

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

SIERRA CLUB,

Plaintiff,

v.

**LOUISVILLE GAS AND ELECTRIC
COMPANY,**

Defendant.

C.A. No. 3:14-CV-391-H

ELECTRONICALLY FILED

[PROPOSED] CONSENT DECREE

WHEREAS, on May 28, 2014, Sierra Club filed a Complaint (“Complaint”) against Louisville Gas and Electric Company (“LG&E”) pursuant to 33 U.S.C. § 1365(a) of the Clean Water Act (“CWA”), seeking declaratory and injunctive relief and civil penalties for alleged violations of 33 U.S.C. §§ 1311 and 1342 at LG&E’s Mill Creek Generating Station (“Mill Creek”);

WHEREAS, the Commonwealth of Kentucky’s Department of Environmental Protection (“KDEP”), pursuant to its delegated authority under the CWA, 33 U.S.C. § 1342(b), issued to LG&E KPDES Permit KY0003221 (“2002 Permit”) on May 6, 2002, which permit became effective on November 1, 2002, authorizing certain discharges of pollutants to waters of the United States from Mill Creek, through enumerated outfalls as defined in the permit;

WHEREAS, the cover page of the 2002 Permit states that “Outfall 002 discharges to Outfall 001 with an occasional direct discharge to the Ohio River at mile point 356.0”;

WHEREAS, Part I, Section A2 of the 2002 Permit states that Outfall 002 is “an internal outfall that discharges to Outfall 001,” includes a limitation on pH “when direct discharged to the

Ohio River,” and does not include any other language either authorizing or limiting direct discharges to the river;

WHEREAS, on May 11, 2007, LG&E applied for renewal of the 2002 Permit, which was set to expire on October 31, 2007;

WHEREAS, KDEP has not yet acted on LG&E’s application for renewal of the 2002 Permit, thereby administratively extending the 2002 Permit, which remains in effect today;

WHEREAS, Sierra Club contended that the 2002 Permit “at most authorizes from Outfall 002 of the Mill Creek Generating Station only an ‘occasional direct discharge to the Ohio River at mile point 356.0,’” Complaint, ¶ 47;

WHEREAS, Sierra Club contended that Mill Creek “is discharging and has discharged mercury and other pollutants, as defined in the CWA, 33 U.S.C. § 1362(6), from Outfall 002 directly to the Ohio River on an almost continuous, daily basis since at least May 22, 2009,” Complaint, ¶ 48;

WHEREAS, Sierra Club contended that LG&E’s “almost continuous, daily discharges from Outfall 002 directly to the Ohio River are not authorized by the 2002 Permit,” and that “[c]onsequently, LG&E has violated and is continuing to violate the CWA, 33 U.S.C. § 1311(a), on each day since at least May 22, 2009, for discharging pollutants without authorization in an NPDES permit,” Complaint ¶ 49;

WHEREAS, LG&E answered the Complaint, denying any liability for the claim alleged therein, and continues to deny any such liability;

WHEREAS, the Commonwealth of Kentucky, Energy and Environment Cabinet, an administrative agency of the Commonwealth of Kentucky charged with issuing and enforcing

permits under the Kentucky Pollutant Discharge Elimination System filed a brief of amicus curiae supporting LG&E's position;

WHEREAS, Sierra Club provided LG&E with notice of the violation alleged in the Complaint as required by 33 U.S.C. § 1365(b)(1), in a letter postmarked March 17, 2014;

WHEREAS, on August 31, 2015, the Court issued a Memorandum Opinion and Order, denying both LG&E's and Sierra Club's cross-motions for summary judgment, finding that additional evidence was needed for the Court to construe the 2002 Permit language at issue, and directing the Parties to engage in settlement discussions;

WHEREAS, Sierra Club and LG&E ("the Parties") have engaged in settlement discussions in an attempt to resolve Sierra Club's claims;

WHEREAS, the Parties desire to completely and finally resolve the claims alleged in Sierra Club's Complaint and Notice of Intent without further litigation;

WHEREAS, the Parties have agreed, and the Court by entering this Consent Decree finds, that: this Consent Decree has been negotiated in good faith and at arm's length; this settlement is fair, reasonable, in the best interest of the Parties and in the public interest; this settlement is consistent with the objective of the Clean Water Act "to restore and maintain the chemical, physical and biological integrity of the Nation's waters," 33 U.S.C. § 1251(a); and entry of this Consent Decree will avoid prolonged and complicated litigation between the Parties;

