

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING

RECEIVED
KENTUCKY STATE BOARD ON
AUG 04 2004
ELECTRIC GENERATION AND
TRANSMISSION SITING

In the Matter of:

ESTILL COUNTY ENERGY PARTNERS, LLC,)
FOR A CERTIFICATE OF CONVENIENCE AND)
NECESSITY TO CONSTRUCT A COAL)
COMBUSTION FACILITY IN ESTILL COUNTY,)
KENTUCKY)

CASE NO. 2002-00172

TESTIMONY OF HARRY LAVIERS, JR.

* * * * *

Come DLX, Inc. ("DLX"), and Harry LaViers, Jr., as Trustee of a Trust established for the benefit of Donald G. LaViers, Stephen D. LaViers, Henry LaViers, IV, and Elizabeth LaViers Owen, all under the Will of Maxie LaViers, deceased (the "Trust")¹, by counsel, and submit the following testimony in support of their positions in these proceedings for all purposes permitted by KRS § 278.700-.716, 807 KAR 5:110, all applicable rules of administrative procedures and the Civil Rules:

¹ The Trust was created under the will of Maxie LaViers, deceased, which is of record in Will Book J, Page 375, in the Estill County Clerk's Office.

1 TESTIMONY OF HARRY LAVIERS, JR., UPON WRITTEN QUESTIONS

2 On the 4th day of August, 2004, beginning at 2:54 p.m., at Kinkead & Stilz, PLLC, 301
3 East Main Street, Suite 800, Lexington, Kentucky, before Rosetta M. Mitchell, a notary public for
4 the Commonwealth of Kentucky, appeared Harry LaViers, Jr., who, after having first been duly
5 sworn, was examined by Wayne F. Collier, Esq., and testified as follows:

6 Q1. Please state your name, occupation and business address for the record.

7 A1. My name is Harry LaViers, Jr., I am presently retired and am the trustee of the Trust
8 established for the benefit of Donald G. LaViers, Stephen D. LaViers, Henry LaViers, IV, and
9 Elizabeth LaViers Owen, all under the Will of Maxie LaViers, deceased (the "Trust"), and my
10 business address is 1632 Wild Turkey Court, Lexington, Kentucky 40511.

11 Q2. Please describe your educational background and experience in the mineral industry.

12 A2. I have a degree in Engineering from Princeton University. My family owned South-East Coal
13 Company ("South-East") from its inception in 1910 until it was liquidated in bankruptcy in
14 1993. I was President of South-East for many years and am intimately familiar with its
15 properties and operations. I and my family lived on the property for many years.

16 Q3. Have you read the testimony of Donald G. LaViers that is being submitted contemporaneously
17 with this?

18 A3. Yes. Mr. LaViers is one of my sons. I am familiar with the matters contained therein and
19 those statements are true and correct to the best of my knowledge and belief.

20 Q4. Are you familiar with the South-East Property?

21 A4. Yes, very much so. I was an engineer and was employed by South-East for many years and
22 became knowledgeable about South-East's boundaries and maps. I also had a residence on the

1 property, so I know it very well.

2 Q5. What is your connection to the Trust established for the benefit of Donald G. LaViers, Stephen
3 D. LaViers, Henry LaViers, IV, and Elizabeth LaViers Owen, all under the Will of Maxie
4 LaViers, deceased (the "Trust")?

5 A5. I am and have been the trustee for the Trust.

6 Q6. What property does the Trust own?

7 A6. It owns property that it acquired from DLX and others by a series of deeds which are of record
8 in Deed Book 170, at Pages 181, 184, 187, 190, 193, 196, 199 and 202, and in Deed Book 215,
9 Page 740, respectively, in the Estill County Clerk's Office. These properties have been
10 referred to as the Calla Subdivision and the Sand Hill Property in DLX's and the Trust's
11 Motion to Intervene and all of the information and documents attached thereto are true and
12 correct to the best of my knowledge and belief and the terms used therein shall also be used
13 in my testimony.

14 Q7. Has the Trust sold any part of the Sand Hill Property?

15 A7. Yes, a sale is pending to Joyce Marcum, who has already recorded the proposed deed.
16 However, she has not yet paid for the property because of the presence of an unenforceable lien
17 for ad valorem taxes which remains unreleased. Once released, the transaction will close and
18 the Trust will cease to own the property conveyed in that deed.

