipt of all necessary permits, financing and approvals, Peabody will convey the Property to Thoroughbred or its affiliates in accordance with conveyance and financing documents to be negotiated by the parties.

4. Either party may terminate this Agreement upon one year's written notice to the other party at the address specified herein.

5. Thoroughbred shall indemnify and save Peabody harmless against any claims, damages or obligations arising from acts or omissions by agents, employees or representatives of Thoroughbred on the Property and Peabody shall have no liability for any operations, acts or omissions by Thoroughbred, its lessees, successors or assigns on the Property, and agrees to indemnify and hold harmless Peabody with respect thereto.

6. Any notice required under this Agreement shall be made by first class mail, postage prepaid, at the following addresses:

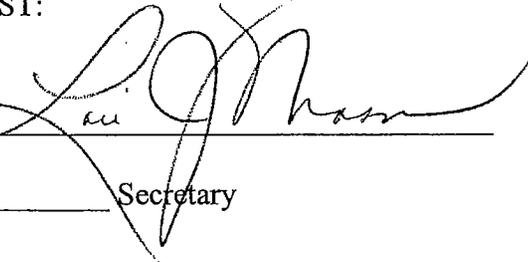
Peabody Energy Corporation
(As agent for all Peabody entities)
Suite 900
701 Market Street
St. Louis, MO 63101

Thoroughbred, LLC
701 Market Street
Suite 815
St. Louis, MO 63101

7. Thoroughbred's access and use of the Property shall not unreasonably interfere with any tenants in possession, agricultural lessees or other individuals currently occupying or using any portion of the Property and such use of the Property shall be in accordance with the terms and conditions contained in this Agreement.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by an officer or entity, which is duly authorized therefor.

ATTEST:

By: 
Its: _____ Secretary

PEABODY COAL COMPANY

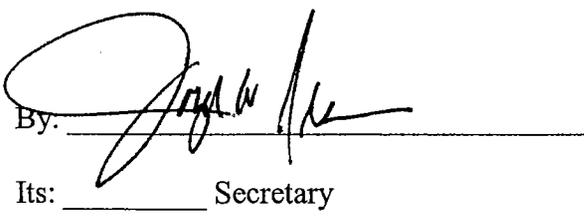
By: Kennel Williamson
Its: PRESIDENT

ATTEST:

By: T. W. Probst
Its: _____ Secretary

PEABODY DEVELOPMENT COMPANY

By: Roger Swalcoth
Its: President

By: 
Its: _____ Secretary

THOROUGHbred GENERATING COMPANY, L.L.C.