WHEREAS, the Parties have agreed to simultaneously present a copy of this Consent Decree to the Attorney General of the United States and the Administrator of the United States Environmental Protection Agency and request that, pursuant to 33 U.S.C. § 1365(c)(3), the Court allow a review period of at least 45 days prior to entry of the Consent Decree; and

WHEREAS, the Parties have consented to entry of this Consent Decree without trial of any issue,

NOW, THEREFORE, without any admission of fact or law, and without any admission by LG&E that any of the violations alleged by Sierra Club in its Complaint or Notice of Intent ever occurred, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action, the subject matter herein, and the Parties consenting hereto, pursuant to 28 U.S.C. §§ 2201, 2202, and 1331, and 33 U.S.C. §§ 1365(a)(1) and 1319(d). Venue is proper in this district under 33 U.S.C. § 1365(c)(1). Solely for the purposes of this Consent Decree and the underlying Complaint filed by Sierra Club, LG&E waives all objections and defenses that it may have to the Court's jurisdiction over this action, to the Court's jurisdiction over LG&E, and to venue in this district. LG&E shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree; however, the Parties reserve any arguments they may have regarding the construction of the terms of this Consent Decree in any proceeding in which the Court is asked to construe or enforce this Decree. For purposes of entry and enforcement of this Consent Decree, LG&E waives any defense or objection based on Sierra Club's standing. Except as expressly provided for herein, this Consent Decree shall not create any rights in any party other than Sierra Club and LG&E. Except as provided herein, the Parties consent to entry of this Consent Decree without further notice.

II. APPLICABILITY

2. Upon entry, the provisions of this Consent Decree shall apply to and be binding upon Sierra Club and LG&E, their respective successors and assigns, and their respective officers, employees, and agents solely in their capacities as such.

III. DEFINITIONS

3. “2002 Permit” means the KPDES Permit KY0003221 issued by the Kentucky Division of Water (“KDOW”) on May 6, 2002 (effective on November 1, 2002), to LG&E for certain discharges from Mill Creek to waters of the United States.

4. “Clean Water Act” or “CWA” means the federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, and its implementing regulations.

5. “Consent Decree” or “Decree” means this Consent Decree.

6. “Dewatering Phase” means the time after which process water is no longer routed to the Mill Creek Main Ash Pond under normal operations.

7. “Effluent Limitations Guidelines” or “ELGs” means the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, 80 Fed. Reg. 67838 (Nov. 3, 2015).

8. “Mill Creek” means the Mill Creek Generating Station, located in Louisville, Kentucky.

9. “Notice of Intent” means the letter postmarked March 17, 2014, attached as Exhibit A to the Complaint.

10. “Parties” means Sierra Club and LG&E, and “Party” means either of the named “Parties.”

IV. GENERAL PROVISIONS

11. Every term expressly defined by this Consent Decree shall have the meaning given to that term by this Consent Decree and, except as otherwise provided in this Decree, every other term used in this Decree that is also a term under the CWA or the regulations implementing the CWA shall mean in this Decree what such term means under the CWA or those implementing regulations.

12. This Consent Decree is not a permit, and it does not bind the Commonwealth of Kentucky with respect to any decision within the scope of its delegated permitting authority under the CWA. Nothing in this Consent Decree is intended to, or shall, alter or waive any applicable law.

13. This Consent Decree does not limit, enlarge or affect the rights of any Party to this Consent Decree as against any third parties.

14. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree, and, unless otherwise agreed to in writing by the Parties by express reference to this Consent Decree, supersedes all prior agreements and understandings between the Parties related to the subject matter herein. No document, representation, inducement, agreement, understanding or promise constitutes any part of this Decree or the settlement it represents, nor shall they be used in construing the terms of this Consent Decree.

V. CESSATION OF DIRECT DISCHARGES FROM OUTFALL 002

15. Installation of Second Discharge Pipe. Subject to the provisions of Section IX (Force Majeure), LG&E shall install, test, and place into service a second discharge pipe at Mill Creek, to convey effluent from Outfall 002 to Outfall 001, by no later than December 31, 2016.