19 Q8. Has the Trust sold any part of the Calla Subdivision?

20 A8. The Trust did sell certain tracts in the Calla Subdivision to Jack Jenkins, Stan Nicola, Eldon
21 Hughes, Ron Wiley, Ted Jones, Howard Calmes and to Old KPC. A true copy of the deed to
22 old KPC is attached as Exhibit A. The Trust continues to own the remainder and such

1 easements as are appurtenant to them, including those for access, utilities and for other rights-
2 of-way.

3 Q9. Has the Trust agreed to sell, lease or transfer any interest in the Refuse Pile Tract to Fox Trot
4 or ECEP

5 A9. No.

6 Q10. Does the Trust object to ECEP's application for a permit? If so, please briefly state its
7 principal reasons.

8 A10. Yes, the Trust does object for the same reasons articulated by DLX in Donald G. LaViers'
9 testimony. The Trust also objects because the merchant facility will be built within 2,000 feet
10 of a residential neighborhood. The Trust believes that both the Sand Hill property and the
11 Calla Subdivision constitute a "residential neighborhood" as defined by KRS § 278.700(6).
12 As such, the facility will be most unsightly and will depreciate the value of the Sand Hill
13 property and the remaining portion of the Calla Subdivision. The facility will certainly
14 generate a great deal of noise in addition to electricity and will adversely affect the esthetic and
15 financial value of the Trust's property. In addition, the Trust does not want to have any of the
16 access roads damaged or impaired by the proposed facility. Any security measures ECEP must
17 implement should not affect the Trust's access in any way. .

18 Q11. Does this conclude your testimony?

19 A11. Yes.

20 Mr. Collier: I have no further questions.

21 I swear that the foregoing written testimony given by me in response to the questions
22 propounded upon me in writing is true and correct to the best of my knowledge and belief.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via first class mail on this the 4th day of August, 2004, to the following:

Lisa E. Underwood, Esq.
Lisa E. Underwood PLC
314 Holiday Road
Lexington, Kentucky 40502
Counsel for Estill County Energy Partners, LLC

Mr. Darrell D. Brock, Jr.
Commissioner/Assistant to Governor
Office of Local Government
1024 Capital Center Drive
Suite 340
Frankfort, KY 40601

Judge Wallace Taylor
Estill County Judge Executive
Room 101
130 Main Street
Irvine, KY 40336

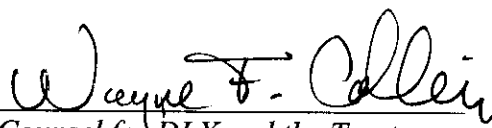
Hon. Gene Strong, Secretary
Economic Development Cabinet
2300 Capital Plaza Tower
500 Mero Street
Frankfort, KY 40601

Hon. LaJuana S. Wilcher, Secretary
KY Environmental and Public Protection
Department for Natural Resources
Division of Energy
500 Mero Street, Fifth Floor
Capital Plaza Tower
Frankfort, KY 40601

Mr. Danny P. Woods
Brighton A&E, Inc.
201 Brighton Park Boulevard
Frankfort, KY 40601

Mr. John M. St. Clair, Jr.
Citizens Guaranty Bank
25 River Drive
Irvine, KY 40336

Thomas J. Fitzgerald, Esq.
Kentucky Resources Council, Inc.
P.O. Box 1070
Frankfort, KY 40602
Counsel for Will Herrick


Wayne F. Collier
Counsel for DLX and the Trust

J:_Wr\DLX\PSC\TestimonyPSCHarryLaViers.wpd

EXHIBIT A

DEED

THIS DEED, made and entered into this 15th day of December, 1995, by and between Harry LaViers, Jr., as Trustee of a Trust established for the benefit of Donald G. LaViers, Stephen D. LaViers, Henry LaViers, IV, and Elizabeth LaViers Owen, all under the Will of Maxie LaViers, whose mailing address is 1632 Wild Turkey Ct., Lexington, Ky. 40511, Grantor, and Kentucky Processing Company, a Kentucky general partnership, whose mailing address is 348 Calla Road, P.O. Box 880, Irvine, Estill County, Kentucky 40336, Grantee.