By: Deanna Tucker
Its: President

Exhibit B

**Thoroughbred Generating Company LLC
Site Boundary Legal Description**

Beginning at the starting point with a coordinate of N 37d 18' 25" lat., W 87d 05' 33" long.; thence S 60°40' W a distance of 3698.7 feet; thence N 40°45' W a distance of 3246.1 feet; thence N 04°08' E a distance of 3100.1 feet; thence N 00°44' W a distance of 913.1 feet; thence S 89°51' W a distance of 1120.8 feet; thence N 82°48' W a distance of 829.2 feet; thence S 79°05' W a distance of 198.7 feet; thence S 67°51' W a distance of 410.7 feet; thence N 80°39' W a distance of 202.4 feet; thence N 59°48' W a distance of 392.0 feet; thence N 53°26' W a distance of 585.5 feet; thence N 50°32' E a distance of 315.5 feet; thence N 42°31' E a distance of 343.9 feet; thence N 32°29' E a distance of 677.4 feet; thence N 26°37' E a distance of 733.2 feet; thence S 82°02' E a distance of 237.4 feet; thence S 27°17' W a distance of 1092.9 feet; thence S 37°45' W a distance of 876.3 feet; thence S 54°16' E a distance of 315.5 feet; thence S 66°29' E a distance of 418.7 feet; thence N 66°55' E a distance of 484.8 feet; thence S 85°33' E a distance of 615.2 feet; thence N 55°39' E a distance of 314.0 feet; thence N 78°11' E a distance of 222.1 feet; thence N 87°47' E a distance of 921.0 feet; thence N 71°26' E a distance of 349.4 feet; thence N 62°26' E a distance of 620.2 feet; thence S 84°03' E a distance of 536.4 feet; thence N 71°49' E a distance of 372.6 feet; thence N 87°47' E a distance of 131.6 feet; thence S 79°37' E a distance of 336.7 feet; thence N 68°28' W a distance of 2391.0 feet; thence N 60°41' E a distance of 1737.4 feet; thence N 57°56' E a distance of 1194.0 feet; thence N 37°58' E a distance of 680.9 feet; thence S 66°05' E a distance of 3091.2 feet; thence S 80°48' E a distance of 2844.2 feet; thence S 10°07' E a distance of 1034.3 feet; thence S 38°05' W a distance of 908.4 feet; thence S 73°13' W a distance of 837.6 feet; thence S 26°17' E a distance of 2813.7 feet; thence N 71°46' E a distance of 1965.2 feet; thence N 37°43' E a distance of 438.0 feet; thence N 28°15' E a distance of 2379.9 feet; thence N 33°23' E a distance of 429.2 feet; thence N 47°48' E a distance of 155.9 feet; thence N 55°37' E a distance of 2580.1 feet; thence N 56°45' E a distance of 562.8 feet; thence N 65°20' E a distance of 314.2 feet; thence N 82°24' E a distance of 78.4 feet; thence S 07°45' W a distance of 3230.4 feet; thence N 76°33' W a distance of 283.6 feet; thence S 06°27' W a distance of 432.8 feet; thence S 64°41' W a distance of 583.1 feet; thence S 52°35' E a distance of 1582.8 feet; thence S 01°11' W a distance of 516.6 feet; thence S 46°08' W a distance of 201.0 feet; thence S 40°27' W a distance of 132.7 feet; thence S 32°51' W a distance of 283.8 feet; thence S 24°02' W a distance of 305.7 feet; thence S 21°05' W a distance of 189.2 feet; thence S 30°26' W a distance of 243.8 feet; thence S 54°05' W a distance of 160.0 feet; thence S 58°48'

W a distance of 311.8 feet; thence S 53°22' W a distance of 203.5 feet; thence S 36°13' W a distance of 98.5 feet; thence N 58°17' W a distance of 184.8 feet; thence S 33°22' W a distance of 95.8 feet; thence S 56°37' E a distance of 104.0 feet; thence N 33°20' E a distance of 74.9 feet; thence S 58°30' E a distance of 82.9 feet; thence S 28°07' W a distance of 385.8 feet; thence S 13°06' W a distance of 1240.6 feet; thence S 34°57' W a distance of 337.7 feet; thence S 55°19' W a distance of 299.8 feet; thence S 43°00' W a distance of 611.7 feet; thence S 65°46' W a distance of 1072.5 feet; thence S 79°51' W a distance of 418.8 feet; thence S 67°35' W a distance of 258.5 feet; thence S 45°16' W a distance of 1010.9 feet; thence S 56°34' W a distance of 185.1 feet; thence S 77°43' W a distance of 289.9 feet; thence S 69°58' W a distance of 514.6 feet; thence S 80°51' W a distance of 463.6 feet; thence S 64°33' W a distance of 128.6 feet; thence S 46°08' W a distance of 255.6 feet; thence S 17°11' W a distance of 1100.7 feet; thence S 26°13' W a distance of 877.1 feet; thence N 45°15' W a distance of 1070.8 feet; thence N 21°18' W a distance of 5061.2 feet; to the point of beginning, having an area of 2717.1 acres

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the forgoing was sent by United States First Class Mail, sufficient postage prepaid, to the following this the 14th day of October, 2003.

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Natural Resources and Environmental
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