16. Cessation of Direct Discharges from Outfall 002. Following installation, testing and placement into service of the second discharge pipe referenced in paragraph 15, Outfall 002 shall no longer make direct discharges to the Ohio River, except as follows:

- a. Emergency Situations. LG&E may make a direct discharge from Outfall 002 to the Ohio River as necessary in emergency situations. Emergency situations include, but are not limited to, circumstances in which LG&E deems it necessary in operating the station to make direct discharges from Outfall 002 in order to prevent overtopping of the impoundments for the Main Ash Pond, to ensure the structural integrity of the impoundments for the Main Ash Pond, or to prevent or mitigate the loss of or damage to life, health, property, or essential public services. Once LG&E has determined the emergency situation has passed, LG&E shall promptly cease the direct discharge from Outfall 002.
- b. Planned Direct Discharge. LG&E may make a direct discharge from Outfall 002 to the Ohio River as reasonably necessary in order to conduct maintenance, repairs, or inspection of either or both discharge pipes from Outfall 002 to Outfall 001. Once said maintenance, repair or inspection is complete, LG&E shall promptly stop the direct discharge from Outfall 002 to the Ohio River. LG&E presently anticipates conducting planned maintenance or inspection of either or both discharge pipes from Outfall 002 to Outfall 001 no more than approximately once every three years.
- c. Notice of Direct Discharge Events. Through December 31, 2021, LG&E shall notify Sierra Club in writing as soon as practicable of any event that results in

any direct discharge from Outfall 002 to the Ohio River, but no later than 14 days after the commencement of such direct discharge, whether or not that event is subject to the exceptions in subparagraphs (a) or (b) above. In this notice, LG&E shall describe the event, whether or not it believes that the event is subject to the exceptions in subparagraphs (a) or (b) above, LG&E's best estimate of the duration of any direct discharges resulting from the event, and the measures (if any) taken to minimize the duration of any direct discharges. Any dispute among the Parties as to whether notice was properly given pursuant to this paragraph, or whether a direct discharge event is or is not subject to the exceptions in subparagraphs (a) and (b) above, shall be subject to Section X (Dispute Resolution).

- d. Duty to Avoid or Minimize Direct Discharges. Following the cessation of direct discharges from Outfall 002 to the Ohio River pursuant to this paragraph, LG&E shall adopt all reasonable measures to avoid, or if unavoidable to minimize the duration and amount of, any direct discharges.

VI. COMPLIANCE WITH EFFLUENT LIMITATION GUIDELINES

17. Subject to the provisions of Section IX (Force Majeure), LG&E shall conduct Effluent Limitations Guidelines pilot studies for Mill Creek by December 31, 2017, and shall notify Sierra Club when the studies are completed. For purposes of implementing 40 C.F.R. § 423.13(g)-(l), LG&E shall propose to the Kentucky Division of Water ("KDOW"), and accept a determination made by KDOW, to comply with the corresponding effluent limitations at Mill Creek by no later than December 31, 2022. LG&E shall submit its proposed schedule to KDOW no later than June 1, 2018 and shall provide Sierra Club with a copy of the proposal within one

business day of its submittal to KDOW, subject to any appropriate designations made by LG&E pursuant to the Stipulated Protective Order in this case (ECF No. 36).

VII. ENVIRONMENTAL ENHANCEMENT PROJECTS

18. No later than 60 days after entry of this Consent Decree, LG&E shall contribute the sum of \$1 million to The Nature Conservancy, a tax exempt 501(c)(3) organization, to be used for environmental enhancement projects to improve forest cover and water quality in the Mill Creek and Green River watersheds. The Nature Conservancy shall expend the funds in accordance with the agreement attached to this Consent Decree as Appendix A. LG&E's obligations with respect to the environmental enhancement projects shall terminate upon its contribution of the funds referenced in this paragraph to The Nature Conservancy.

VIII. RESOLUTION OF CLAIMS

19. Entry of this Decree shall resolve all claims for relief alleged by Sierra Club in its Complaint and its Notice of Intent, or which could have been raised by Sierra Club arising out of the circumstances alleged in the Notice of Intent.