W I T N E S S E T H:

TAX PAID
\$ 350.⁰⁰

THAT for and in consideration of the total sum of \$350,000.00, cash in hand paid, the receipt of all of which is hereby acknowledged, Grantor hereby conveys to Grantee, in fee simple, with Covenant of GENERAL WARRANTY, the following described property, located in Estill County, Kentucky, and being more particularly described in Exhibit A attached hereto and made a part hereof.

PROVIDED, HOWEVER, there is excepted from the foregoing warranty and covenants of title and this conveyance is made subject to any easements and restrictions of record affecting said property, and taxes and assessments for the current year, which taxes and assessments and those of succeeding years, Grantee assumes and agrees to pay.

MAIL TO:
WYATT TARRANT & COMBS
250 W. MAIN STREET
LEXINGTON, KY 40507
ATTN: D. Sester

IN TESTIMONY WHEREOF, witnesseth the signature of Grantor on the date first above written.

By: Harry LaViers, Jr., Trustee
Harry LaViers, Jr., Trustee

COMMONWEALTH OF KENTUCKY)
: SS
COUNTY OF FAYETTE)

The foregoing Deed was acknowledged before me this 12th day of December, 1995, by Harry LaViers, Jr., as Trustee of a Trust established for the benefit of Donald G. LaViers, Stephen D. LaViers, Henry Laviere, IV, and Elizabeth LaViers Owen, all under the Will of Maxie LaViers.

My commission expires: April 10, 1997.

Deborah R. Sesto
Notary Public

CERTIFICATE OF CONSIDERATION

The undersigned hereby swear and affirm, under penalty of perjury, that the consideration recited in the foregoing instrument is the full actual consideration paid or to be paid for the property transferred hereby.

By: Harry LaViers, Jr., Trustee
Harry LaViers, Jr., Trustee

Kentucky Processing Company, a
Kentucky General Partnership,
comprised of Clemons Coal Company
and Kentucky Mineral Processing,
Inc., general partners

Clemons Coal Company

By: Charles E. Yates
Charles E. Yates, President

Kentucky Mineral Processing, Inc.

By: *[Signature]*
Charles E. Yates, President

COMMONWEALTH OF KENTUCKY)
 : SS
COUNTY OF FAYETTE)

The foregoing Certificate of Consideration was sworn to before me this 12th day of December, 1995, by Harry LaViers, Jr., as Trustee of a Trust established for the benefit of Donald G. LaViers, Stephen D. LaViers, Henry LaViers, IV, and Elizabeth LaViers Owen, all under the Will of Maxie LaViers.

My commission expires: April 10, 1997.

Deborah R. Sesto
Notary Public

COMMONWEALTH OF KENTUCKY)
 : SS
COUNTY OF Fayette)

The foregoing Certificate of Consideration was sworn to before me this 15th day of December, 1995, by Charles E. Yates, President of Clemons Coal Company and Kentucky Mineral Processing, Inc., general partners of Kentucky Processing Company, a Kentucky general partnership.

My commission expires: April 10, 1997.

Deborah R. Sesto
Notary Public

THIS INSTRUMENT PREPARED BY:

[Signature]
John R. Rhorer, Jr.
WYATT, TARRANT & COMBS
1700 Lexington Financial Center
Lexington, Kentucky 40507
(606) 233-2012

EXHIBIT A**Tract 1**

Being Lot No. Seven (7) in Block One (1) of Calla Subdivision to Estill County, Kentucky, a plat of which is of record in Plat Book 2, page 20, Estill County Court Clerk's Office, to which reference is hereby made for a more particular description.

Being the same property conveyed to Grantor by deed dated September 15, 1993, of record in Deed Book 204, page 615, and by Deed dated and recorded simultaneously herewith.