IX. FORCE MAJEURE AND POTENTIAL DELAYS

20. For purposes of this Consent Decree, a "Force Majeure Event" shall mean an event that has been or will be caused by circumstances beyond the reasonable control of LG&E, its contractors, or any other entity controlled by or working for LG&E, including obtaining necessary regulatory approvals or permits, that delays compliance with any provisions of this Consent Decree or otherwise causes a period of noncompliance with any provision of this Consent Decree, despite LG&E's exercise of commercially reasonable efforts to fulfill the obligation, except that LG&E shall exercise best efforts to fulfill its obligation under Paragraph 15 above to install, test and place into service a second discharge pipe at Mill Creek, to convey

effluent from Outfall 002 to Outfall 001. A “Force Majeure Event” does not include a financial inability to comply with the terms of the Consent Decree or unanticipated or increased costs or expenses associated with performance of LG&E’s obligations under the Consent Decree.

21. Notice of Potential Delays. If any event occurs or has occurred that may delay compliance with or otherwise cause a period of noncompliance with any obligation under this Consent Decree, whether or not it is a Force Majeure Event, LG&E shall notify Sierra Club in writing as soon as practicable of the event. In this notice, LG&E shall describe the event, the anticipated length of time of the event and any delay it caused or will cause, and the measures, if any, taken or to be taken by LG&E to prevent or minimize the delay or period of noncompliance. Any dispute among the Parties as to whether notice was properly given pursuant to this paragraph, or whether a delay is or is not caused by a Force Majeure Event, shall be subject to Section X (Dispute Resolution).

22. Duty to Avoid or Minimize Delays in Compliance. LG&E shall adopt all commercially reasonable efforts to avoid or minimize any delay in compliance or period of non-compliance with any obligation under this consent decree, whether or not it believes that the delay is caused by a Force Majeure Event, including anticipating and/or addressing the effects of any Force Majeure Event to prevent or minimize any resulting delay, non-performance, or non-compliance.

X. DISPUTE RESOLUTION

23. The dispute resolution procedure provided by this Section shall be available to govern the resolution of all disputes arising under this Consent Decree, provided that the party invoking such procedure has first made a good faith attempt to resolve the matter with the other party.

24. The dispute resolution procedure required herein shall be invoked by either Sierra Club or LG&E giving written notice to the other party advising of a dispute pursuant to this Section. The notice shall describe the nature of the dispute and shall state the noticing party's position with regard to such dispute. The party receiving such a notice shall acknowledge receipt of the notice, and LG&E and Sierra Club shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) calendar days following receipt of such notice.

25. Disputes submitted to dispute resolution under this Section shall, in the first instance, be the subject of informal negotiations between LG&E and Sierra Club. Such period of informal negotiations shall not extend beyond fourteen (14) calendar days from the date of the first meeting among the disputing parties' representatives, unless the Parties agree in writing to shorten or extend this period.

26. If LG&E and Sierra Club are unable to reach agreement during the informal negotiations period, either party may seek judicial resolution of the dispute by filing a petition with this Court. A responding party shall have thirty (30) days to respond to such petition or cross-petition, unless the Court issues an order setting a different deadline for a response.

27. As part of the resolution of any dispute under this Section, in appropriate circumstances LG&E and Sierra Club may agree, or this Court may order, an extension or modification of the schedule for the completion of the activities required under this Consent Decree to account for the delay that occurred as a result of dispute resolution.

28. The Court shall decide all disputes pursuant to applicable principles of law for resolving such disputes. The Parties reserve their right to assert what shall be the applicable standard of review governing resolution of the particular dispute, and shall state their respective

positions concerning the applicable standard of review in their initial filings with the Court under Paragraph 26.

XI. PERMITS

29. Notwithstanding the reference to permits and regulations applicable to Mill Creek in this Consent Decree, the enforcement of such permits and regulations shall be in accordance with their own terms and the applicable law. The permits and regulations applicable to Mill Creek shall not be enforceable under this Consent Decree.

30. By December 31, 2016, LG&E shall supplement its pending application for renewal of the 2002 Permit to include the following information and/or requests:

- a) Flows. LG&E shall identify discharge flow rates and ranges for the Mill Creek Main Ash Pond as a supplement to its pending Permit renewal application. LG&E shall request in that supplement that the renewal of the 2002 Permit require LG&E to monitor Outfall 002 flow at Mill Creek on a daily basis and require LG&E to report on such flow in discharge monitoring reports.
- b) Pollutants. LG&E shall sample the standard set of thirteen (13) metals (Antimony, Arsenic, Beryllium, Cadmium, Chromium, Copper, Lead, Mercury, Nickel, Selenium, Silver, Thallium and Zinc) found in the 2002 Permit, plus Boron, at three (3) different water column heights within the ash pond. The water column heights for such sampling shall be at the surface, the middle and just above the solids base, all as determined by LG&E. LG&E shall include the results of such sampling as a supplement to its application for renewal of the 2002 Permit. LG&E shall request in that supplement that the

renewed KPDES permit require LG&E to sample for these metals once a month during the Dewatering Phase, with the sample point located at Outfall 001 just prior to discharge into the Ohio River.

- c) Total Suspended Solids (“TSS”). LG&E shall request in its supplement to its application for renewal of the 2002 Permit that the renewed permit require that compliance for TSS and oil and grease be monitored at the Outfall 002 weir, prior to commingling with any other wastewater at Outfall 001. LG&E shall request in that supplement that TSS limits be determined by KDOW based upon the ELGs for legacy wastewater. LG&E shall propose in that supplement that weekly compliance sampling for TSS and oil and grease be required at Outfall 002 under the renewed permit.
- d) Pollutant Concentrations in the Receiving Stream. LG&E shall include in its supplement to its application for renewal of the 2002 Permit an analysis of Ohio River water quality, measuring for the conventional constituents found in Form C of the state application package.
- e) 7Q10 for Ohio River. LG&E shall supply the 7Q10 flow for the Ohio River as part of its supplement to its application for renewal of the 2002 Permit.
- f) Water Quality Standards. LG&E shall request in its supplement to its application for renewal of the 2002 Permit that the compliance point for monitoring compliance with state water quality standards under the renewed permit for Mill Creek be located prior to discharge into the Ohio River at Outfall 001. LG&E shall request in its supplement to its application for renewal of the 2002 Permit that any discharge limits for Mill Creek be based

upon allowances for appropriate mixing zones within the Ohio River, and any appropriate compliance schedules.

- g) Decanted Waters. LG&E shall propose in its supplement to its application for renewal of the 2002 Permit that all wastewaters discharged from the Main Ash Pond during the Dewatering Phase be treated by settling within the pond, and thereafter flow into the 002 sump pit by gravity flow over the Outfall 002 weir. LG&E shall also propose in that supplement that when, in the Dewatering Phase, the pond level can no longer support settling and free flowing water over the weir plate, the renewed permit would then authorize pumping from the pond to the pipeline to Outfall 001. If necessary, treatment would be provided during such pumping to ensure compliance with the TSS and the water quality based limitations set forth in the renewed permit prior to discharge into the Ohio River, with compliance measured consistent with subsection (b) above and enforced exclusively pursuant to the revised KPDES permit.
- h) No Waiver of Rights. LG&E's supplementation of its permit renewal package as described herein shall not be construed to mean that LG&E's dewatering of the ash pond is not authorized by the 2002 Permit. In the event that the renewed KPDES permit is not issued, through no fault of LG&E, before LG&E needs to commence dewatering of the Mill Creek ash pond in order to meet its ELG compliance or ash pond closure schedule, LG&E reserves the right to proceed to discharge under the 2002 Permit, after giving notice to

KDOW. LG&E shall provide Sierra Club with a copy of any such notice promptly upon its submittal to KDOW.

XII. MAIN ASH POND CLOSURE

31. Subject to approval by the Kentucky Public Service Commission of the initial ash pond closure process at Mill Creek, LG&E will begin the permitting process for ash pond closure no later than December 31, 2017, and will complete the closure process no later than December 31, 2021. Nothing in this Consent Decree is intended to, or shall, alter any requirement in 80 Fed. Reg. 21302 (April 17, 2015) (“Hazardous and Solid Waste Management Systems: Disposal of Coal Combustion Residuals from Electric Utilities”), or require any particular method of closure for Mill Creek’s Main Ash Pond.