Tract 2

Beginning at an iron pin 40 feet north of Highway Station 42 + 10, measured along the centerline of Kentucky 1840, said point being in the north right-of-way line; thence with the north right-of-way line 40 feet from and parallel to the centerline of Kentucky 1840, and continuing 20 feet from and parallel to the centerline of an entrance road to an iron pin which is S 61-09-22 W 312.95 feet from the beginning; thence leaving the said right-of-way for a series of calls each marked by an iron pin; S 65-18-22 W 169.52 feet; N 58-21-38 W 251.30 feet; N 10-37-38 W 136.00 feet; N 33-13-22 E 244.57 feet; N 60-59-42 E 144.20 feet; S 77-00-38 E 108.68 feet; S 55-12-38 E 126.65 feet; N 31-40-12 E 135.69 feet; S 59-53-48 E 233.22 feet; S 65-36-38 E 323.42 feet; S 30-21-38 E 124.02 feet; S 7-01-02 W 104.40 feet to an iron pin 40 feet north of Station 37 + 35, measured along centerline of Kentucky 1840; thence with said right-of-way N 73-19-38 W 435.80 feet to the beginning and containing 8.17 acres.

Being the same property conveyed to Maxie LaViers, by deed dated August 26, 1980, of record in Deed Book 159, page 178. The said Maxie LaViers, having died testate, on or about March 11, 1984, as evidenced by the probating of her will of record in Will Book J, page 375; wherein she appointed Harry LaViers, Jr. as Executor of her estate. Harry LaViers, Jr., as Executor of the estate of Maxie LaViers, thereafter conveyed the following interests in the aforesaid property as follows:

1. to Harry LaViers, Jr., as Trustee of the Trust established for the benefit of Stephen D. LaViers, under the will of Maxie LaViers, an undivided 17% interest, by deed dated March 1, 1985, of record in Deed Book 170, page 181.
2. to Harry LaViers, Jr., as Trustee of the Trust established for the benefit of Harry LaViers, IV, under the will of Maxie LaViers, an undivided 8% interest, by deed dated February 28, 1985, of record in Deed Book 170, page 184.

3. to Harry LaViers, Jr., as Trustee of the Trust established for the benefit of Elizabeth LaViers Owen, under the will of Maxie LaViers, an undivided 8% interest, by deed dated February 28, 1985, of record in Deed Book 170, page 187.
4. to Harry LaViers, Jr., as Trustee of the Trust established for the benefit of Donald G. LaViers, under the will of Maxie LaViers, an undivided 8% interest, by deed dated February 28, 1985, of record in Deed Book 170, page 190.
5. to Harry LaViers, Jr., as Trustee of the Trust established for the benefit of Stephen D. LaViers, under the will of Maxie LaViers, an undivided 8% interest, by deed dated February 28, 1985, of record in Deed Book 170, page 193.
6. to Harry LaViers, Jr., as Trustee of the Trust established for the benefit of Harry LaViers, IV, under the will of Maxie LaViers, an undivided 17% interest, by deed dated March 1, 1985, of record in Deed Book 170, page 196.
7. to Harry LaViers, Jr., as Trustee of the Trust established for the benefit of Donald G. LaViers, under the will of Maxie LaViers, an undivided 17% interest, by deed dated March 1, 1985, of record in Deed Book 170, page 199.
8. to Harry LaViers, Jr., as Trustee of the Trust established for the benefit of Elizabeth LaViers Owen, under the will of Maxie LaViers, an undivided 17% interest, by deed dated March 1, 1985, of record in Deed Book 170, page 202.

All references are to the Estill County Clerk's office.

ESTILL COUNTY CLERK'S OFFICE
 ESTILL COUNTY, KENTUCKY

H:\JRR\FOX-DLX.DED

STATE OF KENTUCKY, ESTILL County.

I, SHERRY L FOX Clerk of the County aforesaid, do certify that the foregoing DEED DONALD G LAVIERS TRUST & OTHERS BY TRUSTEE HARRY LAVIERS JR was, on the 15TH day of DECEMBER 19 95 lodged at 3:46 o'clock P.M. in my office for record. Recorded DEED Book 215 Page 608

WITNESS my hand, this 15TH day of DECEMBER 19 95.

Recording Fee	\$ 12.00	<u>SHERRY L FOX</u>	Clerk
ADDITIONAL PAGES 2	4.00		
	16.00	BY <u>Joanna Frederick</u>	D. C.

STATE OF KENTUCKY

(SCT)

COUNTY OF ESTILL

I, Sherry L. Fox, Clerk of the County and State
aforesaid, do hereby certify that the foregoing
Deed is a true and correct copy as appears
in record in my said office in Deed Book 215
Page 608.

Witness my hand this 16th day of Jan
2001.

SHERRY L. FOX, Clerk

By Dora L. Berg D.C.