XIII. NOTICES

32. Unless otherwise provided herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to Sierra Club:

Kristin Henry
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
Tel: (415) 977-5716
Email: kristin.henry@sierraclub.org

Thomas Cmar
Earthjustice
1101 Lake St., Ste. 405B
Oak Park, IL 60304
Tel: (312) 257-9338
Email: tcmar@earthjustice.org

As to LG&E:

J. Gregory Cornett
LG&E and KU Energy LLC
220 West Main Street
Louisville, KY 40202
Tel: (502) 627-2756
Email: greg.cornett@lge-ku.com

Robert J. Ehrler
LG&E and KU Energy LLC
220 West Main Street
Louisville, KY 40202
Tel: (502) 627-2305
Email: bob.ehrler@lge-ku.com

33. All notifications, communications, or submissions made pursuant to this Section shall be sent either by: (a) overnight mail or delivery service; (b) certified or registered mail, return receipt requested; or (c) electronic transmission, unless the recipient is not able to review the transmission in electronic form. All notifications, communications and transmissions (a) sent by overnight, certified or registered mail shall be deemed submitted on the date they are postmarked, or (b) sent by overnight delivery service shall be deemed submitted on the date they are delivered to the delivery service. All notifications, communications, and submissions made by electronic means shall be electronically signed and certified, and shall be deemed submitted on the date that such transmissions are sent, unless the recipient shows that it did not receive such transmission.

34. Any Party may change either the notice recipient or the address for providing notices to it by serving the other Party with a notice setting forth such new notice recipient or address.

XIV. SALE OR TRANSFER OF OWNERSHIP INTEREST

35. If LG&E sells or transfers to an entity unrelated to LG&E (“Third Party Purchaser”) part or all of its ownership interest in Mill Creek (“Ownership Interest”), LG&E shall promptly comply with the requirements of Paragraphs 37 prior to any such sale or transfer unless, following any such sale or transfer, LG&E remains the holder of the KPDES permit for Mill Creek.

36. If LG&E sells or transfers an Ownership Interest to a Third Party Purchaser, it shall advise the Third Party Purchaser in writing of the existence of this Consent Decree prior to such sale or transfer, and shall provide a copy of such written notification to Sierra Club pursuant to Section XIII (Notices) of this Consent Decree.

37. The Third Party Purchaser shall be jointly and severally liable with LG&E for all the requirements of this Decree that may be applicable to the transferred or purchased Ownership Interests, except as provided for in Paragraph 40.

38. This Consent Decree shall not be construed to impede the transfer of any Ownership Interests between LG&E and any Third Party Purchaser, as long as the requirements of this Consent Decree are met. This Consent Decree shall not be construed to prohibit a contractual allocation—as between LG&E and any Third Party Purchaser of Ownership Interests—of the burdens of compliance with this Decree, provided that both LG&E and such Third Party Purchaser shall remain jointly and severally liable to Sierra Club for the obligations of the Decree applicable to the transferred or purchased Ownership Interests, except as provided in Paragraph 40.

39. If Sierra Club agrees, Sierra Club, LG&E and the Third Party Purchaser may execute a modification to this Consent Decree that relieves LG&E of its liability under this

Consent Decree for, and makes the Third Party Purchaser liable for, all obligations and liabilities applicable to the purchased or transferred Ownership Interests. Sierra Club's consent to such a modification shall not be unreasonably withheld.

XV. EFFECTIVE DATE

40. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XVI. RETENTION OF JURISDICTION

41. This Court shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, modification, or adjudication of disputes. During the term of this Consent Decree, either LG&E or Sierra Club may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

XVII. MODIFICATION

42. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by LG&E and Sierra Club. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

XVIII. SIGNATORIES AND SERVICE

43. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind to this document the Party he or she represents.

44. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

XIX. TERMINATION

45. As soon as LG&E completes a construction project or any other requirement of this Consent Decree that is not ongoing or recurring, LG&E may, by motion to this Court, seek termination of the provision or provisions of this Consent Decree that imposed the requirement.

XX. FINAL JUDGMENT


46. Pursuant to 33 U.S.C. § 1365, the Proposed Consent Decree will be lodged with the Court and simultaneously presented to the U.S. Department of Justice for its review and comment for a period of up to forty-five (45) days. After the review period, this Consent Decree may be entered by the Court. The Parties agree to cooperate in good faith in order to expeditiously obtain U.S. Department of Justice review of the lodged Consent decree and Court approval. In the event the Department of Justice proposes modifications to this Consent Decree, the Parties agree to confer and undertake good faith efforts to resolve any disputes that may arise out of the review by the Department of Justice.

47. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment in the above-captioned matter.


SO ORDERED, THIS _____ DAY OF _____, 2016.

Agreed to by:

SIERRA CLUB

By: 
Title: Attorney for Sierra Club
Date: 9/26/16

**LOUISVILLE GAS AND ELECTRIC
COMPANY**

By: 
Title: Associate General Counsel
Date: 9/26/16